

**WSR 17-08-070**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)

[Filed April 3, 2017, 11:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-069.

Title of Rule and Other Identifying Information: The department is proposing to amend chapter 388-96 WAC, Nursing facility medicaid payment system, in accordance with legislative direction.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on June 6, 2017, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 7, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., June 6, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by May 23, 2017, phone (360) 664-6092, TTY (360) 664-6178, or email KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 388-96 WAC in order to implement the nursing facility methodology changes from SHB 1274 found in chapter 2, Laws of 2015 2nd sp. sess., and SHB 2678, chapter 131, Laws of 2016.

The department is proposing to repeal WAC 388-96-534, 388-96-540, 388-96-552, 388-96-553, 388-96-554, 388-96-558, 388-96-559, 388-96-561, 388-96-562, 388-96-564, 388-96-565, 388-96-572, 388-96-574, 388-96-708, 388-96-709, 388-96-744, 388-96-746, 388-96-747, 388-96-748, 388-96-762, 388-96-767, 388-96-776, 388-96-783, 388-96-784, and 388-96-786. The department is proposing to amend WAC 388-96-010, 388-96-022, 388-96-107, 388-96-122, 388-96-205, 388-96-208, 388-96-211, 388-96-218, 388-96-502, 388-96-505, 388-96-525, 388-96-542, 388-96-554, 388-96-556, 388-96-560, 388-96-580, 388-96-585, 388-96-710, 388-96-713, 388-96-758, 388-96-759, 388-96-781, 388-96-782, and 388-96-901. The department is proposing to create WAC 388-96-915, 388-96-916, and 388-96-917.

Reasons Supporting Proposal: Legislative direction.

Statutory Authority for Adoption: RCW 74.46.800, 74.46.561(1).

Statute Being Implemented: SHB 1274, SHB 2678.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Elizabeth Pashley, 4450 10th Avenue S.E., Lacey, WA 98503, (360) 725-2447; Implementation and Enforcement:

Peter Graham, 4450 10th Avenue S.E., Lacey, WA 98503, (360) 725-2499.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that they do not impose more than minor costs on affected small businesses or small nonprofit organizations.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Elizabeth Pashley, P.O. Box 45600, Lacey, WA 98503, phone (360) 725-2447, fax (360) 725-2641, email Elizabeth.Pashley@gmail.com.

March 31, 2017  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-010 Definitions.** Unless the context indicates otherwise, the following definitions apply in this chapter.

**"Accounting"** means activities providing information, usually quantitative and often expressed in monetary units, for:

- (1) Decision making;
- (2) Planning;
- (3) Evaluating performance;
- (4) Controlling resources and operations; and
- (5) External financial reporting to investors, creditors, regulatory authorities, and the public.

**"Accrual method of accounting"** is a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

**"Administration and management"** means activities used to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

**"Allowable costs"** are documented costs that are necessary, ordinary, reasonable, and related to the care of medicaid recipients, and are not expressly declared nonallowable by this chapter or chapter 74.46 RCW. Costs are ordinary if they are of the nature and magnitude that prudent and cost conscious management would pay.

~~("Allowable depreciation costs" are depreciation costs of tangible assets, whether owned or leased by the contractor, meeting the criteria specified in WAC 388-96-552.)~~

**"Assignment of contract"** means:

- (1) A new nursing facility licensee has elected to care for medicaid residents;
- (2) The department finds no good cause to object to continuing the medicaid contract at the facility; and
- (3) The new licensee accepts assignment of the immediately preceding contractor's contract at the facility.

**"Bad debts"** are amounts considered to be uncollectible from accounts and notes receivable.

**"Banked beds"** are beds removed from service under chapter 246-310 WAC.

**"Beneficial owner"** is any one or more of the following:

(1) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares one or more of the following:

(a) Voting power which includes the power to vote, or to direct the voting of such ownership interest; ~~((and))~~ or

(b) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

(2) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the ~~((purpose of))~~ effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(3) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(a) Through the exercise of any option, warrant, or right;

(b) Through the conversation of an ownership interest;

(c) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(d) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement; except that, any person who acquires an ownership interest or power specified in ~~((3))~~(a), (b), or (c) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(4) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(a) The pledge agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(b) The pledge agreement, prior to default, does not grant to the pledgee:

(i) The power to vote or to direct the vote of the pledged ownership interest; or

(ii) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

~~("Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.)~~

**"Building"** means the basic structure, shell, structures, or shells of a facility and additions thereto. All allowable sec-

tions of a building are enclosed on all sides with a roof and are permanent.

**"Building improvements"** are betterments and additions made by a building owner to the building.

**"Capital"** means the component of the rate that uses a fair market rental system to set a price per bed.

**"Cash method of accounting"** means a method of accounting in which revenues are recorded when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

**"Change of ownership"** means a substitution, elimination, or withdrawal of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility.

(1) Events which constitute a change of ownership include, but are not limited to, the following:

(a) Changing the form of legal organization of the contractor, ~~((e.g.,))~~ such as a sole proprietor forms a partnership or corporation;

(b) Transferring ownership of the nursing facility business enterprise to another party, regardless of whether ownership of some or all of the real property ~~((and/or))~~ or personal property assets of the facility are also transferred;

(c) Dissolving of a partnership;

(d) Dissolving the corporation, merging the corporation with another corporation, which is the survivor, or consolidating with one or more other corporations to form a new corporation;

(e) Transferring, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock to one or more:

(i) New or former stockholders; or

(ii) Present stockholders each having held less than five percent of the stock before the initial transaction;

(f) Substituting of the individual operator or the operating entity by any other event or combination of events that results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services; or

(g) A nursing facility ceases to operate.

(2) Ownership does not change when the following, without more, occurs:

(a) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(b) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

**"Charity allowance"** means a reduction in charges made by the contractor because of the indigence or medical indigence of a patient.

**"Component rate allocation~~((s))~~"** means the initial component rate allocation~~((s))~~ of the rebased rate for a

rebase period effective July ~~((+))~~ 1st. If a month and a day, other than July ~~((+))~~ 1st with a year precedes "component rate allocation~~((+))~~," it means the initial component rate allocation~~((+))~~ of the rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"**Contract**" means an agreement between the department and a contractor for the delivery of nursing facility services to medical care recipients.

"**Cost report**" means all schedules of a nursing facility's cost report submitted according to the department's instructions.

"**Courtesy allowances**" are reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

"**Department**" means department of social and health services and its employees.

"**Direct care supplies** ~~((DCS) are those supplies))~~ or "dcs" means:

(1) Those supplies:

~~((a))~~ (a) Used by staff providing direct care to residents;

~~((b))~~ (b) Consumed during a single accounting period; and

~~((c))~~ (c) Expensed in that accounting period.

(2) Supplies excluded from DCS include but are not limited to the following:

~~((1))~~ (a) Medical equipment (such as IV poles);

~~((2))~~ (b) Items covered by medicaid fee-for-service system; and

~~((3))~~ (c) Administrative supplies used by direct care staff (such as pencils, pens, paper, and office supplies~~((ete)))~~).

"**Donated asset**" means an asset the contractor acquired without making any payment for the asset either in cash, property, or services. An asset is not a donated asset if the contractor:

(1) Made even a nominal payment in acquiring the asset; or

(2) Used donated funds to purchase the asset.

~~("Essential community provider" means a facility that is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.)~~

"**Equity capital**" means total tangible and other assets ~~((which))~~ that are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital defined as current assets minus current liabilities.

"**Fiscal year**" means the operating or business year of a contractor. All contractors report on the basis of a twelve~~((-))~~ month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, ~~((("fiscal year"))~~ "fiscal year" may also refer to a state fiscal year extending from July ~~((+))~~ 1st through June ~~((30))~~ 30th of the following year and comprising the first or second half of a state fiscal biennium.

"**Fixed equipment**" means attachments to buildings including, but not limited to, wiring, electrical fixtures,

plumbing, elevators, heating system, and air conditioning system. Generally, fixed equipment is affixed to the building and not subject to transfer.

~~("Gain on sale" means the actual total sales price of all tangible and intangible nursing facility assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.)~~

~~("Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.)~~

"**Imprest fund**" means a fund ~~((which))~~ that is regularly replenished in exactly the amount expended from it.

~~("Intangible asset" is an asset that lacks physical substance but possesses economic value.)~~

"**Interest**" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

"**Joint facility costs**" are any costs that benefit more than one facility, or one facility and any other entity.

~~("Large nonessential community providers" are not essential community providers and have more than sixty licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.)~~

"**Leasehold improvements**" are betterments and additions made by the lessee to the leased property that become the property of the lessor after the expiration of the lease.

~~("Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.)~~

"**Licensed beds**" is the adjusted reported beds from the cost report associated with the cost year of the component being set.

"**Nonadministrative wages and benefits**" are wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not ~~((to include))~~ including the administrator, assistant administrator, or administrator-in-training.

"**Nonallowable costs**" are the same as ~~((("unallowable costs."))~~ "unallowable costs."

"**Nonrestricted funds**" are funds that are not restricted to a specific use by the donor, ~~((e.g.,))~~ such as general operating funds.

"**Nursing facility occupancy percentage**" is a percentage determined by multiplying the number of calendar days for the cost report period by the number of licensed beds, regardless of how many beds are set up, in use, or banked under ~~((chapter 70.38 RCW))~~ chapter 246-310 WAC, for the same cost report period. Then, the product is divided into the nursing facility's actual resident days for the same cost report period. Banked beds are not counted as licensed beds for nursing facility occupancy percentage calculation.

"**Operating lease**" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

**"Ownership interest"** means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form ~~((which such))~~ the beneficial ownership takes.

**"Per diem ~~((per patient day or per resident day)) costs,~~ or "per patient day costs," or "per patient days costs"** mean~~((s))~~ total allowable costs for a fiscal period divided by total patient or resident days for the same period.

**"Prospective daily payment rate"** means the rate assigned by the department to a contractor for providing service to medical care recipients prior to the application of settlement principles.

**"Real property,"** whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

**"Recipient"** means a medicaid recipient.

**"Related care"** means only those services that are directly related to providing direct care to nursing facility residents including but not limited to:

- (1) The director of nursing services;
- (2) Nursing direction and supervision;
- (3) Activities and social services programs;
- (4) Medical and medical records specialists~~((:));~~ and
- (5) Consultation provided by:
  - (a) Medical directors; and
  - (b) Pharmacists.

**"Relative"** includes:

- (1) Spouse;
- (2) Natural parent, child, or sibling;
- (3) ~~((Adopted))~~ Adoptive child ~~((or adoptive)),~~ parent, or sibling;
- (4) Stepparent, stepchild, stepbrother, stepsister;
- (5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;
- (6) Grandparent ~~((or))~~ and grandchild; and
- (7) Uncle, aunt, nephew, niece, ~~((or))~~ and cousin.

**"Related organization"** means an entity ~~((that is))~~ under common ownership ~~((and/or))~~ or common control with, or has control of~~((:))~~ or is controlled by~~((:))~~ the contractor.

~~((a))~~ (1) "Common ownership" exists when an entity or person is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

~~((b))~~ (2) "Control" exists where an entity or person has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable and exercised.

**"Renovations"** means the cost of the building, building improvements, leasehold improvements, and fixed equipment used to calculate a facility's age. In order to be used to calculate a facility's age, the cost of renovations in a calendar year must be two thousand dollars or greater per licensed bed.

**"Restricted fund"** means those funds in which either the principal ~~((and/or))~~ or income ~~((of which)),~~ or both, is limited by agreement with or direction of the donor to a specific purpose.

**"Significant renovations"** are renovations that exceed two thousand dollars per licensed bed in a calendar year as reported on the adjusted annual cost report.

~~((Small nonessential community providers" are not essential community providers and have sixty or fewer licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.))~~

**"Start up costs"** are the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start up costs include:

- (1) Administrative and nursing salaries;
- (2) Utility costs;
- (3) Taxes;
- (4) Insurance;
- (5) Repairs and maintenance; and
- (6) Training costs.

Start up costs do not include expenditures for capital assets.

**"Total rate allocation"** means the initial rebased rate for a rebase period effective July ~~((+))~~ 1st. If a month and a day, other than July ~~((+))~~ 1st, with a year precedes "total rate allocation," it means the initial rebased rate of the rebase period has been amended or updated effective the date that precedes it, ~~((e.g.,))~~ such as October 1, 1999 direct care component rate allocation.

**"Unallowable costs"** are costs that do not meet every test of an allowable cost.

**"Uniform chart of accounts"** are account titles identified by code numbers established by the department for contractors to use in reporting costs.

**"Vendor number"** means a number assigned to each contractor delivering care services to medical care recipients.

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

**AMENDATORY SECTION** (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-022 Due dates for cost reports.** (1) The contractor ~~((shall))~~ must submit annually a complete report of costs and financial conditions of the contractor that is prepared and presented in a standardized manner and in accordance with this chapter and chapter 74.46 RCW.

(2) The department will review the contractor's costs and financial conditions in accordance with the methodology effective at the time the contractor incurred the costs as described in chapters 388-96 WAC and 74.46 RCW.

(3) Not later than March 31st of each year, each contractor ~~((shall))~~ must submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

(4) To properly complete the cost report, the contractor must submit the entire cost report, including the certification page to the document electronically. A cost report is not complete until the department receives both documents.

~~((3))~~ (5) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor ~~((shall))~~ must submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

~~((4))~~ If the cost report is not properly completed or if it is not received by the due date established in subsection (2) or (3) of this section, all or part of any payments due under the contract may be withheld by the department until such time as required cost report is properly completed and received)) (6) If the contractor does not properly complete the cost report or the department does not receive it by the due date established in subsection (3) or (5) of this section, the department may withhold all or part of any payments due under the contract until the department receives the contractor's properly completed cost report.

~~((5))~~ (7) The department may impose civil fines(,) and take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date established in subsection ~~((2))~~ (3) or ~~((3))~~ (5) of this section.

AMENDATORY SECTION (Amending WSR 89-01-095, filed 12/21/88)

**WAC 388-96-107 Requests for extensions.** (1) A contractor may request in writing an extension for submitting cost reports. Contractor requests ~~((shall))~~ must:

- (a) Be addressed to the manager, ~~((residential))~~ nursing facility rates program;
- (b) State the circumstances prohibiting compliance with the report due date; and
- (c) Be received by the department at least ten days prior to the due date of the report.

(2) The department may grant two extensions of up to thirty days each, only if the circumstances, stated clearly, indicate the due date cannot be met and the following conditions are present:

- (a) The circumstances were not foreseeable by the provider; and
- (b) The circumstances were not avoidable by advance planning.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

**WAC 388-96-122 Amendments to reports.** (1) For the purpose of determining allowable costs, the department ~~((shall))~~ must consider an amendment to an annual report only if filed by the provider before the receipt by the provider of the notification scheduling the department's audit. The contractor may file an amendment subsequent to such notification and pursuant to the provisions of RCW 74.46.531 to adjust a payment rate allocation because of an error or omission. When the provider files an amendment, the department ~~((shall))~~ must consider it only if significant errors or omissions are discovered. The department ~~((shall))~~ must deem errors or omissions "significant" when the errors or omissions would mean a net difference of two cents or more per patient day or one thousand dollars or more in reported costs, whichever is higher, in any component rate allocation.

(2) To file an amendment, ~~((only those cost report pages where changes appear need to be filed, together with the certification required by WAC 388-96-117))~~ the provider must submit the amended cost report and amended cost report certification page to the department electronically. An amended

cost report is not complete until the department receives both documents.

~~((2))~~ (3) If an amendment is filed, a contractor shall also submit with the amendment an account of the circumstances relating to and the reasons for the amendment, along with supporting documentation. The department ~~((shall))~~ must refuse to consider an amendment resulting in a more favorable settlement or payment rate allocation to a contractor if the amendment is not the result of circumstances beyond the control of the contractor or the result of good-faith error under the system of cost allocation and accounting in effect during the reporting period in question.

~~((3))~~ (4) Acceptance or use by the department of an amendment to a cost report ~~((shall in no way be construed as))~~ is not a release of applicable civil or criminal liability.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-205 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions.** (1) The purposes of department audits and examinations under this chapter and chapter 74.46 RCW are to ascertain that:

- (a) Allowable costs for each year for each medicaid nursing facility are accurately reported;
- (b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;
- (c) The contractor's revenues, expenditures, ~~((and costs of the building, land, land improvements, building improvements, and movable and fixed equipment))~~ building, building square footage, building improvements, leasehold improvements, fixed equipment, and age are recorded in compliance with department requirements, instructions, and generally accepted accounting principles;

(d) The contractor is in compliance with the direct care staffing requirements found in this chapter and chapter 74.42 RCW;

~~((e))~~ (e) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds; and ~~((e))~~ (f) The contractor has reported and maintained accounts receivable in compliance with this chapter and chapter 74.46 RCW.

(2) The department ~~((shall))~~ must examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine whether the information is correct, complete, and reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and chapter 74.46 RCW. The department ~~((shall))~~ must determine the scope of the examination.

(3) When the department finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care~~((, therapy care, and support services))~~ under WAC ~~((388-96-211(3) and (4)))~~ 388-96-218 or in any component rate resulting from undocumented or mis-

reported costs. A schedule of the adjustments ~~((shall))~~ must be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments ~~((shall be))~~ are subject to review under WAC 388-96-901 and 388-96-904.

(4) Audits of resident trust funds and receivables ~~((shall))~~ must be reported separately and in accordance with the provisions of this chapter and chapter 74.46 RCW.

(5) The contractor ~~((shall))~~ must:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds. To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

(b) ~~((Prepare a reconciliation of the cost report with:~~

(i) ~~Applicable federal income and federal and state payroll tax returns; and~~

(ii) ~~The records for the period covered by the cost report.~~

(e)) Make available to the department staff an individual or individuals to respond to questions and requests for information from department staff. The designated individual or individuals ~~((shall))~~ must have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information; and

(c) Prepare a reconciliation of the cost report with:

(i) Applicable federal income and federal and state payroll tax returns; and

(ii) The records for the period covered by the cost report.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost reports or resident trust fund periods, whether examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records ~~((shall))~~ must be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department ~~((shall))~~ must notify ~~((a))~~ the contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, ~~((does))~~ do not allow access to the contractor's nursing facility records.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-208 Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds.** (1) The department ~~((shall))~~ must reconcile medicaid resident

days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

(2) The contractor ~~((shall))~~ must make any payment owed the department as determined by either reconciliation ~~((and/or))~~ or settlement, or both, at the lower of cost or rate ~~((in direct care, therapy care, and support services component rate allocations))~~ within sixty days after the department notifies the contractor of the amount owed.

(3) The department ~~((shall))~~ must pay the contractor within sixty days after it notifies the contractor of an underpayment.

(4) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest ~~((shall))~~ must be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(5) The department ~~((shall))~~ may withhold funds from the contractor's payment for services and ~~((shall))~~ may take all other actions authorized by law to recover from the contractor amounts due and payable including any accrued interest. Neither a timely filed appeal under WAC 388-96-901 and 388-96-904 nor the commencement of judicial review as may be available to the contractor in law to contest a payment obligation determination shall delay recovery from the contractor or payment to the contractor.

(6) For all cost report periods ending on or before December 31, 2015, the contractor must make payment owed to the department for direct care, therapy, and support services at the lower of the cost or rate.

(7) For all cost report periods beginning January 1, 2016 and ending on or before December 1, 2016, cost in direct care, therapy, and support services must be combined and compared to the combined weighted rates for direct care, therapy, and support services. The contractor must make payment owed to the department for combined direct care, therapy, and support services at the lower of the cost or rate.

(8) For all cost report periods beginning on or after January 1, 2017, the contractor must make payment owed to the department for direct care at the lower of the cost or rate.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-211 Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates.**

(1) Contractors ~~((shall))~~ must submit with each annual nursing facility cost report a proposed settlement report showing underpending or overpending in each component rate during the cost report year on a per-resident day basis. The department ~~((shall))~~ must accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

(2) Contractors ~~((shall not be))~~ are not required to refund payments made ~~((in the operations, variable return, property, and financing allowance component rates))~~ to cost components not identified in WAC 388-96-208 (7) or (8) in excess

of the adjusted costs of providing services corresponding to these components.

(3) The facility ~~((will))~~ must return to the department any overpayment amounts ~~((in each of the direct care, therapy care, and support services rate components))~~ identified in WAC 388-96-208 (7) or (8) that the department identifies following the examination and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed one percent of the facility's ~~((direct care, therapy care, and support services))~~ component rate identified in WAC 388-96-208 (7) or (8). However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection ~~((4))~~ (5) of this section. Facilities that are not in substantial compliance for more than ninety days ~~((s))~~ and facilities that provide substandard quality of care at any time during the period for which settlement is ~~((being))~~ calculated, will not be allowed to retain any amount of overpayment in the facility's ~~((direct care, therapy care, and support services component rate))~~ cost components identified in WAC 388-96-208 (7) or (8). The terms "not in substantial compliance" and "substandard quality of care" ~~((shall))~~ must be defined by federal survey regulations.

~~(4) ((Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, shall be done separately for each rate component, and, except as otherwise provided in this subsection, neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in determining the degree of underspending or recovery, if any. In computing a preliminary or final settlement, savings in the support services cost center shall be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings, but no more than twenty percent of the support services component rate may be shifted. In computing a preliminary or final settlement, savings in direct care and therapy care may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor retained overpayments up to one percent of direct care, therapy care, and support services rate components, as authorized in subsection (3) of this section, shall be calculated and applied after all shifting is completed.~~

~~(5))~~ Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW ~~((shall))~~ represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

(5) For cost reports ending on or before December 31, 2016, determination of unused rate funds, including the amounts of direct care, therapy, and support services to be recovered, must be done separately for each rate component and, except as otherwise provided in this subsection, neither costs nor rate payments may be shifted from one component rate or corresponding services are to another in determining the degree of underspending or recover, if any. In calculating a preliminary or final settlement, savings in the support ser-

vices cost center must be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings but no more than twenty percent of the support services component rate may be shifted. In calculating a preliminary or final settlement, savings in direct care and therapy may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor retained overpayments up to one percent of direct care, therapy, and support services rate components, as authorized in subsection (4) of this section, must be calculated and applied after all shifting is completed.

(6) For the calendar year cost report, the following components must be combined for settlement purposes in the following manner:

(a) The direct care, therapy, and support services costs for services provided on or before June 30, 2016 must be combined with the direct care costs for services provided on or after July 1, 2016 and compared to the total combined weighted rate for direct care, therapy, and support services.

(b) The operations rate for services provided on or before June 30, 2016 must be combined with the indirect care rate for services provided on or after July 1, 2016.

(c) The property rate for services provided on or before June 30, 2016 must be combined with the fair market rental rate for services provided on or after July 1, 2016.

(7) The facility must return to the department any overpayment amounts based on the aggregated cost versus rate that the department identifies following the examination and settlement procedures as described in this chapter. The contractor may retain any overpayment that does not exceed one percent of the facility's combined direct care component rate. However, facilities that are not in substantial compliance for more than ninety days and facilities that provide substandard quality of care at any time during the period for which settlement is calculated will not be allowed to retain any amount of overpayment in the facility's direct care component rate.

(8) Contractors are not required to refund payments made in the indirect care, capital, and quality enhancement component rates in excess of the adjusted costs of providing services corresponding to these components.

(9) For the 2017 calendar year cost report and later, the facility must return to the department any overpayment amounts in the direct care rate component that the department identifies following the examination and settlement procedures as described in this chapter. The contractor may retain any overpayment that does not exceed one percent of the facility's direct care component rate. However, facilities that are not in substantial compliance for more than ninety days and facilities that provide substandard quality of care at any time during the period for which settlement is calculated, will not be allowed to retain any amount of overpayment in the facility's direct care component rate. The terms "not in substantial compliance" and "substandard quality of care" must be defined by federal survey regulations.

(10) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in

effect. Spending above the total payment rate or any rate component must not increase payment to a contractor.

(11) While the provisions of RCW 74.46.561(1) are in effect, any reductions and caps must be proportionally allocated to all components before settlement is calculated.

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

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-218 Proposed, preliminary, and final settlements.** (1) For each component rate, the department ~~((shall))~~ must calculate a proposed, preliminary, or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter ~~((and))~~ or chapter 74.46 RCW.

(2) As part of the cost report, the proposed settlement report is due in accordance with WAC 388-96-022. In the proposed preliminary settlement report, a contractor ~~((shall))~~ must compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. In accordance with WAC 388-96-205, 388-96-208, and 388-96-211 the contractor ~~((shall))~~ must take into account all authorized shifting, retained savings, and upper limits to rates on a cost center basis.

~~((a))~~ (3) The department will ~~((~~

~~((i))~~ review the proposed preliminary settlement report for accuracy~~((;))~~ and

~~((ii))~~ accept or reject the ~~((proposal of the))~~ contractor's proposal. If accepted, the proposed preliminary settlement report ~~((shall))~~ must become the preliminary settlement report. If rejected, the department ~~((shall))~~ must issue, by component payment rate allocation, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

~~((b))~~ (4) When the department receives the proposed preliminary settlement report~~((;~~

~~((i))~~ by the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date~~((; or~~

~~((ii))~~ A) When the department receives the proposed preliminary settlement report after the cost report due date specified in WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received.

~~((c))~~ In its discretion, the department may designate a date later than the dates specified in this subsection ~~((2)(b)(i) and (ii) of this section)~~ to issue preliminary settlements.

~~((d))~~ (5) A contractor ~~((shall have))~~ has twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department ~~((shall))~~ must not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement ~~((shall))~~ must be limited to either calculation of the settle-

ment~~((, to the))~~ or application of settlement principles and rules, or both, and ~~((shall))~~ must not encompass rate or audit issues.

~~((3))~~ (6) The department ~~((shall))~~ must issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

~~((a))~~ (7) The department ~~((shall))~~ must prepare a final settlement by component payment rate allocation and ~~((shall))~~ must fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department ~~((shall))~~ must take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department ~~((shall))~~ must compare~~((;~~

~~((i))~~ the payment rates it paid the contractor for the facility in question during the report period, weighted by the number of allowable resident days reported for the period each rate was in effect to the contractor's~~((;))~~;

~~((ii))~~ (a) Audited allowable costs for the reporting period; or

~~((iii))~~ (b) Reported costs for the nonaudited reporting period.

~~((b))~~ (8) A contractor ~~((shall have))~~ has twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department ~~((shall))~~ must not review a final settlement report. Any administrative review of a final settlement ~~((shall))~~ must be limited to either calculation of the settlement~~((, the))~~ or application of settlement principles and rules, or both, and ~~((shall))~~ must not encompass rate or audit issues.

~~((c))~~ (9) The department ~~((shall))~~ may reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medicaid recipient days.

~~((4)(a))~~ (10) In computing a preliminary or final settlement, a contractor must comply with the requirements of WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

~~((b))~~ (11) The nursing facility contractor ~~((shall))~~ must refund all amounts due the department within sixty days after the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department ~~((shall))~~ must deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt ~~((shall))~~ must be used to determine the sixty day period for repayment. After the sixty day



period, interest on any unpaid balance will accrue at one percent per month.

~~((e))~~ (12) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. ~~((After an administrative hearing and/or judicial review,))~~ If the payment obligation is reduced ~~((, then))~~ after an administrative hearing or judicial review, the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

~~((f))~~ (13) In determining whether a facility has forfeited unused rate funds in its direct care, therapy care, and support services component rates under ~~((authority of))~~ WAC 388-96-211, the following rules ~~((shall))~~ apply:

(a) Federal or state survey officials ~~((shall))~~ must determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status ~~((shall))~~ must be used to determine the beginning and ending dates of any period~~((s))~~ of noncompliance; and

(c) Forfeiture ~~((shall))~~ must occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture ~~((shall))~~ must occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

**WAC 388-96-502 ~~((Indirect)) Secondary and overhead costs.~~** Subject to the provisions of this chapter and chapter 74.46 RCW, when a contractor provides goods or services that are not reimbursable, any ~~((indirect))~~ secondary or overhead costs associated with their provision must be allocated to such goods or services on a reasonable basis approved by the department and must not be reported as allowable costs.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

**WAC 388-96-505 Offset of miscellaneous revenues.**

(1) The methodology in (a) through (d) of this subsection is effective for services provided on or before June 30, 2016.

(a) The contractor ~~((shall))~~ must reduce allowable costs whenever the item, service, or activity covered by such costs generates revenue or financial benefits ~~((e.g.))~~ such as purchase discounts, refunds of allowable costs or rebates other than through the contractor's normal billing for care services~~((, except))~~. However, the department ~~((shall))~~ must not deduct from the allowable costs of a nonprofit facility unrestricted grants, gifts, and endowments, and interest therefrom.

~~((2))~~ (b) The contractor ~~((shall))~~ must reduce allowable costs for hold-bed revenue in the support services, operations, and property rate components only. In the support services rate component, the amount of reduction ~~((shall))~~ must be determined by dividing a facility's allowable housekeeping costs by total adjusted patient days and multiplying the result by total hold-room days. In the operations rate component, the amount of the reduction ~~((shall))~~ must be determined by dividing a facility's allowable operation costs by total adjusted patient days and multiplying the result by total hold-room days. In the property rate component, the amount of reduction ~~((shall))~~ must be determined by dividing allowable property costs by the total adjusted patient days and multiplying the result by total hold-room days.

~~((3))~~ (c) Where goods or services are sold, the amount of the reduction ~~((shall be))~~ is the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, ~~((it shall be))~~ the amount of the reduction is the full amount of the revenue received. Where financial benefits such as purchase discounts, refunds of allowable costs, or rebates are received, the amount of the reduction ~~((shall be))~~ is the amount of the discount or rebate. Financial benefits such as purchase discounts, refunds of allowable costs and rebates, including industrial insurance rebates, ~~((shall))~~ must be offset against allowable costs in the year the contractor actually receives the benefits.

~~((4))~~ (d) Only allowable costs ~~((shall))~~ may be recovered under this ~~((section))~~ subsection. Costs allocable to activities or services not included in nursing facility services~~((e.g.))~~ (such as costs of vending machines and services specified in chapter 388-86 WAC not included in nursing facility services~~((s))~~) are nonallowable costs.

(2) The methodology in (a) through (d) of this subsection is effective for services provided on or after July 1, 2016.

(a) The contractor must reduce allowable costs whenever the item, service, or activity covered by such costs generates revenue or financial benefits (such as purchase discounts, refunds of allowable costs, or rebates) other than through the contractor's normal billing for care services. However, the department must not deduct from the allowable costs of a nonprofit facility unrestricted grants, gifts, and endowments, and interest therefrom.

(b) The contractor must reduce allowable costs for hold-bed revenue in the indirect care rate component only. The amount of reduction must be determined by dividing a facility's allowable housekeeping costs by total adjusted patient days and multiplying the result by total hold-room days.

(c) Where goods or services are sold, the amount of the reduction is the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, the amount of the reduction is the full amount of the revenue received. Where financial benefits such as purchase discounts, refunds of allowable costs, or rebates are received, the amount of the reduction is the amount of the discount or rebate. Financial benefits such as purchase discounts, refunds of allowable costs, and rebates, including industrial insurance rebates, must be offset against allowable costs in the year the contractor actually receives the benefits.

(d) Only allowable costs may be recovered under this subsection. Costs allocable to activities or services not

included in nursing facility services (such as costs of vending machines and services specified in chapter 388-86 WAC not included in nursing facility services) are nonallowable costs.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

**WAC 388-96-525 Education and training.** (1) Necessary and ordinary expenses of on-the-job training and in-service training required for employee orientation and certification training directly related to the performance of duties assigned will be allowable costs. Cost of training for which the nursing facility is reimbursed outside the payment rate is an unallowable cost.

(2) Necessary and ordinary expenses of recreational and social activity training conducted by the contractor for volunteers will be allowable costs. Expenses of training programs for other nonemployees will not be allowable costs.

(3) Expenses for travel, lodging, and meals associated with education and training (~~(in the states of Idaho, Oregon, and Washington and the province of British Columbia)~~) are allowable if the expenses meet the requirements of this chapter.

(4) ~~((Except travel, lodging, and meal expenses, education and training expenses at sites outside of the states of Idaho, Oregon, and Washington and the province of British Columbia are allowable costs if the expenses meet the requirements of this chapter.~~

~~(5))~~ Costs designated by this section as allowable ~~((shall be))~~ are subject to any applicable cost center limit established by this chapter.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-542 Home office or central office.** (1) ~~((When calculating the median lid on home and central office costs and determining which home and central office costs to test against the median lid,))~~ The department will include all allowable ~~((;))~~ reported home ~~((;))~~ or central office costs including all costs that are ~~((nonduplicative,))~~ documented, ordinary, necessary, and related to the provision of medical and personal care services to authorized patients.

~~((2)(a) Assets used in the provision of services by or to a nursing facility, but not located on the premises of the nursing facility, shall not be included in net invested funds or in the calculation of property payment for the nursing facility.~~

~~((b) The nursing facility may allocate depreciation, interest expense, and operating lease expense for the home office, central office, and other off-premises assets to the cost of the services provided to or by the nursing facility on a reasonable statistical basis approved by the department.)~~

~~((c) The))~~ Allocated costs ~~((of (b) of this subsection))~~ may be included in the cost of services in such cost centers where such services and related costs are appropriately reported.

~~((3))~~ (2) Home office or central office costs must be allocated and reported ~~((in conformity with the department-approved JCAD methodology as required by WAC 388-96-534)).~~

~~((4) Home office or central office costs are subject to the limitation specified in WAC 388-96-585-))~~

AMENDATORY SECTION (Amending WSR 97-17-040, filed 8/14/97, effective 9/14/97)

**WAC 388-96-554 ((Expensing)) Equipment.** ~~((The following costs shall be expensed:))~~

(1) The contractor must expense the following equipment costs to indirect care:

(a) Expenditures for ~~((depreciable assets))~~ equipment with a historical cost of seven hundred fifty dollars or less per unit ~~((or a useful life of one year or less from the date of purchase))~~

(b) Expenditures for and costs of repairs necessary to maintain the useful life of equipment including furniture and furnishings and real property items, components, or improvements that cost less than seven hundred fifty dollars.

(2) Subsection (1) of this section ~~((shall))~~ does not apply if:

(a) The ~~((depreciable asset))~~ equipment was acquired in a group purchase where the total cost exceeded seven hundred fifty dollars; or

(b) The ~~((depreciable asset))~~ equipment was part of the initial equipment or stock of the nursing home.

~~((3) Expenditures for and costs of building and other real property items, components and improvements, whether for leased or owner-operated facilities, of seven hundred and fifty dollars or less.~~

(4) Expenditures for and costs of repairs necessary to maintain the useful life of equipment, including furniture and furnishings, and real property items, components or improvements which do not increase the useful life of the asset by two years or more. If a repair is to the interior or exterior of the structure, the term "asset" shall refer to the structure.

(5) Remaining undepreciated cost of equipment, including furniture or furnishings or real property items, components, or improvements which are retired and not replaced, provided such cost shall be offset by any proceeds or compensations received for such assets, and such cost shall be expensed only if the contractor has made a reasonable effort to recover at least the outstanding book value of such assets. If a retired asset is replaced, WAC 388-96-572(3) shall apply and the replacement or renewal shall be capitalized if required by WAC 388-96-553-))

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-556 Initial cost of operation.** (1) The necessary and ordinary one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility ~~((shall be))~~ are allowable costs. These expenses ~~((shall be))~~ are limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs ~~((shall))~~ include, but ~~((not be))~~ are not limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training ~~((; except, that they shall exclude))~~. Start-up costs do not include expenditures for capital assets. ~~((These))~~ Start-up costs ~~((will~~

be)) are allowable in the ((operations)) indirect care cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation(~~(; except, that they))~~). However, organizational costs do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the ((operations)) indirect care cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

~~((4) Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care and shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.))~~

**AMENDATORY SECTION** (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-560 Land(~~(; improvements—Depreciation))~~**. Land is not depreciable. The cost of) Land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading (~~(of a nondepreciable nature))~~, and the cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor.

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

**AMENDATORY SECTION** (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

**WAC 388-96-580 Operating leases of office equipment.** (1) Rental costs of office equipment under arm's-length operating leases (~~(shall be))~~ are allowable to the extent such costs are necessary, ordinary, and related to patient care.

(2) The department (~~(shall))~~ must pay office equipment rental costs in the ((operations)) indirect component rate allocation. Office equipment may include items typically used in administrative or clerical functions such as telephones, copy machines, desks and chairs, calculators and adding machines, file cabinets, typewriters, and computers.

~~((3) The department shall not pay for depreciation of leased office equipment.))~~

**AMENDATORY SECTION** (Amending WSR 15-09-025, filed 4/7/15, effective 5/8/15)

**WAC 388-96-585 Unallowable costs.** (1) Unallowable costs listed in subsection (2) of this section represent a partial

summary of such costs, in addition to those unallowable under chapter 74.46 RCW and this chapter.

(2) Unallowable costs include but are not limited to the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services (~~(will be))~~ are unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution(~~(;))~~.

(b) Costs of services and items provided to recipients (~~(which are))~~ covered by the medical care program but not included in the medicaid per-resident day payment rate established under this chapter and chapter 74.46 RCW(~~(;))~~.

(c) Costs associated with a capital expenditure (~~(subject to section 1122 approval (part 100, Title 42 C.F.R.))~~) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations(~~(;))~~.

(d) Costs associated with a construction or acquisition project requiring certificate of need approval(~~(;))~~ or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained(~~(;))~~.

(e) Interest costs other than those provided by WAC 388-96-556(4) on and after January 1, 1985(~~(;))~~.

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care(~~(;))~~.

(g) Costs in excess of limits or in violation of principles set forth in this chapter(~~(;))~~.

(h) Costs resulting from transactions or the application of accounting methods (~~(which))~~ that circumvent the principles of the payment system set forth in this chapter and chapter 74.46 RCW(~~(;))~~.

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere(~~(;))~~.

(j) Bad debts of non-Title XIX recipients (~~(-Bad debts of Title XIX recipients are allowable only when))~~ are unallowable unless all the following applies:

(i) The debt is related to covered services(~~(;))~~.

(ii) (~~(#))~~ The debt arises from the recipient's required contribution toward the cost of care(~~(;))~~.

(iii) The provider can establish reasonable collection efforts were made. Reasonable collection efforts (~~(shall))~~ consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of non-Title XIX recipients(~~(;))~~.

(iv) The debt was actually uncollectible when claimed as worthless(~~(; and))~~.

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

(k) Charity and courtesy allowances((:)).

(l) Cash, assessments, or other contributions(~~(, excluding dues,)~~) to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations((:)).

(m) Vending machine expenses((:)).

(n) Expenses for barber or beautician services not included in routine care((:)).

(o) Funeral and burial expenses((:)).

(p) Costs of gift shop operations and inventory((:)).

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs((:)).

(r) Fund-raising expenses, except those directly related to the patient activity program((:)).

(s) Penalties and fines((:)).

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations((:)).

(u) ~~((Televisions acquired prior to July 1, 2001;~~

~~(v))~~ Federal, state, and other income taxes((:)).

~~((w))~~ (v) Costs of special care services except where authorized by the department;

~~((x))~~ (w) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis((:)). For example, key-man insurance and other insurance or retirement plans((:)).

~~((y))~~ (x) Expenses of profit-sharing plans((:)).

~~((z))~~ (y) Expenses related to the purchase ~~((and/or))~~ or use of private or commercial airplanes ~~((which))~~ that are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care((:)).

~~((aa))~~ (z) Personal expenses and allowances of any nursing home employees or owners or relatives of any nursing home employees or owners((:)).

~~((bb))~~ (aa) All expenses of maintaining professional licenses or membership in professional organizations((:)).

~~((cc))~~ (bb) Costs related to agreements not to compete;

~~((dd))~~ (cc) ~~((Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;~~

~~((ee))~~ Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;))

~~((ff))~~ Legal and consultant fees in connection with a fair hearing against the department when the department's board of appeals upholds the department's actions in an administrative review decision. When the administrative review decision is pending, reported legal and consultant fees ~~((will be))~~ are unallowable. To be allowable, the contractor must report legal and consultant fees related to an administrative review decision issued in the contractor's favor in the cost report period in which the board of appeals issues its decision irrespective of when the legal and consultant fees related to the administrative review were incurred((:)).

~~((gg))~~ (dd) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department. Judicial review is a lawsuit against the department((:)).

~~((hh))~~ ~~Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;))~~

~~((ii))~~ (ee) All rental or lease costs other than those provided for in WAC 388-96-580((:)).

~~((jj))~~ (ff) Post-survey charges incurred by the facility ~~((as a result of subsequent inspections))~~ under ~~((RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year))~~ RCW 18.51.060((:)).

~~((kk))~~ (gg) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through a service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had ~~((they))~~ the purchased nursing care staff been paid at the average hourly wage ~~((, including related taxes and benefits;))~~ for in-house nursing care staff of like classification at the same nursing facility, including related taxes and benefits, as reported in the most recent cost report period((:)).

~~((ll))~~ ~~For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;))~~

~~((mm))~~ (hh) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate((:)).

~~((nn))~~ (ii) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space((:)).

~~((oo))~~ (jj) Travel expenses that are not necessary, ordinary, and related to resident care((:)).

~~((pp))~~ (kk) Moving expenses of employees in the absence a of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia((:)).

~~((qq))~~ ~~Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;~~

~~((rr))~~ (ll) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health((:)).

~~((ss))~~ (mm) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel((:)).

~~((tt))~~ (nn) Costs and fees associated with filing a petition for bankruptcy((:)).

~~((uu))~~ (oo) All advertising or promotional costs, except reasonable costs of help wanted advertising((:)).

~~((vv))~~ (pp) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds((:)).

~~((ww))~~ ~~All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those~~

~~adjusted costs for all facilities reporting such costs for the most recent report period;~~

~~((xx)) (qq) Tax expenses that a nursing facility has never incurred((;)).~~

~~((yy) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006;))~~

~~((zz)) (rr) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits against the department ((shall be unallowable; and)).~~

~~((aaa)) (ss) Increased costs resulting from a series of transactions between the same parties and involving the same assets ((e.g.,) such as sale and lease back((;)) and successive sales or leases of a single facility or piece of equipment).~~

~~(tt) Costs related to a nursing assistant certified training program.~~

~~(uu) Effective July 1, 2012, payments made relating to the safety net assessment.~~

~~(vv) Building renovations, building improvements, or leasehold improvements that require preapproval from the department of health and were not preapproved.~~

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

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

**WAC 388-96-710 Prospective payment rate for new contractors.** (1) The department will establish an initial prospective medicaid payment rate for a new contractor as defined under WAC 388-96-026 within sixty days following the new contractor's application and approval for a license to operate the facility under chapter 18.51 RCW. The rate will take effect as of the effective date of the contract, except as provided in this section, and will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums set forth.

(2) ~~((Except for quarterly updates per RCW 74.46.501 (7)(c), the rate established for a new contractor as defined in WAC 388-96-026 (1)(a) or (b) will remain in effect for the nursing facility until the rate can be reset effective July 1 using the first cost report for that facility under the new contractor's operation containing at least six months' data from the prior calendar year, regardless of whether reported costs for facilities operated by other contractors for the prior calendar year in question will be used to cost rebase their July 1 rates. The new contractor's rate thereafter will be cost rebased only as provided in this chapter and chapter 74.46 RCW.~~

(3)) To set the initial prospective medicaid payment rate for a new contractor as defined in WAC 388-96-026 (1)(a) and (b), the department will:

(a) Determine ~~((whether the new contractor nursing facility belongs to the metropolitan statistical area (MSA) peer group or the non-MSA peer group using the latest information received from the office of management and budget or the appropriate federal agency))~~ the direct care rate by multiplying the current direct care industry median per RCW 74.46.561(8) by the appropriate county wage index by the

appropriate industry medicaid average case mix index (MACMI);

(b) ~~((Select all nursing facilities from the department's records of all the current medicaid nursing facilities in the new contractor's peer group with the same bed capacity plus or minus ten beds. If the selection does not result in at least seven facilities, then the department will increase the bed capacity by plus or minus five bed increments until a sample of at least seven nursing facilities is obtained))~~ Assign the new provider the indirect price based rate per RCW 74.46.561(8);

(c) ~~((Based on the information for the nursing facilities selected under subsection (3)(b) of this section and available to the department on the day the new contractor began participating in the medicaid payment rate system at the facility, rank from the highest to the lowest the component rate allocation in direct care, therapy care, support services, and operations cost centers and based on this ranking:~~

(i) ~~Determine the middle of the ranking and then identify the rate immediately above the median for each cost center identified in subsection (3)(c) of this section. The rate immediately above the median will be known as the "selected rate" for each cost center;~~

(ii) ~~Set the new contractor's nursing facility component rate allocation for therapy care, support services, and operations at the "selected rate";~~

(iii) ~~Set the direct care rate using data from the direct care "selected" rate facility identified in (c) of this subsection as follows:~~

(A) ~~The cost per case mix unit will be the rate base allowable case mixed direct care cost per patient day for the direct care "selected" rate facility, whether or not that facility is held harmless under WAC 388-96-728 and 388-96-729, divided by the facility average case mix index per WAC 388-96-741;~~

(B) ~~The cost per case mix unit determined under (c)(iii)(A) of this subsection will be multiplied by the medicaid average case mix index per WAC 388-96-740. The product will be the new contractor's direct care rate under case mix; and~~

(C) ~~The department will not apply RCW 74.46.506 (5)(k) to any direct care rate established under subsection (5)(c) or (f) of this section. When the department establishes a new contractor's direct care rate under subsection (5)(c) or (f) of this section, the new contractor is not eligible to be paid by a "hold harmless" rate as determined under RCW 74.46.506 (5)(k);~~

(iv) ~~Set the property rate in accordance with the provisions of this chapter and chapter 74.46 RCW; and~~

(v) ~~Set the financing allowance and variable return component rate allocations in accordance with the provisions of this chapter and chapter 74.46 RCW. In computing the variable return component rate allocation, the department will use for direct care, therapy care, support services and operations rate allocations those set pursuant to subsection (3)(c)(i), (ii) and (iii) of this section.~~

(d) ~~Any subsequent revisions to the rate component allocations of the sample members will not impact a "selected rate" component allocation of the initial prospective rate established for the new contractor under this subsection.~~

(4) For the WAC 388-96-026 (1)(a) or (b) new contractor, the department will establish rate component allocations for:

(a) Direct care, therapy care, support services and operations based on the "selected rates" as determined under subsection (3)(c) of this section that are in effect on the date the new contractor began participating in the program;

(b) Property in accordance with the provisions of this chapter and chapter 74.46 RCW using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the property rate will be zero. The property rate will remain zero until the information is received;

(c) Variable return in accordance with the provisions of this chapter and chapter 74.46 RCW using the "selected rates" established under subsection (3)(c) of this section that are in effect on the date the new contractor began participating in the program; and

(d) Financing allowance using for the new contractor as defined under:

(i) WAC 388-96-026 (1)(a), information from the certificate of need; or

(ii) WAC 388-96-026 (1)(b), information provided by the new contractor within ten days of the date the department requests the information in writing. If the contractor as defined under WAC 388-96-026 (1)(b), has not provided the requested information within ten days of the date requested, then the net book value of allowable assets will be zero. The financing allowance rate component allocation will remain zero until the information is received.

(5) The initial prospective payment rate for a new contractor as defined under WAC 388-96-026 (1)(a) or (b) will be established under subsections (3) and (4) of this section. If the WAC 388-96-026 (1)(a) or (b) contractor's initial rate is set:

(a) Between July 1, 2000 and June 30, 2001, the department will set the new contractor's rates for:

(i) July 1, 2001 using the July 1, 2001 rates for direct care, therapy care, support services, and operations of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(a)(i) of this section;

(ii) July 1, 2002 rate using 2001 cost report data; and

(iii) All July 1 rates following July 1, 2002 in accordance with this chapter and chapter 74.46 RCW;

(b) Between July 1, 2001, and June 30, 2002, the department will set the new contractor's rates for:

(i) July 1, 2002 using July 1, 2002 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsections (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(b)(i) of this section;

(ii) July 1, 2003 rate by rebasing using 2002 cost report data in accordance with this chapter and chapter 74.46 RCW; and

(iii) All July 1 rates following July 1, 2003 in accordance with this chapter and chapter 74.46 RCW; or

(c) Between July 1, 2002, and June 30, 2003, the department will set the contractor's rates for:

(i) July 1, 2003 using July 1, 2003 rates for direct care, therapy care, support services, and operation of the sample facilities used to set the initial rate under subsection (3) and (4) of this section.

(A) Property and financing allowance component rates will remain the same as set for the initial rate.

(B) Variable return component rate using the rates determined under subsection (5)(c)(i) of this section;

(ii) July 1, 2004 by rebasing using 2003 cost report data; and

(iii) All July 1 rates following July 1, 2004 in accordance with this chapter and chapter 74.46 RCW.

(6) For the WAC 388-96-026 (1)(c) new contractor, the initial prospective payment rate will be the last prospective payment rate the department paid to the medicare contractor operating the nursing facility immediately prior to the effective date of the new medicare contract or assignment. If the WAC 388-96-026 (1)(c) contractor's initial rate is set:

(a) Between October 1, 1998 and June 30, 1999, the department will not rebase the contractor's rate for:

(i) July 1, 1999; and

(ii) July 1, 2000;

(b) Between July 1, 1999 and June 30, 2000, the department will for:

(i) July 1, 2000 not rebase the new contractor's rate;

(ii) July 1, 2001 rebase the new contractor's rate using twelve months of cost report data derived from the old contractor's and the new contractor's 1999 cost reports; and

(iii) July 1, 2002 not rebase the new contractor's rate; and

(iv) July 1, 2003 not rebase the new contractor's rate;

(c) Between July 1, 2000 and June 30, 2001, the department will for:

(i) July 1, 2001 rebase the new contractor's rate using the old contractor's 1999 twelve month cost report;

(ii) July 1, 2002 not rebase the new contractor's rate;

(iii) July 1, 2003 not rebase the new contractor's rate; or

(d) Between July 1, 2001 and June 30, 2002, the department will for:

(i) July 1, 2002 not rebase the new contractor's rate;

(ii) July 1, 2003 not rebase the new contractor's rate; and

(iii) July 1, 2004 rebase the new contractor's rate using the new contractor's 2002 cost report containing at least six month's data.

(7)) Determine a capital rate once the facility has submitted square footage and facility age information per RCW 74.46.561(5) and the department accepts it; and

(d) Use the facility's available centers for medicare and medicaid date for at least the three quarter period currently being measured by the department to calculate a quality

enhancement rate and if no data is available, the department will not pay a quality enhancement.

(3) A prospective payment rate set for all new contractors will be subject to adjustments for economic trends and conditions as authorized and provided in this chapter and in chapter 74.46 RCW.

~~((8) For a WAC 388-96-026 (1)(a), (b) or (c) new contractor, the medicaid case mix index and facility average case mix index will be determined in accordance with this chapter and chapter 74.46 RCW.))~~

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

**WAC 388-96-713 Rate determination.** (1) Each nursing facility's medicaid payment rate for services provided to medical care recipients will be determined, adjusted, and updated prospectively as provided in this chapter and in chapter 74.46 RCW. The department will calculate any limit, ~~((id, and/or))~~ median, or both only when it rebases each nursing facility's July 1st medicaid payment rate in accordance with chapter 74.46 RCW and this chapter.

(2) If the contractor participated in the program for less than six months of the prior calendar year, its rates will be determined by procedures set forth in WAC 388-96-710.

(3) Contractors ~~((submitting))~~ that submit correct and complete cost reports by March 31st, ~~((shall))~~ must be notified of their rates by July 1st, unless circumstances beyond the control of the department interfere.

(4) In setting rates, the department will use the greater of actual days from the cost report period on which the rate is based or days calculated at minimum occupancy pursuant to chapter 74.46 RCW.

~~((5) Adjusted cost report data from 1999 shall be used for July 1, 2001 through June 30, 2005 direct care, therapy care, support services, and operations component rate allocations.))~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-758 Add-on for low-wage workers.** (1) ~~((The department will grant a low wage add-on payment not to exceed one dollar and fifty seven cents per resident day to any nursing home provider that has indicated a desire to receive the add-on pursuant to subsection (7) of this section.))~~ A nursing home may use the low-wage worker add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add-on to:

(a) Increase wages, benefits, ~~((and/or))~~ or staffing levels for certified nurse aides;

(b) Increase wages ~~((and/or))~~ or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year 2008, according to cost report data ~~((The department has determined that the additional categories of workers qualifying under this standard are)),~~ including:

- (i) Activities directors and assistants;
- (ii) Patient choices coordinators;

- (iii) Central supply/ward clerks;
- (iv) Expanded community service workers; and
- (v) Social workers; and
- (c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that receives a low-wage add-on ~~((shall))~~ must report to the department its expenditure of that add-on by:

- (a) Completing cost report schedule L 1; and
- (b) Returning it to the department by January 31st.

(3) By examining cost report schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on-site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of cost report schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of cost report schedule L 1 irrespective of the calendar year in which it is paid.

~~((7) Each May of the calendar year, the department will ask nursing home contractors whether they will want to continue to receive the add-on or begin to receive the add-on. For nursing home contractors responding by May 31st indicating a desire to receive the low wage worker add-on, the department will pay them the low wage add-on effective July 1st. For nursing home contractors that do not respond by May 31st indicating a desire to receive the low wage worker add-on, the department will cease or not begin paying them the low wage add-on effective July 1st.))~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-759 Standards for low-wage ~~((work-ers))~~ worker add-on.** (1) In accordance with WAC 388-96-758, the low-wage worker add-on must be used to provide increases in wages or benefits, or to address resulting wage compression beginning on or after the date on which the add-on is first included in the rate. The low-wage worker add-on may be used to increase staffing levels for certified nurse aides only. Nursing home contractors receiving the low-wage add-on may not use it to pay for increases for time periods that they were not receiving the low wage worker add-on.

(2) Any type of traditional employee benefit is allowable. Such benefits typically fall in one of two categories: retirement~~((s))~~ and life or health insurance. However, nontra-

ditional benefits are also allowable (for example, wellness benefits, subsidized meals, or assistance with daycare).

(3) The employer's share of payroll taxes associated with wages and benefits may be covered with the add-on.

(4) For purposes of wage compression, an "immediately affected" job class is one that is related to the low-wage worker category, either in the organizational structure (for example, it supervises the low-wage worker category) or by existing practice (for example, the facility has a benchmark of paying that job class a certain percentage more than the low-wage worker category). Facilities must be able to explain the basis of the relationship if requested. Because the statute refers to "resulting wage compression," a facility must use a portion of the add-on to increase wages or benefits before it may use any of the add-on to address any wage compression caused by such increase.

(5) A facility may use the add-on in relation to any of the job categories listed in WAC 388-96-758, regardless of whether the average wage it pays to its own employees is above fifteen dollars per hour, either before or after including the additional wages funded by the add-on.

(6) Wages or benefits, including employee bonuses, otherwise properly paid with the add on will not be considered as unallowable costs ~~((per))~~ under RCW 74.46.410 (2)(x).

(7) The low-wage worker add-on payments calculated in accordance with WAC 388-96-758 and this section ~~((shall))~~ must be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-781 Exceptional care rate add-on—Covered medicaid residents.** A nursing facility (NF) may receive an increase in its direct care ~~((and/or therapy component))~~ rate allocations for providing exceptional care to a medicaid resident who:

(1) Receives specialized services to meet chronic complex medical conditions and neurodevelopment needs of medically fragile children and resides in a NF where all residents are under age twenty-one with at least fifty percent of the residents entering the facility before the age of fourteen;

(2) Receives expanded community services (ECS);

(3) Is admitted to ~~((the))~~ a NF as an extraordinary medical placement (EMP) and the department of corrections (DOC) has approved the exceptional direct care ~~((and/or therapy payment))~~;

(4) Is ventilator or tracheotomy (VT) dependent and resides in a NF that the department has designated as active ventilator-weaning center;

(5) Has a traumatic brain injury (TBI) established by a comprehensive assessment reporting evaluation (CARE) assessment administered by department staff and resides in a NF that the department has designated as capable for TBI patients;

(6) Has a TBI and currently resides in nursing facility specializing in the care of TBI residents where more than fifty percent of residents are classified with TBIs based on the federal minimum data set assessment (MDS ~~((2))~~ 3.0 or its successor); or

(7) Is admitted to a NF from a hospital with an exceptional care need and medicaid purchasing administration (MPA) or a successor administration has approved the exceptional direct care ~~((and/or therapy))~~ payment.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-782 Exceptional ~~((therapy care and exceptional))~~ direct care—Payment.** (1) For WAC 388-96-781(1) residents, the department will pay the Oregon medicaid rate.

(2) For WAC 388-96-781 (4), (5) ~~((and)),~~ (6), and (7) residents, the department may establish a rate add-on that when added to the nursing facility's per diem medicaid rate does not exceed the cost of caring for the client in a hospital.

(3)(a) Costs related to payments resulting from increases in direct care component rates under subsection (2) of this section ~~((shall))~~ must be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care ~~((shall))~~ must be for rate setting, settlement, and other purposes deemed appropriate by the department~~((; or~~

~~((b) Costs related to payments resulting from increases in therapy care component rates under subsection (2) of this section shall not be offset against the facility's examined, allowable therapy care costs, for each report year or partial period such increases are paid)).~~

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

**WAC 388-96-901 Disputes.** (1) When a contractor wishes to contest the way in which the department applied a statute or department rule to the contractor's circumstances, the contractor ~~((shall))~~ must pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to the following:

(i) Determining a nursing facility payment rate;

(ii) Calculating a nursing facility settlement;

(iii) Imposing a civil fine on the nursing facility;

(iv) Suspending payment to a nursing facility; ~~((or))~~ and

(v) Conducting trust fund and accounts receivable audits.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to:

(i) Actions taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421;

(ii) Case mix accuracy review of minimum data set (MDS) nursing facility resident assessments~~((which shall be))~~ that are limited to separate administrative review under ~~((the provisions of))~~ WAC 388-96-905;

(iii) ~~((Quarterly and))~~ Semiannual rate updates to reflect changes in a facility's resident case mix including contractor errors made in the MDSs used to update the facility's resident case mix;



(iv) Actions taken under the exceptional direct ~~((and therapy))~~ care program codified at WAC 388-96-781 and 388-96-782; and

(v) Actions taken under WAC ~~((388-96-218(2)(c); and~~

~~(vi) Actions taken under WAC 388-96-786))~~ 388-96-218(2)(c).

(2) The administrative review process prescribed in WAC 388-96-904 ~~((shall))~~ must not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits ~~((of a claim or to))~~, make a record for subsequent judicial review, or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding officer ~~((shall))~~ must dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by the department in proposing or making a change to the nursing facility medicaid payment rate methodology, as required by Title 42 U.S.C. Sec. 1396a (a)(13)(A) and WAC 388-96-718;

(b) Challenges to the nursing facility medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;

(c) Challenges to a contractor's rate that are based in whole or in part on federal laws, regulations, or policies;

(d) Challenges to the legal validity of a statute or regulation; and

(e) Actions of the department affecting a medicaid beneficiary or provider that were not commenced by the office of rates management, aging and ~~((disability services))~~ long-term support administration ~~((, for example, entitlement to or payment for durable medical equipment or other services))~~.

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the nursing facility medicaid payment system or ~~((wishes to))~~ bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. The contractor ~~((may))~~ must not use this section or WAC 388-96-904 for such purposes. This prohibition ~~((shall apply))~~ applies irrespective of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

#### NEW SECTION

**WAC 388-96-915 Capital component—Square footage.** (1) Allowable nursing home square footage is the external dimensions of the building utilized and licensed as a nursing home less all unallowable square footage as outlined in subsection (2) of this section. Allowable nursing home square footage includes the following:

(a) All necessary, ordinary, and reasonable space on the campus or adjacent to the campus utilized by the residents and staff of the nursing home including in administrative and support capacities; and

(b) Basements to the extent they are utilized for administrative or support functions including the storage of equipment and records.

(2) Unallowable nursing home square footage includes, but is not limited to:

(a) Courtyards or other areas not surrounded by four walls and a contiguous roof;

(b) Patios and decks; and

(c) Off-site storage space.

(3) Off-site administrative square footage is allowable to the extent it is:

(a) Allocated in accordance with an approved joint cost allocation disclosure as outlined in WAC 388-96-534;

(b) Not otherwise unallowable under subsection (2) of this section; and

(c) Used for administrative purposes.

(4) Off-site administrative square footage is allowable up to ten percent of the combined total allowable square footage. Any square footage over ten percent of the combined total allowable square footage is unallowable.

(5) In order to be allowable, all space must be identified on a site plan, blueprint, or county assessment identifying the gross external square footage.

#### NEW SECTION

##### **WAC 388-96-916 Capital component—Facility age.**

(1) The average age of a facility is the actual facility age reduced for significant renovations.

(2) For the rate beginning July 1, 2016, the department must use renovations data back to 1994 as submitted on facility cost reports to determine an initial age.

(3) Beginning July 1, 2016:

(a) Facilities must all be re-aged to one year older on December 31st of each year.

(b) Facility ages must be reduced during review of the cost report if the value of the renovation completed in any calendar year exceeds two thousand dollars times the number of licensed beds. In order to calculate the new age, the cost of the renovation must be divided by the accumulated depreciation per bed in the year of the renovation to determine the equivalent number of new replacement beds. The new age for the facility is a weighted average with the replacement bed equivalents reflecting an age of zero and the existing licensed beds, minus the new bed equivalents, reflecting their age in the year of the renovation.

(4) At no time may the depreciated age be less than zero or greater than forty-four years.

#### NEW SECTION

**WAC 388-96-917 Direct care—County wage information.** (1) The department must calculate a county wide wage index each rebase year by utilizing the most recent average wage data available from the federal bureau of labor statistics for registered nurses, licensed practical nurses, and certified nursing assistants.

(2) For each county, the department must calculate an average combined wage for all three disciplines based on the percentage of total wages by discipline from the prior year cost report. Each wage must be multiplied by the relative uti-

lization percentage for that discipline. The total of all three disciplines is the average wage in that county.

(3) The department must calculate the statewide average combined wage for all three disciplines based on the average percentage of total wages by discipline from the prior year cost report.

(4) The county index is determined by dividing the county average wage in a given county by the statewide average wage.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-96-534 Joint cost allocation disclosure (JCAD).
- WAC 388-96-540 Will the department allow the cost of an administrator-in-training?
- WAC 388-96-552 Depreciable assets.
- WAC 388-96-553 Capitalization.
- WAC 388-96-554 Expensing.
- WAC 388-96-558 Depreciation expense.
- WAC 388-96-559 Cost basis of land and depreciation base.
- WAC 388-96-561 Cost basis of land and depreciation base—Donated or inherited assets.
- WAC 388-96-562 Depreciable assets—Disposed—Retired.
- WAC 388-96-564 Methods of depreciation.
- WAC 388-96-565 Lives.
- WAC 388-96-572 Handling of gains and losses upon retirement of depreciable assets—Other periods.
- WAC 388-96-574 New or replacement construction—Property tax increases.
- WAC 388-96-708 Beds removed from service under chapter 70.38 RCW, new beds approved under chapter 70.38 RCW, and beds permanently relinquished—Effect on prospective payment rate.
- WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds by means other than "banking" pursuant to chapter 70.38 RCW.
- WAC 388-96-744 How will the department set the therapy care rate and determine the median cost limit per unit of therapy?
- WAC 388-96-746 How much therapy consultant expense for each therapy type will the department allow to be added to the total allowable one-on-one therapy expense?
- WAC 388-96-747 Constructed, remodeled or expanded facilities.

- WAC 388-96-748 Financing allowance component rate allocation.
- WAC 388-96-762 Allowable land.
- WAC 388-96-767 Appraisal values.
- WAC 388-96-776 Add-ons to the property and financing allowance payment rate—Capital improvements.
- WAC 388-96-783 Certificate of capital authorization (CCA).
- WAC 388-96-784 Expense for construction interest.
- WAC 388-96-786 Pay for performance add-on.

#### **WSR 17-10-005**

#### **PROPOSED RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed April 20, 2017, 12:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-04-091.

Title of Rule and Other Identifying Information: WAC 192-320-036, regarding determining tax rates for employers who are delinquent on taxes or reports.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 2nd Floor, 212 Maple Park Avenue, Olympia, WA, on June 8, 2017, at 10:30 a.m.

Date of Intended Adoption: June 12, 2017.

Submit Written Comments to: Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507, email [jmyers@esd.wa.gov](mailto:jmyers@esd.wa.gov), fax (360) 902-9605, by June 7, 2017.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer by June 7, 2017, TTY 711 or (360) 902-9354.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 50.29.010 gives the department the authority to waive the delinquent tax rate when an otherwise qualified employer acts in good faith and application of the delinquent tax rate would be inequitable. This rule will define good faith and inequitably with a more flexible, totality of the factors approach. It also clarifies the department's authority to retroactively apply the delinquent tax rate.

Reasons Supporting Proposal: Employers who make good faith efforts to repay and report their wages as required will not be subject to the delinquent tax rate imposed by RCW 50.29.025. The department will also consider whether application of the delinquent tax rate would be inequitable based on the totality of certain factors. Finally, the rule will eliminate confusion regarding the department's authority to retroactively apply the delinquent tax rate.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.29.010.

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

Name of Proponent: Employment security department, private.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, (360) 902-9587; Implementation and Enforcement: Brenda Westfall, Olympia, (360) 902-9554.

No small business economic impact statement has been prepared under chapter 19.85 RCW. By federal law, all businesses are subject to the same tax requirements regardless of size. There is no exception for small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does not impose additional costs on businesses in general, nor on small businesses in particular. The rule makes application of the delinquent tax rate more flexible and equitable, which should result in it being applied less frequently.

April 19, 2017  
Dale Peinecke  
Commissioner

**AMENDATORY SECTION** (Amending WSR 10-23-065, filed 11/12/10, effective 12/13/10)

**WAC 192-320-036 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports, beginning in rate year 2011?** (1)

An employer that has not submitted by September 30th all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1st of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if ~~((they constitute))~~:

(a) The unpaid taxes, interest, and penalties add up to less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1st. These minimum amounts only apply to taxes, interest, and penalties, not failure to submit the required tax and wage reports((-

~~(3)(a))~~; or

(b) The unpaid taxes, interest, and penalties were found in a voluntary audit unless the department determines the employer did not make a good faith effort to comply with the law.

(3)(a) Under RCW 50.29.080, the department may re-determine an employer's previously assigned tax rate and retroactively assign delinquent tax rates to prior years if the department discovers an employer did not correctly report its taxes and wages.

(b) In the event an employer does not register with the department, the department may assign the delinquent tax rate beginning the calendar year after the July 1st following the first quarter an employer paid wages.

(4)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the ~~((commissioner))~~ department that he or she acted in good faith and that ~~((application of the rate for delinquent taxes))~~ applying the delinquent tax rate would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the ~~((commissioner, recognizing that the delinquent tax rate only~~

applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due)) department. The ~~((commissioner's))~~ department's decision ~~((shall))~~ will be subject to review only under the arbitrary and capricious standard and ~~((shall))~~ will be reversed in administrative proceedings only for manifest injustice ~~((based on clear and convincing evidence))~~.

(b) ~~((The commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:~~

(i) ~~If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;~~

(ii) ~~If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;~~

(iii) ~~If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or~~

(iv) ~~If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.~~

The limitations in (b) of this subsection do not apply to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(c) ~~Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:~~

(i) ~~An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;~~

(ii) ~~Taxes due which are determined as the result of a voluntary audit;~~

(iii) ~~Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due or the department approves a deferred payment contract within thirty days of the final resolution of the amount due;~~

(iv) ~~The serious illness or death of key personnel or their family that extends throughout the period in which the tax could have been paid prior to September 30th and no reasonable alternative personnel were available and any amounts due are paid no later than December 31st of such year; or~~

(v) ~~An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.~~

(d) ~~When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:~~

(i) ~~The harshness of the burden on the employer caused by application of the rate for delinquent taxes;~~

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.) If the department finds the employer knew or should have known its actions or inactions would result in a failure to submit all reports, taxes, penalties and interest by September 30th, then the department will find that an employer did not act in good faith and that application of the delinquent tax rate will not be inequitable.

(c) In determining if an employer acted in good faith and if application of the delinquent tax rate would be inequitable, the department may consider all facts surrounding the delinquent reports, taxes, penalties and interest.

(i) The department will consider the following factors when determining if an employer acted in good faith and if application of the delinquent tax rate will be inequitable. No single factor is conclusive. The factors include, but are not limited to:

(A) Whether there were events beyond the employer's reasonable control;

(B) Whether departmental error led to the delinquency;

(C) Whether the employer made only isolated errors instead of repeated errors;

(D) If the employer was a domestic service employer under RCW 50.04.160;

(E) Whether the employer, upon learning of the delinquency, made a diligent effort to pay overdue taxes, penalties, and interest and file overdue reports within ninety days;

(F) The amount of taxes, penalties and interest an employer failed to pay compared to the amount of taxes an employer reported and paid during the same time period;

(G) The number of employees an employer failed to report compared to the number of employees an employer reported during the same time period;

(H) The additional amount of taxes, penalties, and interest resulting from the application of delinquent tax rates compared to the amount of taxes, penalties, and interest the employer failed to pay originally.

(ii) The department will not consider the following factors when determining if an employer acted in good faith and if application of the delinquent tax rate would be inequitable:

(A) An employer's lack of available funds to pay taxes, penalties, and interest;

(B) Delay by the employer or its representative in opening mail or receiving other notices from the department relating to tax filing and payment.

(5)(a) An employer that is not a "qualified employer" because of failure to pay contributions when due ~~((shall))~~ will be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional one percent. If the employer fails to pay contributions when due for a second or more consecutive year, it ~~((shall))~~ will be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional two percent.

(b) If the employer fails to provide quarterly tax reports and the department cannot otherwise calculate what tax rate the employer would otherwise have had if it had not been delinquent, the department ~~((shall))~~ will use the higher of the rate calculated under RCW 50.29.025 (2)(d) (NAICS rate with one percent minimum) or the last annual rate assigned to the employer.

(c) The higher rate for an employer in (a) of this subsection ~~((shall))~~ will not apply if the employer enters a deferred payment contract approved by the agency by September 30th of the previous rate year.

(d) If, after September 30th of the previous rate year and within thirty days after the date the department sent its first subsequent tax rate notice to the employer, an employer in (a) of this subsection pays all amounts owed or enters a deferred payment contract approved by the ~~((agency))~~ department, the additional rate ~~((shall))~~ will be one-half percent less than it would otherwise have been in (a) of this subsection. "First subsequent tax rate notice to the employer" means the first notice to the employer assigning that specific delinquent tax rate, regardless of whether the notice is part of the department's annual tax rate run.

(e) If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate ~~((shall))~~ will immediately revert to the rate in (a) of this subsection.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due ~~((shall))~~ will be assigned a social cost factor rate in rate class 40. The tax rate caps for "qualified employers" in RCW 50.29.025 ~~((shall))~~ will not apply either to the calculation of the social cost factor rate in rate class 40 or to the sum of the array calculation factor rate and the graduated social cost factor rate for employers that are not "qualified employers."

(7) An employer that is not a "qualified employer" because it is a successor and its predecessor was not a "qualified employer" ~~((shall))~~ will be assigned rates based on its successor status.

(8) Assignment of the rate for delinquent taxes is not considered a penalty that is subject to waiver under WAC 192-310-030.

**WSR 17-10-016**

**PROPOSED RULES**

**STATE BOARD OF EDUCATION**

[Filed April 24, 2017, 10:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-029.

**Title of Rule and Other Identifying Information:** The following sections of chapter 180-19 WAC, Charter schools: WAC 180-19-010 Definitions, 180-19-020 Notice of intent to submit an authorizer application, 180-19-030 Submission of authorizer application, 180-19-040 Evaluation and approval or denial of authorizer application, 180-19-070 Charter school—Request for proposals, 180-19-080 Charter school applications—Submission, approval, or denial, 180-19-250 Oversight of authorizers—Revocation of authorizing contract, and 180-19-260 Authorizer oversight—Transfer of charter contract.

**Hearing Location(s):** Office of Superintendent of Public Instruction/State Board of Education (SBE), 600 Washington Street S.E., Olympia, WA 98504-7206, on June 7, 2017, at 1:00-2:00 p.m.

**Date of Intended Adoption:** July 13, 2017.

**Submit Written Comments to:** Kaaren Heikes, 600 Washington Street S.E., Olympia, WA 98504-7206, email Kaaren.heikes@k12.wa.us, by June 1, 2017.

**Assistance for Persons with Disabilities:** Contact Denise Ross by June 1, 2017, (360) 725-6027.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The purpose of the proposal is to make various amendments to eight sections of chapter 180-19 WAC, Charter schools, in order to conform adopted SBE rules to implement chapter 180-19 WAC with chapter 241, Laws of 2016 (E2SSB 6194), Concerning public schools that are not common schools. The proposed amendments also make certain technical corrections to this chapter, as in WAC 180-19-010 Definitions.

**Reasons Supporting Proposal:** The need to ensure that chapter 180-19 WAC, Charter schools, is consistent in language, provisions, and intent with chapter 28A.710 RCW, as amended by chapter 241, Laws of 2016 (E2SSB 6194).

**Statutory Authority for Adoption:** Chapter 28A.710 RCW.

**Statute Being Implemented:** Chapter 28A.710 RCW, as amended by chapter 241, Laws of 2016.

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

**Name of Proponent:** SBE, governmental.

**Name of Agency Personnel Responsible for Drafting:** Kaaren Heikes, 600 Washington Street S.E., Olympia, WA 98504, (360) 725-6029; **Implementation and Enforcement:** Ben Rarick, 600 Washington Street S.E., Olympia, WA 98504, (360) 725-6025.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

**SCHOOL DISTRICT FISCAL IMPACT STATEMENT**

<b>WSR:</b>	<b>Title of Rule:</b> Oversight of charter school authorizers.	<b>Agency:</b> SDF - School District Fiscal Impact - SPI.
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**Part I: Estimates: No fiscal impact,** chapter 180-19 WAC, Charter schools, is being updated through this rule revision to conform to the requirements of E2SSB 6194 as passed in the 2016 legislative session. Also included are

some changes to delete obsolete language. Neither of these changes create additional costs to school districts, thus this rule change has no fiscal impact.

**Estimated Cash Receipts to:** No estimated cash receipts.

**Estimated Expenditures From:** No estimated expenditures.

**Estimated Capital Impact:** No estimated capital impact.

A copy of the statement may be obtained by contacting Thomas J. Kelly, Room 433, 600 Washington Street S.E., Olympia, WA 98504, phone (360) 725-6301.

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

April 24, 2017

Ben Rarick

Executive Director

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-010 Definitions.** (1) "Board" means the state board of education.

(2) "School district" or "district" means a school district board of directors.

(3) "*NACSA Principles and Standards*" means the "*Principles and Standards for Quality Charter Authorizing* (~~(((2012)))~~ 2015 Edition or most current edition)" developed by the National Association of Charter School Authorizers.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-020 Notice of intent to submit an authorizer application.**

~~(((Effective until May 15, 2015)))~~

~~A school district intending to file an application during a calendar year to be approved as a charter school authorizer must submit to the state board of education a notice of intent to file such application by October 1st of that same year. A district may not file an authorizer application in a calendar year unless it has filed a timely notice of intent as provided for herein. A notice of intent shall not be construed as an obligation to submit an application under these rules. The board shall post on its public web site a form for use by districts in submitting notice of intent, and shall post all notices of intent upon receipt.~~

~~(((Effective May 15, 2015)))~~

A school district intending to file an application during a calendar year to be approved as a charter school authorizer must submit to the state board of education a notice of intent to file such application by June 15th of that same year. A district may not file an authorizer application in a calendar year unless it has filed a timely notice of intent as provided for herein. A notice of intent shall not be construed as an obligation to submit an application under these rules. The board shall post on its public web site a form for use by districts in

submitting notice of intent, and shall post all notices of intent upon receipt.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-030 Submission of authorizer application.**

~~((Effective until May 15, 2015))~~

(1) The state board of education shall develop and make available on its web site, no later than October 1st of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by December 31st of the year prior to the year the district seeks approval as an authorizer. The district's completed application must be submitted via electronic mail to [sbe@k12.wa.us](mailto:sbe@k12.wa.us) by the date specified in this section. The board shall post on its web site each application received from a school district.

(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) ~~The district's strategic vision for chartering.~~ The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the findings and intents set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; the characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.

(b) ~~A plan to support the vision presented,~~ including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW;

(ii) Job titles, job descriptions, and brief bios and resumes of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum, instruction and assessment; special education; English language learners and other diverse learning needs; performance management and law, finance and facilities, through staff and any contractual relationships or partnerships with other public entities; and

(iii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.

(c) ~~A draft or preliminary outline of the request for proposal~~ that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.

(d) ~~A draft of the performance framework~~ that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein; and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) ~~A draft of the district's proposed renewal, revocation, and nonrenewal processes,~~ consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.

(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attach-

~~ment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:~~

~~(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;~~

~~(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;~~

~~(c) Solicit applications for both new charter schools and conversion charter schools, while appropriately distinguishing the two types of charter schools in proposal requirements and evaluation criteria;~~

~~(d) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;~~

~~(e) Ensure that any contract it may execute with the governing board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited English proficient, and any other special populations of students as required by state and federal laws;~~

~~(f) Include in any charter contract it may execute with the governing board of an approved charter school, in accordance with RCW 28A.710.160(2), educational services that at a minimum meet the basic education standards set forth in RCW 28A.150.220.~~

**(Effective May 15, 2015))**

(1) The state board of education shall develop and make available on its web site, no later than May 15th of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by October 15th of the year prior to the year the district seeks approval as an authorizer. The district's completed application must be submitted via electronic mail to [sbe@k12.wa.us](mailto:sbe@k12.wa.us) by the date specified in this section. The board shall post on its web site each application received from a school district.

(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the findings and interests set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; the characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to

considering all charter applicants based on the merits of their proposals and the likelihood of success; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.

(b) **A plan to support the vision presented,** including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW;

(ii) Job titles, job descriptions, and brief bios and resumes of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum, instruction and assessment; special education, English language learners and other diverse learning needs; performance management and law, finance and facilities, through staff and any contractual relationships or partnerships with other public entities; and

(iii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.

(c) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.

(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and

growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) **A draft of the district's proposed renewal, revocation, and nonrenewal processes**, consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.

(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:

(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;

(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;

(c) ~~((Solicit applications for both new charter schools and conversion charter schools, while appropriately distinguishing the two types of charter schools in proposal requirements and evaluation criteria;~~

~~((d))~~ Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;

~~((e))~~ (d) Ensure that any contract it may execute with the ~~((governing))~~ charter school board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited-English proficient, and any other special populations of students as required by state and federal laws;

~~((f))~~ (e) Include in any charter contract it may execute with the ~~((governing))~~ charter school board of an approved charter school, in accordance with RCW ~~((28A.710.160(2), educational services))~~ 28A-710-040 (2)(b), that the charter school must provide a program of basic education that at a minimum meets ~~((the basic education standards set forth in RCW 28A.150.220))~~ the requirements of RCW 28A.150.200

and 28A.150.220, and meets the goals in RCW 28A.150.210, including instruction in the essential learning requirements and participation in the statewide student assessment system as developed under RCW 28A.655.070.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-040 Evaluation and approval or denial of authorizer applications.**

~~((Effective until May 15, 2015))~~

~~(1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by April 1st of each year.~~

~~(2) In evaluating each application, the board will rate each part of the application as set forth in WAC 180-19-030 (3)(a) through (e) as well developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030(1).~~

~~(a) "Well developed" shall mean that the application response meets the expectations established by the board and the NACSA Principles and Standards in material respects and warrants approval subject to execution of an authorizing contract with the board.~~

~~(b) "Partially developed" shall mean that the application response contains some aspects of a well developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the NACSA Principles and Standards.~~

~~(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the NACSA Principles and Standards.~~

~~(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with the NACSA Principles and Standards, as required by RCW 28A.710.100(3), in at least the following areas:~~

~~(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;~~

~~(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;~~

~~(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;~~

~~(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs interven-~~



tion, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

~~(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.~~

~~(4) The board shall develop and post on its public web site rubrics for determination of the extent to which each criterion for evaluation has been met.~~

~~(5) The board may utilize the services of external reviewers with expertise in educational, organizational or financial matters in evaluating applications.~~

~~(6) Prior to approving any application, the board shall require an in-person interview with district leadership for the purpose of reviewing and evaluating the application. The in-person interview will be used to supplement or clarify information provided by the district in the written application. The information received in the in-person interview shall be considered in formulating the overall ratings of the application under subsection (2) of this section.~~

~~(7) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in WAC 180-19-030(3). A determination that an application does not meet standards of quality authorizing in any part, shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.~~

~~(8) The board shall post on its public web site the applications of all school districts approved as authorizers. A school district approved as an authorizer shall post its application on a public web site.~~

**(Effective May 15, 2015))**

(1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by February 1st of each year.

(2) In evaluating each application, the board will rate each part of the application as set forth in WAC 180-19-030 (3)(a) through (e) as well-developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030(1).

(a) "Well-developed" shall mean that the application response meets the expectations established by the board and the *NACSA Principles and Standards* in material respects and warrants approval subject to execution of an authorizing contract with the board.

(b) "Partially developed" shall mean that the application response contains some aspects of a well-developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the *NACSA Principles and Standards*.

(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way

that is not recognizably connected to the expectations established by the board and the *NACSA Principles and Standards*.

(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with the *NACSA Principles and Standards* as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

(4) The board shall develop and post on its public web site rubrics for determination of the extent to which each criterion for evaluation has been met.

(5) The board may utilize the services of external reviewers with expertise in educational, organizational or financial matters in evaluating applications.

(6) Prior to approving any application, the board shall require an in-person interview with district leadership for the purpose of reviewing and evaluating the application. The in-person interview will be used to supplement or clarify information provided by the district in the written application. The information received in the in-person interview shall be considered in formulating the overall ratings of the application under subsection (2) of this section.

(7) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in WAC 180-19-030(3). A determination that an application does not meet standards of quality authorizing in any part shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.

(8) The board shall post on its public web site the applications of all school districts approved as authorizers. A school district approved as an authorizer shall post its application on a public web site.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-070 Charter school—Request for proposals.**

~~((Effective until January 16, 2016))~~

~~No later than April 15th, each authorizer shall annually issue requests for proposals for charter schools meeting the requirements of RCW 28A.710.130.~~

~~(Effective January 16, 2016))~~

No later than March 1st, each authorizer shall annually issue ~~((requests))~~ solicitations for proposals for charter schools meeting the requirements of RCW 28A.710.130.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-080 Charter school applications—Submission, approval, or denial.**

~~((Effective until January 16, 2016))~~

~~(1) An applicant, as defined in RCW 28A.710.010, seeking approval must:~~

~~(a) Submit a nonbinding notice of intent to be approved as a proposed charter school not less than thirty days before the last date for submission of an application to an authorizer as provided in this section. An applicant may not submit a charter school application in a calendar year unless it has filed timely notice of intent as provided herein; and~~

~~(b) Submit an application for a proposed charter school to an authorizer by no later than July 15th of the year in which the applicant seeks approval.~~

~~(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than October 15th of the year in which the application is received.~~

~~(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to [sbe@k-12.wa.us](mailto:sbe@k-12.wa.us).~~

~~(Effective January 16, 2016))~~

(1) An applicant, as defined in RCW 28A.710.010, seeking approval must:

(a) Submit a nonbinding notice of intent to be approved as a proposed charter school by May 1st of the year in which approval is sought. An applicant may not submit a charter school application in a calendar year unless it has filed timely notice of intent as provided herein; and

(b) Submit an application for a proposed charter school to an authorizer by no later than June 1st of the year in which the applicant seeks approval.

(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than September 1st of the year in which the application is received.

(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to [sbe@k-12.wa.us](mailto:sbe@k-12.wa.us).

AMENDATORY SECTION (Amending WSR 14-02-060, filed 12/26/13, effective 1/26/14)

**WAC 180-19-210 Annual report by authorizer.** (1)

Each authorizer must, no later than November 1st of each year starting in 2014, submit an annual report to the state board of education meeting the requirements of RCW 28A.710.100(4). The board shall develop and post on its web site by September 1st of each year a standard form which must be used, and instructions which must be followed by each authorizer in making its report. The completed report must be sent via electronic mail to [sbe@k12.wa.us](mailto:sbe@k12.wa.us) and shall be posted on the board's web site.

(2) The report must include:

(a) The date of authorizer approval by the board;

(b) The names and job titles of district personnel having principal authorizing responsibilities with contact information for each;

(c) The names and job titles of any employees or contractors to whom the district has delegated responsibilities under RCW 28A.710.100, with contact information for each;

(d) An executive summary including, but not limited to, an overview of authorizing activity during the prior year and the status and performance of the charter schools authorized;

(e) The authorizer's strategic vision for chartering, as submitted to the state board under WAC 180-19-030 (3)(a), and its assessment of progress toward achieving that vision;

(f) The status of the authorizer's charter school portfolio, identifying all charter schools in each of the following categories:

(i) Approved but not yet open, including for each, the targeted student population and the community the school hopes to serve; the location or geographic area proposed for the school; the projected enrollment; the grades to be operated each year of the term of the charter contract; the names of and contact information for the ~~((governing))~~ charter school board, and the planned date for opening;

(ii) Operating, including for each, location; grades operated; enrollment in total and by grade; and for each student subgroup as defined in RCW 28A.300.042 in totals and as percentages of enrollment;

(iii) Charter renewed with date of renewal;

(iv) Charter transferred to another authorizer during the prior year, with date of transfer;

(v) Charter revoked during the prior year with date of and reasons for revocation;

(vi) Voluntarily closed;

(vii) Never opened, with no planned date for opening.

(g) The academic performance of each operating charter school overseen by the authorizer, based on the authorizer's performance framework, including:

(i) Student achievement on each of the required indicators of academic performance in RCW 28A.710.170 (2)(a)

through (f), as applicable by grade, in absolute values and in comparison to the annual performance targets set by the charter school under RCW 28A.710.170(3). Student academic proficiency, student academic growth, achievement gaps, graduation rates and postsecondary readiness must be included as reported in the achievement index developed by the state board of education under RCW 28A.657.110.

(ii) Student achievement on each additional indicator of academic performance the authorizer has chosen to include in its performance framework to augment external evaluations of performance, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170.

(iii) Student achievement on each indicator must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status as required of performance frameworks in RCW 28A.710.170.

(h) The financial performance of each operating charter school overseen by the authorizer, based on the indicators and measures of financial performance and sustainability in the authorizer's performance framework, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170;

(i) The organizational performance of the ((governing)) charter school board of each operating charter school overseen by the authorizer, based on the indicators and measures of organizational performance in the authorizer's performance framework, including compliance with all applicable laws, rules and terms of the charter contract;

(j) The authorizer's operating costs and expenses for the prior year for fulfilling the responsibilities of an authorizer as enumerated in RCW 28A.710.100(1) and provided under the terms of each charter contract, detailed in annual financial statements that conform with generally accepted accounting principles and applicable reporting and accounting requirements of the office of the superintendent of public instruction;

(k) The contracted, fee-based services purchased from the authorizer by the charter schools under its jurisdiction under RCW 28A.710.110, including a brief description of each service purchased, an itemized accounting of the revenue received from the schools for the services, and the actual costs of these services to the authorizer.

AMENDATORY SECTION (Amending WSR 14-08-033, filed 3/25/14, effective 4/25/14)

**WAC 180-19-250 Oversight of authorizers—Revocation of authorizing contract.** (1) Evidence of material or persistent failure by an authorizer to carry out its duties according to nationally recognized principles and standards for charter authorizing is grounds for revocation of an authorizer's chartering contract. This may include:

(a) Failure to comply with the terms of the authorizing contract between the authorizer and the board;

(b) Violation of a term of the charter contract between the authorizer and a charter school board;

(c) Demonstrated failure to develop and follow chartering policies and practices that are consistent with the princi-

ples and standards for quality charter authorizing developed by the National Association of Charter School Authorizers in any of the following areas, as required by RCW 28A.710-100:

- (i) Organizational capacity;
- (ii) Soliciting and evaluating charter applications;
- (iii) Performance contracting;
- (iv) Ongoing charter school oversight and evaluation;
- (v) Charter renewal decision making.

(2) Notice of intent to revoke. If the board makes a determination, after due notice to the authorizer and reasonable opportunity to effect a remedy, that the authorizer continues to be in violation of a material provision of a charter contract or its authorizing contract, or has failed to remedy other identified authorizing problems:

(a) The board shall notify the authorizer in writing that it intends to revoke the authorizer's chartering authority under RCW 28A.710.120. The notification to the authorizer shall explain and document the reasons for the intent to revoke chartering authority.

(b) The authorizer shall, within thirty days of notification, submit a written response showing that the authorizer has implemented or will implement within sixty days of submitting the written response, a sufficient remedy for the violation or deficiencies that are the stated grounds for the intent to revoke chartering authority. The board shall within thirty days of receipt provide written notice to the authorizer whether it finds the proposed remedy sufficient to correct the violation or deficiencies.

(3) Notice of revocation. If the authorizer fails to provide a timely written response or if the response is found insufficient by the board to meet the requirement set forth in subsection (1) of this section:

(a) The board shall provide the authorizer with written notice of revocation of the authorizer's chartering authority. The notice of revocation shall state the effective date of revocation, which shall not be sooner than twenty days from the date of receipt of the notice of revocation by the authorizer unless a timely notice of a request for an adjudicative proceeding is filed as set forth herein.

(b) The authorizer may request an adjudicative proceeding to contest the revocation. The request for an adjudicative proceeding must be submitted in writing by the authorizer to the board within twenty days of receipt of the notice of revocation at the following address:

Old Capitol Building  
P.O. Box 47206  
600 Washington St. S.E., Room 253  
Olympia, Washington 98504

Any adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act (APA).

AMENDATORY SECTION (Amending WSR 14-08-033, filed 3/25/14, effective 4/25/14)

**WAC 180-19-260 Authorizer oversight—Transfer of charter contract.** (1) In the event that a notice of revocation is provided to the authorizer under WAC 180-19-250, any charter contract held by that authorizer shall be transferred,

for the remaining portion of the charter term, to the Washington charter school commission on documentation of mutual agreement to the transfer by the charter school board and the commission.

(2) Documentation of mutual agreement shall consist of a written agreement between the charter school board and the commission, signed and dated by the chair or president of the charter school board and the chair of the commission. The agreement shall include any modification or amendment of the charter contract as may be mutually agreed upon by the charter school (~~board~~) and the commission.

(3) The commission shall submit the agreement to the state board of education. The board shall review the agreement and on a determination that the requirements of these rules have been met, issue written certification of the transfer of the charter contract to the charter school (~~governing~~) board and the commission.

(4) On certification by the board of the transfer of the charter contract, the prior authorizer shall transfer to the commission all student records and school performance data collected and maintained in the performance of its duties as an authorizer under RCW 28A.710.100 and 28A.710.170.

(5) The commission, in consultation with the charter school (~~governing~~) board, shall develop and implement a procedure for timely notification to parents of the transfer of the charter contract and any modifications or amendments to the charter included in the written agreement executed under subsection (2) of this section.

(6) If mutual agreement is not obtained on the transfer of the charter contract under RCW 28A.710.120(6) and this section, the charter school shall be closed under the provisions of RCW 28A.710.210. The district shall develop and implement a termination protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, as necessary, and proper disposition of public school funds, property, and assets. The protocol must include, at a minimum, a plan for addressing the following:

(a) Adequate and timely communication with parents, school staff and the community regarding the closing of the charter school and the options for student transfer to another public school;

(b) Retention of student, personnel, governance and financial records in compliance with all applicable laws and policies;

(c) The transfer of all student records in accordance with privacy rules set forth in the Family Educational Rights and Privacy Act (FERPA) and any applicable state laws and school district policies;

(d) Resolution of all financial obligations associated with the closure of the charter school;

(e) Return of the public funds in the possession of the charter school as provided for in RCW 28A.710.201(2), or as required by any other state law; and

(f) A plan for the disposition of all other assets, in compliance with applicable state and federal laws or district policies governing the assets.

The protocol must specify tasks, timelines, and responsible parties, including delineating the respective duties of the charter school and the authorizer. The district shall provide the board with a copy of the termination protocol. The board

may review the protocol and request revisions for implementation.

**WSR 17-10-024**  
**PROPOSED RULES**  
**STATE BOARD OF HEALTH**

[Filed April 25, 2017, 1:58 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: WAC 246-105-040 Requirements based on national immunization guidelines, updating the reference to the advisory committee on immunization practices (ACIP) from the 2016 publication to the 2017 publication.

Hearing Location(s): Gonzaga University, Hemmingson Center, Multi-Purpose Room 314, 702 East Desmet Avenue, Spokane, WA 99202, on June 14, 2017, at 1:50 p.m.

Date of Intended Adoption: June 14, 2017.

Submit Written Comments to: Sierra Rotakhina, P.O. Box 47990, Olympia, WA 98504-7990, email <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-4088, by May 31, 2017.

Assistance for Persons with Disabilities: Contact Sierra Rotakhina by May 31, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal updates the reference to the national immunization standards set by ACIP from the 2016 publication to the 2017 publication. Minimal, if any, impacts to stakeholders are anticipated. Updating the rule does not change any policies for schools or child care centers. Additionally, the 2017 ACIP standards for vaccination of diseases required by WAC 246-105-030 have not changed from 2016.

Reasons Supporting Proposal: Review of the 2017 ACIP standards have determined that there are no changes that impact Washington state immunization requirements. However, this proposal is necessary to provide clarity and consistency for stakeholders by pointing the existing guidelines referenced in rule to the most current national immunization standards published by ACIP.

Statutory Authority for Adoption: RCW 28A.210.140.

Statute Being Implemented: RCW 28A.210.060.

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

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Sierra Rotakhina, 101 Israel Road S.E., Tumwater, WA 98504-7990, (360) 236-4106; Implementation and Enforcement: Michele Roberts, 310 Israel Road S.E., Tumwater, WA 98504-7830, (360) 236-3568.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state law, the rules of other Wash-

ington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

April 25, 2017  
Michelle A. Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 16-15-103, filed 7/20/16, effective 8/20/16)

**WAC 246-105-040 Requirements based on national immunization guidelines.** The department shall develop and distribute implementation guidelines for schools and child care centers that are consistent with the national immunization guidelines described in this section and the requirements in WAC 246-105-090.

(1) Unless otherwise stated in this section, a child must be vaccinated against each vaccine-preventable disease listed in WAC 246-105-030 at ages and intervals according to the national immunization guidelines in the "*Advisory Committee on Immunization Practices (ACIP) Recommended Immunization Schedule for Persons Aged 0 Through 18 Years, United States ((2016)) 2017*"; as published in the *Morbidity and Mortality Weekly Report (MMWR) ((2016;65(04): 86-87)) 2017;66(5):134-135*.

(2) In addition to the ages and intervals required by subsection (1) of this section, the following vaccine administration guidelines shall apply. Schools and child care centers may accept one of the following as proof of a child's immunization status against varicella:

- (a) Documentation on the CIS form that the child received age appropriate varicella vaccine; or
- (b) Diagnosis or verification of a history of varicella disease by a health care provider acting within his or her scope of practice; or
- (c) Diagnosis or verification of a history of herpes zoster by a health care provider acting within his or her scope of practice; or
- (d) Serologic proof of immunity against varicella; or
- (e) Documentation by the parent that a child has a history of varicella. This type of proof will be accepted only for certain grade levels described in the department's implementation guidelines according to WAC 246-105-090(2).

**WSR 17-10-030**  
**WITHDRAWAL OF PROPOSED RULES**  
**WASHINGTON STATE PATROL**

[Filed April 26, 2017, 9:03 a.m.]

The Washington state patrol requests the withdrawal of the proposed rule making regarding WAC 204-91A-070,

filed as WSR 16-21-033, distributed in State Register Issue 16-21 on October 11, 2016.

John R. Batiste  
Chief

**WSR 17-10-036**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed April 26, 2017, 3:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-06-078.

Title of Rule and Other Identifying Information: The department is proposing to create new sections, amend existing sections, and repeal sections in chapter 388-829 WAC, Community residential service business training requirements.

Hearing Location(s): Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on June 27, 2017, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 28, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., June 27, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by phone (360) 664-6092, TTY (360) 664-6178, or email KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 388-829 WAC in order to clarify language, update policy, and align the chapter with RCW 74.39A.074, 74.39A.341, 74.39A.351, and 18.88B.041.

Reasons Supporting Proposal: These amendments are necessary to ensure compliance with regulatory requirements of RCW 74.39A.074, 74.39A.341, 74.39A.351, and 18.88B.041.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 74.39A.074, 74.39A.341, 74.39A.351, and 18.88B.041.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, (360) 407-1581; Implementation and Enforcement: Linda Gil, P.O. Box 45310, Olympia, WA 98504-5310, (360) 407-1543.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose more than minor costs on small businesses or

nonprofits, and align chapter 388-829 WAC with RCW 74.39A.074, 74.39A.341, 74.39A.351, and 18.88B.041.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 407-1581, fax (360) 407-0955, email Chantelle.Diaz@dshs.wa.gov.

April 25, 2017  
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 17-11 issue of the Register.

**WSR 17-10-048**  
**PROPOSED RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**

[Filed April 28, 2017, 3:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-02-080.

Title of Rule and Other Identifying Information: WAC 363-116-360 Exempt vessels.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on June 15, 2017, at 10:00 a.m.

Date of Intended Adoption: June 15, 2017.

Submit Written Comments to: Sheri J. Tonn, Chair, 2901 Third Avenue, Suite 500, Seattle, WA 98121, email LarsonP@wsdot.wa.gov, fax (206) 515-3906, by June 8, 2017.

Assistance for Persons with Disabilities: Contact Shawna Erickson by June 12, 2017, (206) 515-3647.

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

- The proposed changes to this rule regarding tonnage limitations and license requirements for petitioners on foreign flagged yachts and small passenger vessels applying for pilotage exemptions is necessary due to the passage of SSB 5262 which amended RCW 88.16.070 and becomes effective July 23, 2017. The new rule will reflect the increase in the tonnage limitation for yachts from seven hundred fifty to one thousand three hundred gross tons (gt) (international) and for small passenger vessels from five hundred to one thousand three hundred gt (international) and require that small passenger vessels be manned by United States licensed deck and engine officers appropriate to the size of the vessel with merchant mariner credentials issued by the United States Coast Guard or Canadian deck and engine officers with Canadian issued certificates of competency appropriate to the size of a vessel.
- The fee schedule for petitioners has also been modified.
- Consideration may be given to a proposed requirement that all yachts one thousand gt and over which are new to

the area and/or with a master who is new to the area, take a pilot on their initial entry transit.

Reasons Supporting Proposal: It is the intent of the board to align the language of the rule with that of the statute.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed modifications to this rule are intended to accommodate not only larger yachts and passenger vessels, but all yachts and passenger vessels transiting Washington state pilotage waters who meet the vessel exemption criteria.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The application of the proposed modifications is clear in the description of the proposal and its anticipated effects as well as the proposed language shown below.

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. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

April 28, 2017

Peggy Larson  
Executive Director

AMENDATORY SECTION (Amending WSR 12-21-077, filed 10/19/12, effective 11/19/12)

**WAC 363-116-360 Exempt vessels.** (1) Under the authority of RCW 88.16.070, application may be made to the board of pilotage commissioners to seek exemption from the pilotage requirements for the operation of a limited class of small passenger vessels, which are not more than ((five)) one thousand three hundred gross tons (international), do not exceed two hundred feet in length, is manned by United States-licensed deck and engine officers appropriate to the size of the vessel with merchant mariner credentials issued by the United States coast guard or Canadian deck and engine officers with Canadian-issued certificates of competency appropriate to the size of the vessel, and are operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia, or yachts, which are not more than ((seven)) one thousand three hundred ((fifty)) gross tons (international), and do not exceed two hundred feet in length. For purposes of this section, any vessel carrying passengers for a fee, including yachts under charter where both the vessel and crew are provided for a fee, shall be considered a passenger vessel.

The owners or operators of the vessel for which exemption is sought must:

(a) Complete and file with the board a petition requesting an exemption at least forty-eight hours prior to planned vessel operations where possible. Petitions filed with less than forty-eight hours notice may be considered by the chair at the chair's discretion on a board-approved form. The form shall include a description of the vessel, the contemplated use of vessel, the proposed area of operation, the names and addresses of the vessel's owner and operator, the areas and dates of planned operations, and such other information as the board shall require.

(b) Pay the appropriate initial application or renewal fee with the submittal of the petition, which is listed in subsection (5) of this section.

(2) All petitions for exemption filed with the board shall be considered at its next regularly or specially scheduled meeting. Consistent with the public interest, the chair may grant an interim exemption to a petitioner subject to final approval at the next board meeting, where special time or other conditions exist.

(3) Any grant of an exemption, including interim exemptions, may contain such conditions as the board, or in the case of an interim exemption, the chair, deems necessary to protect the public interest in order to prevent the loss of human life and property and to protect the marine environment of the state of Washington.

Such conditions may include: A requirement that the vessel employ the services of a pilot on its initial voyage into state pilotage waters; and/or that the master of the vessel at all times hold as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than sixteen hundred gross tons or as a master of inland steam or motor vessels of not more than five hundred gross tons, such license to include a current radar endorsement; and/or that the vessel possess specific navigational charts, publications and navigational equipment necessary to ensure safe operation.

(4) The board shall annually, or at any other time when in the public interest, review any exemptions granted to the specified class of small vessels to ensure that each exempted vessel remains in compliance with the original exemption and any conditions to the exemption. The board shall have the authority to revoke such exemption when there is not continued compliance with the requirements for exemption.

(5) Fee Schedule for Petitioners for Exemption

	3 Months or Less	1 Year or Less	Annual Renewal
<b>A. Yachts</b>			
Up to and including 50 feet LOA	\$50	\$50	\$50
Up to and including 100 feet LOA	450 to 700	750 to 1000	300 to 600
Up to and including 200 feet LOA and 750 gt	750 to 1000	1125 to 1400	450 to 800
Up to and including 200 feet LOA and 751 to 1300 gt	1500	1500	1500

	3 Months or Less	1 Year or Less	Annual Renewal
<b>B. Passenger Vessels</b>			
Up to and including 100 feet LOA	1125	1500	600 to 1000
Up to and including 200 feet LOA	1500	1500	750 to 1200

(6) Petitions for annual renewals must be submitted within one year of the expiration of the previous exemption.

**WSR 17-10-056**  
**PROPOSED RULES**  
**STATE BOARD OF HEALTH**

[Filed May 2, 2017, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-22-035.

Title of Rule and Other Identifying Information: WAC 246-100-197 Rabies—Measures to prevent human disease, the state board of health is proposing to amend the rule to incorporate the most current science related to rabies post-exposure practice and quarantine periods, and update the National Association of State Public Health Veterinarians Compendium of Animal Rabies Prevention and Control adoption by reference date for procedures related to emergency sheltering of mammals displaced during a disaster.

Hearing Location(s): Gonzaga University, Hemmingson Center, Multi-Purpose Room 314, 702 East Desmet Avenue, Spokane, WA 99202, on June 14, 2017, at 1:30 p.m.

Date of Intended Adoption: June 14, 2017.

Submit Written Comments to: Vicki M. Bouvier, Washington State Department of Health, P.O. Box 47820, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policy> review, by May 31, 2017.

Assistance for Persons with Disabilities: Contact Melanie Hisaw by June 7, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 246-100-197 Rabies—Measures to prevent human disease, the proposal amends the rule to incorporate the most current science related to rabies post-exposure practice and quarantine periods, updates the National Association of State Public Health Veterinarians Compendium of Animal Rabies Prevention and Control adoption by reference date for procedures related to emergency sheltering of mammals displaced during a disaster, and makes editorial changes to clarify and improve readability of the rule.

Reasons Supporting Proposal: The proposed changes incorporate the most recent national standards relating to post-exposure practices that reduce barriers for pet owners to comply with the rule. These proposed changes take advantage of new flexibility in practice standards and are expected to increase compliance with the state rabies rule which could result in greater public health protection. The proposal also provides local health officers the most current emergency response procedures for sheltering all mammals, including pets, displaced during a disaster.

Statutory Authority for Adoption: RCW 43.20.050 and 16.70.040.

Statute Being Implemented: RCW 43.20.050 and 16.70.040.

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Vicki M. Bouvier, 111 Israel Road S.E., Tumwater, WA 98511, (360) 236-3011; Implementation: Ron Wohrle, 243 Israel Road S.E., Tumwater, WA 98511, (360) 236-3011; and Enforcement: Wayne Clifford, 243 Israel Road S.E., Tumwater, WA 98511, (360) 236-3011.

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 copy of the statement may be obtained by contacting Vicki M. Bouvier, Department of Health, P.O. Box 47820, Olympia, WA 98504, phone (360) 236-3011, email Vicki.Bouvier@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Vicki M. Bouvier, Department of Health, P.O. Box 47820, Olympia, WA 98504, phone (360) 236-3011, email Vicki.Bouvier@doh.wa.gov.

May 2, 2017  
Michelle A. Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 11-04-017, filed 1/21/11, effective 1/1/12)

**WAC 246-100-197 Rabies—Measures to prevent human disease.** (1) The purpose of this rule is to protect the public from rabies, a deadly disease.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Adequate anamnestic response" means paired serum specimens that show a two fold increase in titer between the first and second specimens, and show the second titer is above 0.5 IU/mL (1:50).

(b) "Animal exhibitor" means a person with a valid class C certification as an exhibitor under the Animal Welfare Act, 7 U.S.C. 2131-2159.

~~((b))~~ (c) "Cat" means an animal of the species *Felis domesticus*, and excludes felid hybrid animals.

~~((c))~~ (d) "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 Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA) executed by a licensed and accredited veterinarian or a veterinarian approved by APHIS, USDA.

~~((d))~~ (e) "Dog" means an animal of the species *Canis familiaris* and excludes canid hybrid animals.

~~((e))~~ (f) "Entry permit" means prior written permission from the director of the department of agriculture.

~~((f))~~ (g) "Euthanize" means to humanely destroy an animal by a method that involves instantaneous unconscious-

ness and immediate death or by a method that causes painless loss of consciousness and death during the loss of consciousness.

~~((g))~~ (h) "Ferret" means an animal of the species *Mustela furo*.

~~((h))~~ (i) "Hybrid" means any mammal which is the offspring of the reproduction between any species of:

(i) Wild canid or hybrid wild canid and a domestic dog or hybrid wild canid, or is represented by its owner to be a wolf hybrid, coyote hybrid, coy dog or any other kind of wild canid hybrid; or

(ii) Wild felid or hybrid wild felid and a domestic cat or hybrid wild felid or is represented by its owner to be a wild felid hybrid.

~~((i))~~ (j) "Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, and other species so designated by statute. Livestock does not mean "wild animals" as defined in RCW 77.08.010.

~~((j))~~ (k) "Owner" means any person legally responsible for the care and actions of a pet animal.

~~((k))~~ (l) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or governmental agency; or the authorized agents of these entities.

~~((l))~~ (m) "Prospective serologic monitoring protocol" means the protocol identified in Part I B.5 of the *Compendium of Animal Rabies Prevention and Control*, 2016.

(n) "Research facility" means a person with a valid class R certification as a research facility under the Animal Welfare Act, 7 U.S.C. 2131-2159.

~~((m))~~ (o) "USDA" means the United States Department of Agriculture.

(p) "Vaccination status" means one of the following:

(i) "Currently vaccinated" means a dog, cat, or ferret that has been initially vaccinated and revaccinated against rabies following veterinary and USDA-licensed rabies vaccine manufacturer instructions.

(ii) "Overdue for vaccination" means a dog, cat, or ferret that has not received a booster vaccination against rabies following veterinary and USDA-licensed rabies vaccine manufacturer instructions.

(iii) "Unvaccinated" means a dog, cat, or ferret that has never received a vaccination against rabies.

(q) "Wildlife rehabilitator" means a person with a valid permit as a wildlife rehabilitator under chapter 77.12 RCW.

(r) "Zoological park" means an accredited member of the American Zoo and Aquarium Association (AZA).

(3) An owner of a dog, cat, or ferret shall have it vaccinated ~~(against rabies)~~ and revaccinated against rabies following veterinary and USDA-licensed rabies vaccine manufacturer instructions. This requirement does not apply to animal shelters.

(4) Zoological parks and other types of animal exhibitors shall confine for a minimum of six months all wild-caught mammals susceptible to rabies and intended for public exhibition.

(5) The following restrictions apply to the importation and movement of certain mammals in Washington state.



(a) All persons are prohibited from acquiring, selling, bartering, exchanging, giving, purchasing, distributing, or trapping to retain any bat, skunk, fox, raccoon, or coyote, except a zoological park, animal exhibitor, ~~((or))~~ research facility, or wildlife rehabilitator.

(b) All persons are prohibited from importing into the state any bat, skunk, fox, raccoon, or coyote, except a zoological park, animal exhibitor, or research facility under an entry permit issued by the director of the department of agriculture in consultation with the secretary of the department.

(c) Any person importing a dog internationally that requires confinement according to requirements of 42 C.F.R. 71.51, shall notify the secretary of the department within seventy-two hours of the animal's arrival in the state.

(6) When a local health officer receives a report that a dog, cat, ferret, or hybrid has been exposed to a rabid or suspected rabid animal, the local health officer ~~((may require:~~

~~(a) Unvaccinated dogs, cats and ferrets be:~~

~~(i) Euthanized immediately; or~~

~~(ii) Confined in a manner considered appropriate by the local health officer for at least six months from the date of suspected rabies exposure and given rabies vaccine at least thirty days prior to the end of the confinement period.~~

~~(b) Currently vaccinated dogs, cats, and ferrets be revaccinated immediately with rabies vaccine, kept under the owner's control in a manner considered appropriate by the local health officer, and observed for forty-five days for signs of illness.~~

~~(c) Hybrids be euthanized)) shall assess the vaccination status of the animal. Based on the species and vaccination status of the animal, the local health officer may require any of the following:~~

~~(a) For currently vaccinated dogs, cats, and ferrets:~~

~~(i) Immediate veterinary care;~~

~~(ii) Immediate revaccination with a USDA-licensed rabies vaccine; and~~

~~(iii) The animal be kept under the owner's control and observed for signs of illness in a manner considered appropriate by the local health officer for forty-five days from the date of suspected or known rabies exposure.~~

~~(b) For unvaccinated dogs, cats, and ferrets:~~

~~(i) Immediate euthanasia; or~~

~~(ii) Quarantine;~~

~~(A) Immediate veterinary care;~~

~~(B) Immediate vaccination with a USDA-licensed rabies vaccine; and~~

~~(C) Confinement and observation for signs of illness in a manner considered appropriate by the local health officer for at least four months for dogs and cats, and at least six months for ferrets from the date of suspected or known rabies exposure.~~

~~(c) For dogs and cats overdue for vaccination with proof of having received a USDA-licensed rabies vaccine at least once:~~

~~(i) Immediate veterinary care;~~

~~(ii) Immediate vaccination with a USDA-licensed rabies vaccine; and~~

~~(iii) The animal be kept under the owner's control and observed for signs of illness in a manner considered appropri-~~

~~ate by the local health officer for forty-five days from the date of suspected or known rabies exposure.~~

~~(d) For dogs and cats overdue for vaccination without proof of having received a USDA-licensed rabies vaccine at least once:~~

~~(i) Immediate euthanasia; or~~

~~(ii) Quarantine;~~

~~(A) Immediate veterinary care;~~

~~(B) Immediate vaccination with a USDA-licensed rabies vaccine; and~~

~~(C) Confinement and observation for signs of illness in a manner considered appropriate by the local health officer for at least four months from the date of suspected or known rabies exposure; or~~

~~(iii) An evaluation consistent with the prospective serologic monitoring protocol:~~

~~(A) Immediate veterinary care;~~

~~(B) Collection of a first blood sample for analysis;~~

~~(C) Immediately following collection of the first blood sample, vaccination with a USDA-licensed rabies vaccine;~~

~~(D) Collection of a second blood sample for analysis at least five days, but no later than seven days from the first blood sample collection; and~~

~~(E) Confinement in a manner considered appropriate by the local health officer until the results of the prospective serologic monitoring protocol are known.~~

~~(I) If the prospective serologic monitoring protocol results show the animal has an adequate anamnestic response to the rabies vaccination, the animal must be kept under the owner's control and observed for signs of illness in a manner considered appropriate by the local health officer for forty-five days from the date of the suspected or known rabies exposure.~~

~~(II) If the prospective serologic monitoring protocol shows the animal does not have an adequate anamnestic response to the rabies vaccination, the animal must be confined and observed for signs of illness in a manner considered appropriate by the local health officer for at least four months from the date of suspected or known rabies exposure.~~

~~(e) For ferrets overdue for vaccination:~~

~~(i) Immediate euthanasia; or~~

~~(ii) Quarantine;~~

~~(A) Immediate veterinary care;~~

~~(B) Immediate vaccination with a USDA-licensed rabies vaccine; and~~

~~(C) Confinement and observation for signs of illness in a manner considered appropriate by the local health officer for at least six months from the date of suspected or known rabies exposure.~~

~~(f) For hybrids, euthanize immediately.~~

(7) The owner or caretaker of a dog, cat, or ferret that is confined or under observation as described in subsection (6) of this section shall report any illness in the animal to the local health officer. If signs suggestive of rabies develop, the local health officer may order the animal to be euthanized and tested for rabies.

(8) When a local health officer receives a report that a mammal has bitten or otherwise potentially exposed a person to rabies, the local health officer may institute any or all of the following:

(a) Order a healthy dog, cat, or ferret to be confined in a manner the local health officer considers appropriate and observed daily for at least ten days with any illness reported to the local health officer, and if signs suggestive of rabies develop, order the animal to be euthanized and tested for rabies;

(b) Order immediate euthanasia and rabies testing of any stray or unwanted dog, cat, or ferret; or

(c) Order euthanasia and rabies testing of any hybrid or other mammal that is not a livestock animal.

(9) When a mammal other than a bat is found to be rabid, the local health officer may institute additional community-wide measures as appropriate including, but not limited to, the following actions:

(a) Issuance of orders to pick up and impound stray and unlicensed dogs, cats, hybrids and ferrets;

(b) Issuance of orders to owners of dogs, cats, and ferrets requiring proof of rabies vaccination following veterinary and USDA-licensed rabies vaccine manufacturer instructions;

(c) Restriction of dogs, cats, hybrids, and ferrets to owners' or caretakers' premises except when on leash; or

(d) Provide public and professional outreach education.

(10) When mammals are displaced during or after a man made or natural disaster and require emergency sheltering, the local health officer may implement and coordinate rabies prevention and control measures as described in Part I B.8., Disaster Response of the *Compendium of Animal Rabies Prevention and Control*, ((2008)) 2016. A copy of this publication is available for review at the department's web site, at [www.doh.wa.gov](http://www.doh.wa.gov).

(11) A person euthanizing a mammal for the purpose of rabies testing as described in this section shall prepare, package, and transport the specimens to be tested in a manner approved by the local health officer and according to the department's *Guidelines for the Submission of Specimens for Rabies Testing*, ((August 2006)) February 2011. This publication is available from the department at [www.doh.wa.gov](http://www.doh.wa.gov).

### WSR 17-10-068

#### PROPOSED RULES

#### DEPARTMENT OF AGRICULTURE

[Filed May 3, 2017, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-05-088.

Title of Rule and Other Identifying Information: Chapter 16-08 WAC, Practice and procedure, the department is proposing to amend chapter 16-08 WAC to improve clarity, to modify the department's procedure for conducting brief adjudicative proceedings, and to list additional actions that the department may review in a brief adjudicative proceeding.

Hearing Location(s): Washington State Department of Agriculture, Natural Resources Building, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504, on June 7, 2017, at 1:30 p.m.

Date of Intended Adoption: June 21, 2017.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, email [wsdarules.comments@agr.wa.gov](mailto:wsdarules.comments@agr.wa.gov), fax (360) 902-2094, by June 7, 2017.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (800) 833-6388 or 711 no later than May 31, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-08 WAC to improve clarity, to modify the department's procedure for conducting brief adjudicative proceedings, and to list additional actions that the department may review in a brief adjudicative proceeding.

Under RCW 34.05.482 of the Administrative Procedure Act, an agency may use a brief adjudicative proceeding if:

- Use of the proceeding under the circumstances does not violate any provision of law;
- The protection of the public interest does not require the agency to give notice and an opportunity to participate to persons other than the parties;
- The matter is within a category the agency has identified by rule for use of a brief adjudicative proceeding; and
- The issue and interests involved in the controversy do not warrant use of a formal adjudicative proceeding.

Reasons Supporting Proposal: The proposed amendments clarify the process for brief adjudicative proceedings including filing, decisions, administrative review, and the agency record. In addition, minor changes to the existing rule are proposed to increase clarity.

Statutory Authority for Adoption: RCW 43.17.060 and chapter 34.05 RCW.

Statute Being Implemented: RCW 34.05.482 - [34.05].-494.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Elizabeth McNagny, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1809.

No small business economic impact statement has been prepared under chapter 19.85 RCW. All components of the proposed rule meet the exemption under RCW 19.85.025(3) and 34.05.310 (4)(g).

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).

May 3, 2017  
Kirk Robinson  
Deputy Director

AMENDATORY SECTION (Amending WSR 11-20-047, filed 9/29/11, effective 10/30/11)

**WAC 16-08-002 Definitions.** The definitions in this section apply to this chapter unless the context otherwise requires:

"Date of service" means the date the department places a properly dated and stamped document into the United States Postal Service or other mail service for delivery.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture.

"Person" means natural persons, sole proprietorship, corporations, trusts, unincorporated associations and partnerships.

"Presiding officer" means the person designated by the director to preside over adjudicative proceedings.

"Reviewing officer" means the director of agriculture or the person designated by the director to review initial orders and prepare and enter final orders for the director.

AMENDATORY SECTION (Amending WSR 04-02-063, filed 1/7/04, effective 2/7/04)

**WAC 16-08-003 (~~Declaration of~~) Purpose (~~and applicability~~) of this chapter.** This chapter sets forth the rules of procedure that (~~are applicable~~) apply to adjudicative proceedings before the department. (~~Because~~) This chapter does not apply to civil penalties and orders issued by the department (~~pursuant to~~) under chapters 90.64 and 90.48 RCW in the (~~livestock~~) dairy nutrient management program (~~are appealable only to the pollution control hearings board (PCHB) under chapter 43.21B RCW and chapter 371-08 WAC, this chapter is not applicable to those proceedings~~).

AMENDATORY SECTION (Amending WSR 04-02-063, filed 1/7/04, effective 2/7/04)

**WAC 16-08-004 (~~Livestock~~) Dairy nutrient management program (~~LNMP~~) appeals.** (1) All appeals of civil penalties and orders issued by the (~~department in the livestock~~) department's dairy nutrient management program (~~shall be~~) are filed with the (~~PCHB~~) pollution control hearings board at the environmental hearings office and (~~shall be~~) are served on the department of agriculture (~~pursuant to~~) under RCW 43.21B.230 and 43.21B.300, and WAC 371-08-335 and 371-08-345.

(2) (~~Pursuant to~~) Under WAC 371-08-306, when referring to appeals related to civil penalties and orders issued by the department of (~~agriculture in the livestock~~) agriculture's dairy nutrient management program, all references to "department" in both chapters 43.21B RCW and 371-08 WAC (~~shall~~) mean the department of agriculture; all references to "director" (~~shall~~) mean the director of the department of agriculture.

AMENDATORY SECTION (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

**WAC 16-08-011 (~~Adoption of~~) The department of agriculture adopts the model rules of procedure.** The model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge (~~pursuant to~~) under RCW 34.05.250(~~, as now or hereafter amended,~~) are (~~hereby~~) adopted for use by the department. In the case of a conflict

between the model rules of procedure and procedural rules adopted in this chapter, the procedural rules adopted in this chapter by the department (~~shall~~) take precedence.

AMENDATORY SECTION (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

**WAC 16-08-091 Depositions in adjudicative proceedings—Notice.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than five days in writing to the department of agriculture and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or her or the particular class or group to which he or she belongs. On motion of a party upon whom the notice is served, the presiding officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

AMENDATORY SECTION (Amending WSR 11-20-047, filed 9/29/11, effective 10/30/11)

**WAC 16-08-141 Brief adjudicative proceedings—Applicability.** (~~(1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where not violative of law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. Those circumstances may include:~~

- (a) Actions taken by the agency based on the failure:
  - (i) To maintain, supply, or display records; and/or
  - (ii) To display evidence of a license; and/or
  - (iii) To display or post information required by law; and/or
  - (iv) To possess required insurance, bonding or other security.
- (b) Actions taken with respect to late application renewal fees.
- (c) Actions taken with respect to certificate of compliance agreements under WAC 16-461-010.
- (d) Actions taken with respect to sale permits pursuant to RCW 15-13-270.
- (e) Actions taken to revoke certification of plant material as foundation or breeder planting stock pursuant to RCW 15-14-110.
- (f) Penalty actions taken with respect to cattle breed name use.
- (g) Penalty actions taken against milk producers pursuant to RCW 15-36-115 or 15-36-595.
- (h) Dairy degrade or permit suspension actions taken pursuant to chapter 15-36 RCW.
- (i) Actions taken with respect to licenses for sale of milk for animal food pursuant to RCW 15-37-030 et seq.
- (j) Actions taken with respect to registration of commercial feed pursuant to RCW 15-53-9036.
- (k) Actions taken with respect to pesticide registration under RCW 15-58-110.

~~(l) Actions taken with respect to organic certification pursuant to RCW 15.86.060 and/or 15.86.070.~~

~~(m) Actions taken with respect to mushroom buyer or dealer licenses pursuant to RCW 15.90.020.~~

~~(n) Actions taken with respect to animal health certificates pursuant to RCW 16.36.050.~~

~~(o) Actions taken with respect to destruction or treatment of quarantined animals pursuant to RCW 16.36.090.~~

~~(p) Actions taken with respect to licenses for garbage feeding to swine pursuant to RCW 16.36.108.~~

~~(q) Actions taken with respect to licenses related to custom farm slaughter pursuant to chapter 16.49 RCW.~~

~~(r) Actions taken with respect to licenses related to custom meat facilities pursuant to chapter 16.49 RCW.~~

~~(s) Actions taken with respect to approval of livestock pens within feedlots pursuant to RCW 16.58.080.~~

~~(t) Actions taken with respect to certified feed lot licenses pursuant to RCW 16.58.130.~~

~~(u) Actions taken with respect to seizure and destruction of incorrect weights and measures pursuant to RCW 19.24.250.~~

~~(v) Actions taken with respect to licenses of grain dealers or warehousemen pursuant to RCW 22.09.471.~~

~~(w) Revocation of compliance agreements for the completion of state phytosanitary, sanitation, or brown garden snail certificates pursuant to chapters 15.13 and 17.24 RCW.~~

~~(x) Revocation of compliance agreements for preprinting or use of rubber stamps for nursery stock inspection certificates pursuant to chapter 15.13 RCW.~~

~~(y) Revocation of compliance agreements for root sampling of nursery stock pursuant to chapter 15.13 RCW.~~

~~(z) Agency refusal to certify seed stocks because of misleading or confusing labeling pursuant to chapter 15.60 RCW and WAC 16.316.345.~~

~~(aa) Rescinding of permit for seed conditioning pursuant to chapter 15.60 RCW and WAC 16.316.185(8).~~

~~(bb) Expulsion from or refusal to allow entry into a seed or plant certification program pursuant to chapters 15.60 and 15.13 RCW.~~

~~(2) A party to a brief adjudicative hearing has twenty-five days to file an application or request from the date of service of the department's notice of intent to take action. The application or request for a brief adjudicative hearing shall be filed at the address listed on the form provided by the department. The party filing the application or request for a brief adjudicative proceeding shall submit a written explanation of their view of the matter along with the application or request. Other parties may file a written response within ten days after service of the application for a brief adjudicative proceeding. Copies of the response shall be served on all parties. Oral statements may be submitted and considered as follows:~~

~~(a) If a party to a brief adjudicative proceeding desires an opportunity to make an oral statement, it should be requested in the application or request.~~

~~(b) A request to make an oral statement may be granted if the presiding officer believes such a statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of the decision to grant or deny the request to hear oral comments, and~~

~~if the request is granted, shall notify the parties of the time and place for hearing comments.~~

~~(3) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.~~

~~(4) The presiding officer's written decision is an initial order. If no review is taken of the initial order, it shall be the final order.~~

~~(5) The reviewing officer shall conduct a review of an initial order resulting from a brief adjudicative proceeding upon the written or oral request of a party if the director receives the request within twenty one days from the service of the initial order. If no request is filed in a timely manner, the reviewing officer may review, on his or her own motion, an order resulting from a brief adjudicative proceeding and adopt, modify, or reject the initial order; but the reviewing officer shall not take any action on review less favorable to any party without giving that party notice and opportunity to explain his or her view of the matter.~~

~~(6) A request for review of an initial order shall contain an explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect. The request for review shall be filed with the director and copies shall be served on all parties, and evidence of such service filed. Responses to a request for review of an initial order shall be filed with the director and served on all parties within ten days after service of the request for review.~~

~~(7) The order on review shall be in writing, shall include a brief statement of the reasons for the decision, and shall be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.~~

~~(8) The record in a brief adjudicative proceeding shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding and/or by the reviewing officer for any review.)~~ (1) If an adjudicative proceeding is requested in a matter not listed in this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when use of a brief adjudicative proceeding will not violate any provision of law and protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties and:

(a) The only issues presented are issues of law; or

(b) Both parties have agreed to a brief adjudicative proceeding.

(2) Brief adjudicative proceedings may be used to determine the following issues including, but not limited to:

(a) Whether an applicant, permittee, or licensee satisfies all requirements to maintain, provide, make available for review, or display records or has committed other record-keeping violations.

(b) Whether an applicant, permittee, or licensee satisfies all requirements to create, maintain, provide, or make available for review data or reports.

(c) Whether an applicant, permittee, or licensee satisfies all requirements to display or post information required by law.

(d) Whether an applicant satisfies financial security requirements by providing adequate proof of insurance, surety bonds, custodial account, or other proof of financial security as required by law.

(e) Whether an applicant satisfies terms for reinstatement of a license or registration after a period of license or registration suspension or revocation.

(f) Whether an applicant meets minimum eligibility requirements for an initial or renewal application for a license, permit, registration, or certification.

(g) Whether an applicant, licensee, permittee, or registrant should be denied a license, permit, registration, or certification for failure to comply with labeling requirements.

(h) Whether an applicant, permittee, or licensee failed to cooperate in an investigation, examination, sample taking, or inspection by the department.

(i) Whether an applicant, permittee, or licensee violated the terms of a final order issued by the director or director's designee.

(j) Whether an applicant, permittee, licensee, or registrant failed to timely pay an application fee, renewal fee, or an assessment required for a license, registration, permit, or certification.

(k) Whether commercial use of a weighing or measuring instrument or device violates chapter 19.94 RCW or 16-674, 16-662, or 16-663 WAC.

(l) Whether motor fuel marketed for sale is in compliance with chapters 19.112 RCW and 16-662 WAC.

(m) Whether planting stock fails to meet the certification requirements under chapter 15.14 RCW.

(n) Whether a milk processing plant or producer license should be lowered in grade for failure to meet requirements under chapter 15.36 RCW.

(o) Whether a license for sale of milk for animal food should be denied, suspended, or revoked for violations under chapter 15.37 RCW.

(p) Whether a commercial feed registration of pet food and specialty pet food should be denied or canceled for failure to comply with requirements under chapter 15.53 RCW.

(q) Whether registration on the organic brand name materials list should be denied, suspended, or revoked for failure to meet the requirements under chapter 15.86 RCW.

(r) Whether an applicant for a custom farm slaughter license or a custom meat facility license should be denied, suspended, or revoked for failure to comply with the requirements under chapter 16.49 RCW.

(s) Whether an applicant for pesticide registration should be denied for failure to comply with the pesticide product or labeling requirements under chapter 15.58 RCW.

(t) Whether an applicant for fertilizer registration should be denied for failure to comply with commercial fertilizer product or labeling requirements under chapter 15.54 RCW.

(u) Whether an applicant for a license to feed garbage to swine should be denied, suspended, or revoked for failure to comply with the licensing requirements under chapter 16.36 RCW.

(v) Whether an applicant for a certified feed lot license should be denied, suspended, or revoked for failure to pay fees required under RCW 16.58.130.

(w) Whether a person is in violation of chapter 16.36 RCW for failure to secure a certificate of veterinary inspection for an animal being brought into Washington state.

(x) Whether a person is in violation of RCW 16.36.050(2) for failure to transport or deliver an animal to the destination designated by a certificate of veterinary inspection, import health papers, permits, or other transportation documents required by law.

(y) Whether a person licensed to practice veterinary medicine, surgery, or dentistry in Washington state is in violation of RCW 16.36.080 for failure to report to the department the existence or suspected existence of a reportable disease among animals within the state.

(z) Whether a seed conditioning permit should be revoked for failure to comply with chapters 15.49 RCW and 16-302 WAC.

#### NEW SECTION

**WAC 16-08-142 Brief adjudicative proceedings—Filing.** (1) A request for hearing (application for brief adjudicative proceeding) must be in writing and filed with the department during regular office hours at the address designated in the notice or instructions provided by the department. A party may request a brief adjudicative proceeding by completing the application form provided by the department, along with a written explanation of the party's view of the matter.

(2) A request for hearing is filed in a timely manner when the mailing is postmarked or received by the department within twenty-five days of service of the proposed department action giving rise to the request for hearing.

(3) A request for hearing may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered, or certified mail. A request for hearing may be filed by electronic mail (email) only when instructions for email filings have been provided by the department.

(4) If the request for hearing is not timely filed with the department, the applicant waives his or her right to a hearing.

#### NEW SECTION

**WAC 16-08-144 Brief adjudicative proceedings—Procedure.** (1) Brief adjudicative proceedings shall be conducted by a presiding officer designated by the director in accordance with WAC 16-08-021.

(2) The parties or their representatives may present written documentation in addition to the request for hearing. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer may hear oral argument from the parties or their representatives if the presiding officer believes the statement will help in reaching a decision. If a party to a brief adjudicative proceeding desires to make an oral statement, a request shall be included in the application for the brief adjudicative proceeding. If the request is granted,

the presiding officer will designate the time and place for taking oral statements and notify the parties.

(4) The parties may not call witnesses to testify.

(5) If a party fails to appear at the designated time and place for taking oral statements, the presiding officer shall take the oral statement of any party present and shall consider it and all written submissions.

#### NEW SECTION

**WAC 16-08-145 Brief adjudicative proceedings—Decisions.** (1) The presiding officer for brief adjudicative proceedings shall not issue an oral order.

(2) Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer shall enter a written initial order. The initial order will contain a brief written statement of the reasons for the decision and information about any internal review available.

(3) If a party does not request administrative review of an initial order in accordance with WAC 16-08-148, the initial order becomes a final order on the twenty-first calendar day after service of the initial order.

#### NEW SECTION

**WAC 16-08-148 Brief adjudicative proceedings—Administrative review.** (1) Any party may request orally or in writing a review of the initial order issued under WAC 16-08-145. A petition for review of an initial order shall contain a written explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect. Oral requests must be placed in writing.

(a) Petitions for review may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered or certified mail. A petition for review may be filed by electronic mail (email) only when instructions for email filings have been provided by the department. Petitions for review must be received by the department at the address designated in the initial order within twenty-one days of service of the initial order.

(b) Petitions for review shall be served on all parties, and evidence of such service filed at the address designated in the initial order.

(2) A party may file a response to a petition for a review.

(a) The response shall be filed at the address designated in the initial order within ten days of the date of service of the petition for review.

(b) Copies of the response shall be served on all other parties at the time the response is filed.

(3)(a) The department reviewing officer, upon his or her own motion, may petition for administrative review of an initial order.

(b) The reviewing officer shall provide notice to the parties of his or her determination to review the initial order within twenty-one days of service of the initial order. The notice to the parties shall state the date by which a decision shall be made. The reviewing officer shall not take any action on review that is less favorable than the initial order without giving all parties notice and an opportunity to explain his or her view of the matter.

(4) The reviewing officer shall enter a final order disposing of the proceeding. A final order shall be in writing and shall:

(a) Include a brief statement of the reasons for the decision;

(b) Be entered within twenty-one days after the date of the initial order or of the petition for review, whichever is later.

(5) If the reviewing officer deems it necessary, he or she may remand a matter for further proceedings.

#### NEW SECTION

**WAC 16-08-149 Brief adjudicative proceedings—Agency record.** The agency record in a brief adjudicative proceeding shall consist of any documents relating to the matter that were considered or prepared by the presiding officer or by the reviewing officer for any review. The agency record shall include:

(1) All initiating documents;

(2) The request for hearing;

(3) All documents submitted in the proceeding;

(4) Any transcript or recording of any oral arguments presented; and

(5) All orders issued in the case.

AMENDATORY SECTION (Amending WSR 98-09-085, filed 4/21/98, effective 5/22/98)

**WAC 16-08-151 Emergency adjudicative proceedings.** (1) Pursuant to RCW 34.05.479, the department shall use emergency adjudicative proceedings for the suspension or cancellation of authority in situations involving an immediate danger to the public health, safety, or welfare requiring immediate action by the department. Such situations shall include:

(a) Failure to possess required insurance, bonding or other security.

(b) Health, safety, or welfare violations when the violation involves an immediate danger to the public health, safety, or welfare, including, but not limited to, decisions by the department to:

(i) Condemn horticultural plants under chapter 15.13 RCW; ~~((or to))~~

(ii) Condemn infested or infected articles under chapter 15.08 RCW; ~~((or to))~~

(iii) Issue stop sale, use, or removal order under chapter 15.49 RCW; ~~((or to))~~

(iv) Quarantine apiaries under chapter 15.60 RCW; ~~((or to))~~

(v) Quarantine animals under chapter 16.36 RCW; ~~((or to))~~

(vi) Impound infested, infected, or regulated articles pursuant to chapter 17.24 RCW; ~~((or to))~~ and

(vii) Close food processing facilities under chapter 69.07 RCW ~~((;))~~ or under rules or regulations of the director adopted pursuant to such laws.

(2) The ~~((summary))~~ department shall enter a written order ~~((shall include))~~ containing a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health,

safety, or welfare. The order shall be effective when entered. Service of the order shall be made pursuant to WAC 10-08-110. The order shall also give the affected party (~~five days from service of the order~~) instructions on how to request an adjudicative proceeding on the order, or, in the alternative, the (~~director~~) department may in the order automatically establish a date affording the affected party the opportunity to present any defense concerning why the (~~summary~~) order is incorrect.

(3) A (~~decision made upon~~) request for emergency hearing (application for an adjudicative proceeding) must be in writing and filed with the department during regular office hours at the address designated in the notice or instructions provided by the department. A request for hearing is filed in a timely manner when the mailing is postmarked or received by the department within five days of service of the order. A request for hearing may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered, or certified mail. A request for hearing may be filed by electronic mail (email) only when instructions for email filings have been provided by the department.

(4) The presiding officer for the emergency adjudicative proceeding shall (~~be expressed in~~) issue a written order which shall be served on all parties (~~within five days after its entry~~). This written order is a final order.

(~~(4)~~) (5) The (~~summary~~) order shall be effective pending disposition on the merits of the denial, suspension or revocation of authority.

AMENDATORY SECTION (Amending WSR 97-14-050, filed 6/27/97, effective 7/28/97)

**WAC 16-08-171 Documents—Filing.** Any documents filed with the director under provisions of the Administrative Procedure Act, chapter 34.05 RCW, Model rules of procedure, chapter 10-08 WAC, and this chapter, shall be filed with the Administrative Regulations Program, P.O. Box 42560, 1111 Washington St., S.E., Olympia, WA 98504-2560.

Unless otherwise required by law, (~~filing of a document with the director shall be made personally, by first class mail, by certified or registered mail, by commercial parcel delivery company, or by electronic telefacsimile transmission and same-day mailing of original showing same-day postmark~~) documents may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered or certified mail. Documents may be filed by electronic mail (email) only when instructions for email filings have been provided by the department. Filing shall occur within the period of time specified for filing by statute, rule, or order.

**WSR 17-10-072**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed May 3, 2017, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-126.

Title of Rule and Other Identifying Information: WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): Conference Room 114A, 6400 Linderson Way S.W., Tumwater, WA 98501, on June 12, 2017, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at dor.wa.gov.

*Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: June 19, 2017.

Submit Written Comments to: Danitza M. Casselman, Department of Revenue, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, email danitzac@dor.wa.gov, by June 12, 2017.

Assistance for Persons with Disabilities: Contact Julie King, (360) 704-5717, 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: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to appraise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply beginning July 1, 2017, through December 31, 2017.

Reasons Supporting Proposal: This proposal provides the revised stumpage value tables for July 1, 2017, to December 31, 2017.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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: Danitza M. Casselman, 6400 Linderson Way S.W., Tumwater, WA, (360) 534-1593; Implementation and Enforcement: Marcus Glasper, 6400 Linderson Way S.W., Tumwater, WA, (360) 534-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic statement has not been prepared as the proposed rules do not impose more than a minor cost on small businesses. Only large businesses are statutorily required to utilize the values contained in the rules, while small businesses have other statutory authority for their tax reporting obligations.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Danitza M. Casselman, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1583, email danitzac@dor.wa.gov. The proposed rule is a significant legislative rule as defined by RCW 34.05.328.

May 3, 2017

Kevin Dixon

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-02-003, filed 12/22/16, effective 1/1/17)

**WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.** (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((January)) July 1 through ((June 30)) December 31, 2017:

**Washington State Department of Revenue  
STUMPAGE VALUE TABLE**

((January)) July 1 through ((June 30)) December 31, 2017

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Starting July 1, 2012, there are no separate Quality Codes per Species Code.

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
((Douglas-fir <sup>(2)</sup> ))	DF	1	\$318	\$311	\$304	\$297	\$290
		2	420	413	406	399	392
		3	410	403	396	389	382
		4	456	449	442	435	428
		5	423	416	409	402	395
		6	273	266	259	252	245
Western-Hemlock and Other Conifer <sup>(3)</sup>	WH	1	240	233	226	219	212
		2	281	274	267	260	253
		3	262	255	248	241	234
		4	286	279	272	265	258
		5	282	275	268	261	254
		6	236	229	222	215	208
Western-Red-cedar <sup>(4)</sup>	RC	1-5	1111	1104	1097	1090	1083
		6	935	928	921	914	907
Ponderosa-Pine <sup>(5)</sup>	PP	1-6	193	186	179	172	165
Red-Alder	RA	1-5	477	470	463	456	449
Black Cotton-wood	BC	1-5	80	73	66	59	52
Other Hard-wood	OH	1-5	282	275	268	261	254
		6	23	16	9	2	1
Douglas-fir-Poles & Piles	DFL	1-5	711	704	697	690	683
Western-Red-cedar Poles	RCL	1-5	1545	1538	1531	1524	1517
		6	1228	1221	1214	1207	1200
Chipwood <sup>(6)</sup>	CHW	1-5	13	12	11	10	9
		6	3	2	1	1	1
Small Logs <sup>(6)</sup>	SML	6	23	22	21	20	19
RC-Shake & Shingle-Blocks <sup>(7)</sup>	RCS	1-6	289	282	275	268	261
Posts <sup>(8)</sup>	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF-Christ-mas Trees <sup>(9)</sup>	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christ-mas Trees <sup>(9)</sup>	TFX	1-6	0.50	0.50	0.50	0.50	0.50

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Douglas-fir <sup>(2)</sup>	DF	1	\$357	\$350	\$343	\$336	\$329
		2	460	453	446	439	432
		3	454	447	440	433	426
		4	497	490	483	476	469
		5	458	451	444	437	430
		6	277	270	263	256	249
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	1	241	234	227	220	213
		2	330	323	316	309	302
		3	264	257	250	243	236
		4	318	311	304	297	290
		5	301	294	287	280	273
Western Red-cedar <sup>(4)</sup>	RC	1-5	1082	1075	1068	1061	1054
		6	1110	1103	1096	1089	1082
Ponderosa Pine <sup>(5)</sup>	PP	1-6	191	184	177	170	163
Red Alder	RA	1-5	483	476	469	462	455
Black Cotton-wood	BC	1-5	100	93	86	79	72
Other Hard-wood	OH	1-5	284	277	270	263	256
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	706	699	692	685	678
Western Red-cedar Poles	RCL	1-5	1514	1507	1500	1493	1486
		6	1377	1370	1363	1356	1349
Chipwood <sup>(6)</sup>	CHW	1-5	11	10	9	8	7
Small Logs <sup>(6)</sup>	SML	6	1	1	1	1	1
		6	29	28	27	26	25
RC Shake & Shingle-Blocks <sup>(7)</sup>	RCS	1-6	289	282	275	268	261
Posts <sup>(8)</sup>	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christ-mas Trees <sup>(9)</sup>	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christ-mas Trees <sup>(9)</sup>	TFX	1-6	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine in SVA 6, or any other conifer not listed on this page.

(4) Includes Alaska-Cedar.

(5) Includes Western White Pine in SVA 6, and all Pines in SVA 1-5.

(6) Stumpage value per ton.

(7) Stumpage value per cord.

(8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.

(9) Stumpage Value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:



(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((January)) July 1 through ((June 30)) December 31, 2017:

**TABLE 9—Harvest Adjustment Table  
Stumpage Value Areas 1, 2, 3, 4, and 5**  
((January)) July 1 through ((June 30)) December 31, 2017

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>II. Logging conditions</b>		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00
<b>IV. Thinning</b>		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table  
Stumpage Value Area 6**  
((January)) July 1 through ((June 30)) December 31, 2017

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
<b>II. Logging conditions</b>		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00

**TABLE 11—Domestic Market Adjustment**

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00
Note:	This adjustment only applies to published MBF sawlog values.	

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a \$0/ton stumpage value.