

**WSR 19-07-011**  
**PROPOSED RULES**  
**DEPARTMENT OF ECOLOGY**  
 [Order 18-01—Filed March 7, 2019, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-14-006.

Title of Rule and Other Identifying Information: Chapter 173-224 WAC, Water quality permit fees, the purpose of this chapter is to establish a fee system for state waste discharge and National Pollutant Discharge Elimination System (NPDES) permits issued by ecology pursuant to RCW 90.48.160, 90.48.162, or 90.48.260.

Hearing Location(s): On April 23, 2019, at 10:00, at the webinar and in-person at 300 Desmond Drive S.E., Lacey, WA 98503. Presentation, question and answer session followed by the hearing.

We are also holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=ec65bf401d7cf5aa6a404774e7eca2037>. For audio call United States toll number +1-240-454-0887 and enter access code 800 126 755. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: June 26, 2019.

Submit Written Comments to: Charles Gilman, Department of Ecology, Water Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, submit comments by mail, online, or at the hearing(s), <http://ws.ecology.commentinput.com/?id=aWJ4f>, by April 30, 2019.

Assistance for Persons with Disabilities: Contact Teresa Reno, phone 360-407-7285, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711711 [711], for deaf or hard of hearing 877-833-6341 (Washington relay service), email [teresa.reno@ecy.wa.gov](mailto:teresa.reno@ecy.wa.gov), by April 19, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The main goal and objective of RCW 90.48.465 is to establish and maintain a fee schedule for fully funding the administration of the state's water quality permit programs. Ecology increases permit fees every two years to maintain pace with inflationary cost factors and continue moving toward payment equity between fee categories.

The statute also requires that the department, in establishing the fees, consider the economic impact on small discharges and public entities, and provide appropriate adjustments where applicable. Ecology addresses this requirement through our small business and economic hardship discounts, which are available to permittees that meet the criteria established in rule.

Reasons Supporting Proposal: RCW 90.48.465 requires ecology to establish, by rule, annual fees that will fund the wastewater and stormwater permit programs. Ecology adopted chapter 173-224 WAC, Water quality permit fees, in response to this law.

This rule amendment allows ecology to continue recovering expenses in operating and managing the permit pro-

grams. Ecology is proposing to increase fees for fiscal years 2020 and 2021 in order to collect the revenue needed to recover the costs of administering the wastewater and stormwater programs next biennium and move closer to payment equity between fee categories. Ecology may also propose changes to the structure of specific permit fee categories, including creating the winery general permit fee category and a market research and development incentive.

Statutory Authority for Adoption: Chapter 90.48 RCW, Water pollution control; RCW 90.48.465 Water discharge fees—Report to the legislature.

Statute Being Implemented: RCW 90.48.465 Water discharge fees—Report to the legislature.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Charles Gilman, 300 Desmond Drive S.E., Lacey, WA 98503, 360-407-6425.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Charles Gilman, 300 Desmond Drive S.E., Lacey, WA 98503, phone 360-407-6425, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email [wqfee\\_unit@ecy.wa.gov](mailto:wqfee_unit@ecy.wa.gov).

The proposed rule does impose more-than-minor costs on businesses.

**Small Business Economic Impact Statement (SBEIS)**  
**Relevant Information for State Register Publication**

**Proposed amendments to chapter 173-224 WAC, Water quality permit fees.**

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (RFA) (chapter 19.85 RCW) as having fifty or fewer employees. Estimated costs are determined as compared to the existing regulatory environment, the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for nonprofit or government agencies. The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

*This information is excerpted from ecology's complete set of regulatory analyses of the proposed rule. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the reg-*

ulatory analyses (Ecology publication no. 19-10-017, March 2019).

#### COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this proposed rule making, the baseline includes:

- The existing rule: Water quality permit fees rule, chapter 173-224 WAC.
- The authorizing statute: Water pollution control law, chapter 90.48 RCW; specifically RCW 90.48.465 Water discharge fees.
- Requirements set by other agencies, including the Washington state liquor and cannabis board (LCB).

The proposed rule amendments make the following changes:

- Updating permit fees: Increasing permit fees to recover program costs and to improve equity across fee categories, including adding fees for the winery general permit.
- Market research and development: Adding an up to three year, seventy-five percent discount for fees for facilities involved in market research for products or processes that reduce or eliminate pollutants or pollutant-generating activity.
- Annual production certification: Requiring winery permit holders to submit information certifying annual production or unit processes.

#### COSTS OF COMPLIANCE: EQUIPMENT

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment.

#### COSTS OF COMPLIANCE: SUPPLIES

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies.

#### COSTS OF COMPLIANCE: LABOR

Under the proposed amendments, wineries would annually certify their production to ecology. They would incur the additional labor costs to fill out a form and submit it to ecology. We assumed this would take one hour of time, using known production values. If an environmental engineer performed this certification, it would cost \$50. At the one hundred seventy-four identified wineries with existing individual permits or positive production values in available LCB data, this would be a total annual cost of \$8,700. The equivalent twenty year present value cost is \$159 thousand.

#### COSTS OF COMPLIANCE: PROFESSIONAL SERVICES

Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services.

#### COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS

Where applicable, ecology estimates administrative costs ("overhead") as part of the cost of labor and professional services, above.

#### COSTS OF COMPLIANCE: OTHER

Initial fee changes at the permittee level (during the two years specified in the proposed amendments) range from a

fee reduction of \$1 thousand to a fee increase of \$943 thousand per year, across both winery assumptions, in 2021. In twenty year present values, individual permittees would pay between \$0 and \$24 million more under the proposed amendments. Total twenty year present value costs across all likely permittees range between \$199 million (if all wineries use the general permit) and \$202 million (if wineries maintain existing individual permits).

#### COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES

##### Small businesses:

- Fee increases: Increased compliance costs (for permittees with proposed higher fees; see section 2.3.1 for list) per employee at small businesses would range from \$95 to \$123 thousand.
- There would be no increase in compliance costs for small businesses in fee categories that would not have explicit higher fees under the proposed amendments (see section 2.3.1 for list of categories with no proposed change in 2020 and 2021 fees).

##### Largest ten percent of businesses:

- Increased compliance costs per employee at the largest ten percent of businesses would range from \$5 to \$5 thousand.
- There would be no increase in compliance costs for the largest ten percent of businesses that would not have explicit higher fees under the proposed amendments (see section 2.3.1 for list of categories with no proposed change in 2020 and 2021 fees).

#### Assuming that all wineries currently holding an individual permit switch to the general permit would:

- Reduce compliance costs at small (by employment) wineries by between \$60 and nearly \$2 thousand per employee, in 2020 and 2021.
- Reduce compliance costs at the largest ten percent (by employment) of wineries by between \$21 and \$600 per employee, in 2020 and 2021.

#### CONSIDERATION OF LOST SALES OR REVENUE

Ecology used the REMI PI+ model for Washington state to estimate the impact of the proposed rule on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: Interindustry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time.

- Prices:
  - o In modeled results, the overall price level for all goods, including housing, would be virtually unaffected.
  - o Correspondingly, most commodity prices would also not change, as compared to the baseline forecast.
  - o Food and beverage prices, however, were modeled as increasing by 1/100th of a percent, compared to the baseline forecast for the state economy. Alcoholic beverages in particular would see a 1/50th of a percent increase in prices.

- Output/sales:
  - o Apparel, leather, and similar products manufacturing would experience a reduction in the value of their output, of up to 1/5th of a percent of the baseline forecast sales. This is because this market is relatively small in the state. The nominal value of this impact is about \$1 million by 2038.
  - o Similarly, textile manufacturing would experience an up to 1/20th of a percent of the baseline sales forecast. The nominal value of this impact is about \$276 thousand by 2038.
  - o Some manufacturing sectors would experience sales losses by 2038 of up to 1/100th of a percent of the baseline sales forecast.

#### MITIGATION OF DISPROPORTIONATE IMPACT

RFA (RCW 19.85.030(2)) states that:

Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates.

Ecology considered all of the above options, and included the following legal and feasible elements in the proposed rule amendments that reduce costs. In addition, ecology considered the alternative rule contents discussed in Chapter 6, and excluded those elements that would have imposed excess compliance burden on businesses.

Due to the narrow scope of this rule making, the options for reducing disproportionate impacts on small businesses were limited. However:

- The existing rule (as well as the amended rule) include opportunity for small businesses to demonstrate hardship and reduce their fees.
- In line with the goals and objectives of the authorizing statute (see Chapter 6), fees were set with operation size (complexity of permit management and support) in mind. To the extent that operation size correlates with the number of employees, this would work to reduce relative compliance burden on small businesses.
- While this rule does not contain many of the substantive regulatory requirements suggested for reduction in RFA (compliance requirements for permits, inspection, timetables, fines for noncompliance), it does contain some reporting requirements. The proposed amendments add reporting of production at wineries. This requirement was, however, designed to impose minimal burden, rely-

ing on known information and simplified reporting through a form.

#### SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION

Ecology involved small businesses and local government in our development of the proposed rule amendments, using the methods below. About eighty percent of permittees are small businesses or local governments.

- Water quality listserv, including business association, individual business, and local government representatives.
- Permittee list from fee invoicing software (five thousand eight hundred forty-eight permittees with contact information).
- Stakeholder meetings including municipality and county representatives.

#### NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE

- 112X Animal production and aquaculture (various)
- 1151 Support activities for crop production
- 2121 Coal mining
- 2122 Metal ore mining
- 2123 Nonmetallic mineral mining and quarrying
- 2211 Electric power generation, transmission, and distribution
- 2213 Sewer systems
- 2213 Water, sewage, and other systems
- 23XX Construction
- 3114 Fruit and vegetable preserving and specialty food manufacturing
- 3117 Seafood product preparation and packaging
- 3119 Other food manufacturing
- 3121 Beverage manufacturing
- 3132 Fabric mills
- 3211 Sawmills and wood preservation
- 3221 Pulp, paper, and paperboard mills
- 3241 Petroleum and coal products manufacturing
- 3251 Basic chemical manufacturing
- 3259 Other chemical product and preparation manufacturing
- 31XX - 33XX Manufacturing (various)
- 3311 Iron and steel mills and ferroalloy manufacturing
- 3313 Aluminum product manufacturing
- 3314 Nonferrous metal (except aluminum) production and processing
- 3328 Coating, engraving, heat treating, and allied activities
- 3366 Ship and boat building
- 4841 General freight trucking
- 5622 Waste treatment and disposal
- 8129 Other personal services
- 921X Executive, legislative, and general government (various)

#### IMPACT ON JOBS

Under the assumption that wineries with existing individual permits would continue to operate under those permits (the highest compliance cost assumption), the Washington state economy could experience a net gain of between

twenty-three jobs (in 2020) and forty-nine jobs (in 2038) across all industries. In this model, jobs are one year of full time equivalent employment. Economic activity across sectors of the state economy results in spending on goods and services, including those provided by the state government. This is how a broad-based set of compliance costs (primarily fees) results in a benefit to the state economy, when considered together.

A copy of the statement may be obtained by contacting Charles Gilman, 300 Desmond Drive S.E., Lacey, WA 98503, phone 360-407-6425, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email wqfee\_unit@ecy.wa.gov.

March 7, 2019  
 Polly Zehm  
 Deputy Director

**AMENDATORY SECTION** (Amending WSR 94-10-027, filed 4/28/94, effective 5/29/94)

**WAC 173-224-020 Applicability.** This chapter applies to all persons holding or applying for a state waste discharge or NPDES permit issued by the department pursuant to RCW 90.48.160, 90.48.162, 90.48.200 or 90.48.260, including persons holding permits that remain in effect under WAC 173-216-040, 173-220-180(5), or 173-226-050. This chapter does not apply when a wastewater discharge permit is written for a state conducted remedial action under the Model Toxics Control Act. That is, ecology (~~will~~) may not charge itself for wastewater discharge permits written for sites where the agency is conducting a cleanup.

**AMENDATORY SECTION** (Amending WSR 17-16-005, filed 7/20/17, effective 8/20/17)

**WAC 173-224-030 Definitions.** "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

"Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

"Animal unit" means the following:

Animal Type	Number of Animals per Animal Unit
Dairy Cows	
Jersey Breed	
Milking Cow	0.900
Dry Cow	0.900
Heifer	0.220
Calf	0.220
Other Breeds	
Milking Cow	1.400
Dry Cow	1.000

Animal Type	Number of Animals per Animal Unit
Heifer	0.800
Calf	0.500
Feedlot Beef	0.877
Horses	0.500
Sheep	0.100
Swine for breeding	0.375
Swine for slaughter	0.110
Laying hens & pullets > 3 months	0.004
Broilers & pullets < 3 months	0.002

For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.

"Annual permit fee" means the fee charged by the department for annual expenses associated with activities specified in RCW 90.48.465. This annual fee is based on the state's fiscal year (July 1 - June 30).

"bbls/d" means barrels per day of feedstock for petroleum refineries.

"bins/yr" means total standard bins used during the last complete calendar year by a facility in the fruit packing industry. The bins measure approximately 47.5 inches x 47.4 inches x 29.5 inches and hold approximately 870 pounds of fruit.

"Chemical pulp mill w/chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

"Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

"Combined industrial waste treatment" means a facility which treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

"Combined sewer overflow (CSO)" means the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded.

"Concentrated animal feeding operation" means an "animal feeding operation" that meets the criteria in Appendix B of 40 C.F.R. 122 as presently enacted and any subsequent modifications thereto.

"Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents (~~will be~~) are considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and BTEX).

"Crane" means a machine used for ~~((the))~~ hoisting and lifting ~~((of))~~ ship hulls.

"cu. yds/yr" means the cubic yards per year for total production from ~~((an))~~ a sand and gravel facility ~~((in cubic yards))~~ during the most recent completed calendar year.

"Department" means the department of ecology.

"Director" means the director of the department of ecology.

"Disturbed acres" means the total area which will be disturbed during all phases of the construction project or common plan of development or sale. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

"Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with any groundwater infiltration or surface waters that may be present.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present.

"EPA" means the United States Environmental Protection Agency.

"Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.

"Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

"Food processing" means the preparation of food for human or animal consumption or the preparation of animal by-products, excluding fruit packing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes from only one separately permitted food processor must be treated as one facility for billing purposes.

"Fruit packing" means ~~((the preparation of))~~ preparing fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

"gpy" means gallons per year and is used to calculate winery production levels for the most recent completed calendar year.

"Gross revenue for business" means the gross income from Washington business activities.

"Hazardous waste clean up sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

"Industrial facility" means any facility not included in the definition of municipal/domestic facility.

"Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the wastewater discharge permit.

"Industrial stormwater" means a stormwater discharge from an operation required to be covered under ecology's NPDES and state waste discharge general permit for storm-

water discharges associated with industrial activities or modifications to that permit or having an individual wastewater permit for stormwater only.

"Manufacturing" means ~~((the))~~ making ~~((of))~~ goods and articles by hand or ~~((especially, by machinery))~~ machine into a manufactured product.

"Median household income" means the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

"Metal finishing" means ~~((the preparation of))~~ preparing metal surfaces by means of electroplating, electroless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

"MGD" means ~~((permitted flow expressed in))~~ million gallons per day.

"Municipal/domestic facility" means a publicly owned facility treating domestic wastewater together with any industrial wastes that may be present, or a privately owned facility treating solely domestic wastewater.

"Municipal gross revenue" means gross receipts from monthly, bimonthly, and/or quarterly user charges for sewer services received from all classes of customers;

Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.

Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.

Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.

Gross revenue excludes:

Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.

Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.

Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.

Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.

Connection charges.

Revenues from sales of by-products such as sludge, processed wastewater, etc.

"Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

"Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but which may contain chemicals or additives added by the permittee to control corrosion or fouling of the cooling system.

"Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product, and which does not contain chemicals added by the permittee. The noncontact cooling water fee without additives category applies to those facilities which discharge only noncontact cooling water and which have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

"Nonferrous metals forming" means ~~((the))~~ manufacturing ~~((of))~~ semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

"Nonoperating sand and gravel site" means a location where previous mining or processing has occurred; that has not been fully reclaimed; that conducts mining or processing fewer than ninety days per year, and that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation off-site for processing, use, or sale and still be considered a nonoperating site.

"NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under Section 402 of the federal Clean Water Act and RCW 90.48.260.

"Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

"Portable facility" means a facility that is designed for mobility and is moved from site to site for short term operations. A portable facility applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

"RCRA" means Resource Conservation Recovery Act clean up sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters 70.105 and 70.105D RCW including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

"Residential equivalent" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it serves, "residential equivalent" means an influent flow of two hundred fifty gallons per day.

"Sand and gravel" means ~~((the))~~ mining or quarrying ~~((of))~~ sand, gravel, or rock, or ~~((the production of))~~ producing concrete, ~~((of))~~ asphalt, or a combination thereof.

"Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals

(fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

"Sewer service" means ~~((the activity of))~~ receiving sewage deposited into and ~~((carried off))~~ transported by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

"State waste discharge permit" means a permit required under RCW 90.48.160 or 90.48.162.

"Stormwater" means precipitation that flows from an industrial operation or construction activity discharging stormwater runoff as defined in 40 C.F.R. 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p)(2)(E).

"Tons/yr." means the total production from an asphalt production facility in tons during the most recent completed calendar year.

"Vegetable/bulb washing" means ~~((the))~~ washing, packing, ~~((and))~~ and/or shipping ~~((of))~~ fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

AMENDATORY SECTION (Amending WSR 17-16-005, filed 7/20/17, effective 8/20/17)

**WAC 173-224-040 Permit fee schedule.** (1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee ~~((will be))~~ is assessed for RCRA sites regardless of whether a new permit is ~~((being))~~ issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is ~~((being))~~ modified.

## (2) Industrial facility categories.

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
Aluminum Alloys	\$((19,707.00)) <u>21,768.00</u>	\$((20,807.00)) 22,950.00
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	((110,799.00)) <u>115,785.00</u>	115,785.00
b. State Permit	((55,402.00)) <u>57,895.00</u>	57,895.00
Aluminum Forming	((59,120.00)) <u>65,304.00</u>	((62,420.00)) <u>68,850.00</u>
Aquaculture		
a. Finfish hatching and rearing - Individual Permit	((5,635.00)) <u>5,889.00</u>	5,889.00
b. Finfish hatching and rearing - General Permit Coverage	((3,947.00)) <u>4,125.00</u>	4,125.00
c. Shellfish hatching	((213.00)) <u>223.00</u>	223.00
Aquatic Pest Control		
a. Irrigation Districts	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
b. Mosquito Control Districts	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
c. Invasive Moth Control	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
d. Aquatic Species Control & Eradication	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
e. Oyster Growers	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
f. Rotenone Control	((585.00)) <u>647.00</u>	((618.00)) <u>682.00</u>
Boat Yards - Individual Permit Coverage		
a. With stormwater only discharge	((505.00)) <u>558.00</u>	((533.00)) <u>588.00</u>
b. All others	((1,008.00)) <u>1,113.00</u>	((1,064.00)) <u>1,173.00</u>
Boat Yards - General Permit Coverage		
a. With stormwater only discharge	((461.00)) <u>509.00</u>	((487.00)) <u>537.00</u>
b. All others	((933.00)) <u>1,031.00</u>	((985.00)) <u>1,087.00</u>
Bridge Washing		
a. Single-site Permit	((3,511.00)) <u>3,839.00</u>	((3,669.00)) <u>4,047.00</u>
b. WSDOT Annual Fee	((11,669.00)) <u>12,757.00</u>	((12,194.00)) <u>13,450.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
<b>Coal Mining and Preparation</b>		
a. < 200,000 tons per year	((7,878.00)) <u>8,702.00</u>	((8,318.00)) <u>9,175.00</u>
b. 200,000 - < 500,000 tons per year	((17,738.00)) <u>19,593.00</u>	((18,728.00)) <u>20,657.00</u>
c. 500,000 - < 1,000,000 tons per year	((31,529.00)) <u>34,827.00</u>	((33,289.00)) <u>36,718.00</u>
d. 1,000,000 tons per year and greater	((59,120.00)) <u>65,304.00</u>	((62,420.00)) <u>68,850.00</u>
<b>Combined Industrial Waste Treatment</b>		
a. < 10,000 gpd	((3,758.00)) <u>3,972.00</u>	3,972.00
b. 10,000 - < 50,000 gpd	((9,393.00)) <u>9,816.00</u>	9,816.00
c. 50,000 - < 100,000 gpd	((18,790.00)) <u>19,636.00</u>	19,636.00
d. 100,000 - < 500,000 gpd	((37,575.00)) <u>39,266.00</u>	39,266.00
e. 500,000 gpd and greater	((56,365.00)) <u>58,901.00</u>	58,901.00
Combined Food Processing Waste Treatment Facilities	((17,988.00)) <u>18,797.00</u>	18,797.00
<b>Combined Sewer Overflow System</b>		
a. < 50 acres	((3,758.00)) <u>3,927.00</u>	3,927.00
b. 50 - < 100 acres	((9,393.00)) <u>9,816.00</u>	9,816.00
c. 100 - < 500 acres	((11,276.00)) <u>11,783.00</u>	11,783.00
d. 500 acres and greater	((15,028.00)) <u>15,704.00</u>	15,704.00
Commercial Laundry	((481.00)) <u>526.00</u>	((503.00)) <u>555.00</u>
<b>Concentrated Animal Feeding Operation</b>		
a. < 200 Animal Units	((264.00)) <u>292.00</u>	((279.00)) <u>308.00</u>
b. 200 - < 400 Animal Units	((663.00)) <u>732.00</u>	((700.00)) <u>772.00</u>
c. 400 - < 600 Animal Units	((1,327.00)) <u>1,466.00</u>	((1,401.00)) <u>1,546.00</u>
d. 600 - < 800 Animal Units	((1,990.00)) <u>2,198.00</u>	((2,101.00)) <u>2,317.00</u>
e. 800 Animal Units and greater	((2,657.00)) <u>2,935.00</u>	((2,805.00)) <u>3,094.00</u>



INDUSTRIAL FACILITY CATEGORIES	FY <del>((2018))</del> 2020 ANNUAL PERMIT FEE	FY <del>((2019))</del> 2021 ANNUAL PERMIT FEE & BEYOND
Dairies \$.50 per Animal Unit not to exceed ( <del>(\$1,776.00 for FY 2018 and \$1,875.00 for FY 2018)) \$1,969.00 for FY 2020 and \$2,076.00 for FY 2021 &amp; beyond</del> )		
Facilities Not Otherwise Classified - Individual Permit Coverage		
a. < 1,000 gpd	<del>((1,878.00))</del> <u>1,963.00</u>	1,963.00
b. 1,000 - < 10,000 gpd	<del>((3,758.00))</del> <u>3,927.00</u>	3,927.00
c. 10,000 - < 50,000 gpd	<del>((9,394.00))</del> <u>9,817.00</u>	9,817.00
d. 50,000 - < 100,000 gpd	<del>((15,028.00))</del> <u>15,704.00</u>	15,704.00
e. 100,000 - < 500,000 gpd	<del>((29,912.00))</del> <u>31,258.00</u>	31,258.00
f. 500,000 - < 1,000,000 gpd	<del>((37,575.00))</del> <u>39,266.00</u>	39,266.00
g. 1,000,000 gpd and greater	<del>((56,364.00))</del> <u>58,900.00</u>	58,900.00
Facilities Not Otherwise Classified - General Permit Coverage		
a. < 1,000 gpd	<del>((1,318.00))</del> <u>1,377.00</u>	1,377.00
b. 1,000 - < 10,000 gpd	<del>((2,726.00))</del> <u>2,849.00</u>	2,849.00
c. 10,000 - < 50,000 gpd	<del>((6,578.00))</del> <u>6,874.00</u>	6,874.00
d. 50,000 - < 100,000 gpd	<del>((10,523.00))</del> <u>10,997.00</u>	10,997.00
e. 100,000 - < 500,000 gpd	<del>((21,040.00))</del> <u>21,987.00</u>	21,987.00
f. 500,000 - < 1,000,000 gpd	<del>((26,300.00))</del> <u>27,484.00</u>	27,484.00
g. 1,000,000 gpd and greater	<del>((39,456.00))</del> <u>41,232.00</u>	41,232.00
Flavor Extraction		
a. Steam Distillation	<del>((193.00))</del> <u>202.00</u>	202.00
Food Processing		
a. < 1,000 gpd	<del>((1,877.00))</del> <u>1,961.00</u>	1,961.00
b. 1,000 - < 10,000 gpd	<del>((4,788.00))</del> <u>5,003.00</u>	5,003.00
c. 10,000 - < 50,000 gpd	<del>((8,549.00))</del> <u>8,934.00</u>	8,934.00
d. 50,000 - < 100,000 gpd	<del>((13,432.00))</del> <u>14,036.00</u>	14,036.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
e. 100,000 - < 250,000 gpd	((18,788.00)) <u>19,633.00</u>	19,633.00
f. 250,000 - < 500,000 gpd	((24,707.00)) <u>25,819.00</u>	25,819.00
g. 500,000 - < 750,000 gpd	((30,998.00)) <u>32,393.00</u>	32,393.00
h. 750,000 - < 1,000,000 gpd	((37,575.00)) <u>39,266.00</u>	39,266.00
i. 1,000,000 - < 2,500,000 gpd	((46,291.00)) <u>48,374.00</u>	48,374.00
j. 2,500,000 - < 5,000,000 gpd	((51,668.00)) <u>53,993.00</u>	53,993.00
k. 5,000,000 gpd and greater	((56,365.00)) <u>58,901.00</u>	58,901.00
<b>Fruit Packing - Individual Permit Coverage</b>		
a. 0 - < 1,000 bins/yr.	((375.00)) <u>392.00</u>	392.00
b. 1,000 - < 5,000 bins/yr.	((752.00)) <u>786.00</u>	786.00
c. 5,000 - < 10,000 bins/yr.	((1,502.00)) <u>1,570.00</u>	1,570.00
d. 10,000 - < 15,000 bins/yr.	((3,009.00)) <u>3,144.00</u>	3,144.00
e. 15,000 - < 20,000 bins/yr.	((4,975.00)) <u>5,199.00</u>	5,199.00
f. 20,000 - < 25,000 bins/yr.	((6,951.00)) <u>7,264.00</u>	7,264.00
g. 25,000 - < 50,000 bins/yr.	((9,299.00)) <u>9,717.00</u>	9,717.00
h. 50,000 - < 75,000 bins/yr.	((10,335.00)) <u>10,800.00</u>	10,800.00
i. 75,000 - < 100,000 bins/yr.	((12,023.00)) <u>12,564.00</u>	12,564.00
j. 100,000 - < 125,000 bins/yr.	((15,028.00)) <u>15,704.00</u>	15,704.00
k. 125,000 - < 150,000 bins/yr.	((18,788.00)) <u>19,633.00</u>	19,633.00
l. 150,000 bins/yr. and greater	((22,511.00)) <u>23,524.00</u>	23,524.00
<b>Fruit Packing - General Permit Coverage</b>		
a. 0 - < 1,000 bins/yr.	((262.00)) <u>274.00</u>	274.00
b. 1,000 - < 5,000 bins/yr.	((526.00)) <u>550.00</u>	550.00
c. 5,000 - < 10,000 bins/yr.	((1,053.00)) <u>1,100.00</u>	1,100.00

INDUSTRIAL FACILITY CATEGORIES	FY <del>((2018))</del> 2020 ANNUAL PERMIT FEE	FY <del>((2019))</del> 2021 ANNUAL PERMIT FEE & BEYOND
d. 10,000 - < 15,000 bins/yr.	<del>((2,106.00))</del> <u>2,201.00</u>	2,201.00
e. 15,000 - < 20,000 bins/yr.	<del>((3,486.00))</del> <u>3,643.00</u>	3,643.00
f. 20,000 - < 25,000 bins/yr.	<del>((4,866.00))</del> <u>5,085.00</u>	5,085.00
g. 25,000 - < 50,000 bins/yr.	<del>((6,507.00))</del> <u>6,800.00</u>	6,800.00
h. 50,000 - < 75,000 bins/yr.	<del>((7,232.00))</del> <u>7,557.00</u>	7,557.00
i. 75,000 - < 100,000 bins/yr.	<del>((8,410.00))</del> <u>8,788.00</u>	8,788.00
j. 100,000 - < 125,000 bins/yr.	<del>((10,523.00))</del> <u>10,997.00</u>	10,997.00
k. 125,000 - < 150,000 bins/yr.	<del>((13,152.00))</del> <u>13,744.00</u>	13,744.00
l. 150,000 bins/yr. and greater	<del>((15,781.00))</del> <u>16,491.00</u>	16,491.00
<b>Fuel and Chemical Storage</b>		
a. < 50,000 bbls	<del>((1,878.00))</del> <u>1,963.00</u>	1,963.00
b. 50,000 - < 100,000 bbls	<del>((3,758.00))</del> <u>3,927.00</u>	3,927.00
c. 100,000 - < 500,000 bbls	<del>((9,393.00))</del> <u>9,816.00</u>	9,816.00
d. 500,000 bbls and greater	<del>((18,790.00))</del> <u>19,636.00</u>	19,636.00
<b>Hazardous Waste Clean Up Sites</b>		
a. Leaking Underground Storage Tanks (LUST)		
1. State Permit	<del>((4,927.00))</del> <u>5,149.00</u>	5,149.00
2. NPDES Permit Issued pre 7/1/94	<del>((4,926.00))</del> <u>5,148.00</u>	5,148.00
3. NPDES Permit Issued post 7/1/94	<del>((9,855.00))</del> <u>10,298.00</u>	10,298.00
b. Non-LUST Sites		
1. 1 or 2 Contaminants of concern	<del>((9,635.00))</del> <u>10,069.00</u>	10,069.00
2. > 2 Contaminants of concern	<del>((19,270.00))</del> <u>20,137.00</u>	20,137.00
<b>Ink Formulation and Printing</b>		
a. Commercial Print Shops	<del>((2,891.00))</del> <u>3,021.00</u>	3,021.00
b. Newspapers	<del>((4,818.00))</del> <u>5,035.00</u>	5,035.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
c. Box Plants	((7,708.00)) <u>8,055.00</u>	8,055.00
d. Ink Formulation	((9,636.00)) <u>10,070.00</u>	10,070.00
<b>Inorganic Chemicals Manufacturing</b>		
a. Lime Products	((9,393.00)) <u>9,816.00</u>	9,816.00
b. Fertilizer	((11,307.00)) <u>11,816.00</u>	11,816.00
c. Peroxide	((15,028.00)) <u>15,704.00</u>	15,704.00
d. Alkaline Earth Salts	((18,790.00)) <u>19,636.00</u>	19,636.00
e. Metal Salts	((26,299.00)) <u>27,482.00</u>	27,482.00
f. Acid Manufacturing	((37,265.00)) <u>38,942.00</u>	38,942.00
g. Chlor-alkali	((75,151.00)) <u>78,533.00</u>	78,533.00
<b>Iron and Steel</b>		
a. Foundries	((19,707.00)) <u>21,768.00</u>	((20,807.00)) <u>22,950.00</u>
b. Mills	((39,447.00)) <u>43,573.00</u>	((41,649.00)) <u>45,939.00</u>
<b>Metal Finishing</b>		
a. < 1,000 gpd	((2,362.00)) <u>2,609.00</u>	((2,494.00)) <u>2,751.00</u>
b. 1,000 - < 10,000 gpd	((3,939.00)) <u>4,351.00</u>	((4,159.00)) <u>4,587.00</u>
c. 10,000 - < 50,000 gpd	((9,849.00)) <u>10,879.00</u>	((10,399.00)) <u>11,470.00</u>
d. 50,000 - < 100,000 gpd	((19,706.00)) <u>21,767.00</u>	((20,806.00)) <u>22,949.00</u>
e. 100,000 - < 500,000 gpd	((39,408.00)) <u>43,530.00</u>	((41,608.00)) <u>45,894.00</u>
f. 500,000 gpd and greater	((59,115.00)) <u>65,299.00</u>	((62,415.00)) <u>68,845.00</u>
<b>Noncontact Cooling Water With Additives - Individual Permit Coverage</b>		
a. < 1,000 gpd	((1,176.00)) <u>1,229.00</u>	1,229.00
b. 1,000 - < 10,000 gpd	((1,639.00)) <u>1,713.00</u>	1,713.00
c. 10,000 - < 50,000 gpd	((3,526.00)) <u>3,685.00</u>	3,685.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
d. 50,000 - < 100,000 gpd	<del>((8,223.00))</del> <u>8,593.00</u>	8,593.00
e. 100,000 - < 500,000 gpd	<del>((14,087.00))</del> <u>14,721.00</u>	14,721.00
f. 500,000 - < 1,000,000 gpd	<del>((19,965.00))</del> <u>20,863.00</u>	20,863.00
g. 1,000,000 - < 2,500,000 gpd	<del>((25,838.00))</del> <u>27,001.00</u>	27,001.00
h. 2,500,000 - < 5,000,000 gpd	<del>((31,572.00))</del> <u>32,993.00</u>	32,993.00
i. 5,000,000 gpd and greater	<del>((37,575.00))</del> <u>39,266.00</u>	39,266.00
<b>Noncontact Cooling Water With Additives - General Permit Coverage</b>		
a. < 1,000 gpd	<del>((824.00))</del> <u>861.00</u>	861.00
b. 1,000 - < 10,000 gpd	<del>((1,642.00))</del> <u>1,716.00</u>	1,716.00
c. 10,000 - < 50,000 gpd	<del>((2,468.00))</del> <u>2,579.00</u>	2,579.00
d. 50,000 - < 100,000 gpd	<del>((5,756.00))</del> <u>6,015.00</u>	6,015.00
e. 100,000 - < 500,000 gpd	<del>((9,863.00))</del> <u>10,307.00</u>	10,307.00
f. 500,000 - < 1,000,000 gpd	<del>((13,977.00))</del> <u>14,606.00</u>	14,606.00
g. 1,000,000 - < 2,500,000 gpd	<del>((18,085.00))</del> <u>18,899.00</u>	18,899.00
h. 2,500,000 - < 5,000,000 gpd	<del>((22,192.00))</del> <u>23,191.00</u>	23,191.00
i. 5,000,000 gpd and greater	<del>((26,300.00))</del> <u>27,484.00</u>	27,484.00
<b>Noncontact Cooling Water Without Additives - Individual Permit Coverage</b>		
a. < 1,000 gpd	<del>((942.00))</del> <u>984.00</u>	984.00
b. 1,000 - < 10,000 gpd	<del>((1,878.00))</del> <u>1,963.00</u>	1,963.00
c. 10,000 - < 50,000 gpd	<del>((2,821.00))</del> <u>2,948.00</u>	2,948.00
d. 50,000 - < 100,000 gpd	<del>((6,578.00))</del> <u>6,874.00</u>	6,874.00
e. 100,000 - < 500,000 gpd	<del>((11,276.00))</del> <u>11,783.00</u>	11,783.00
f. 500,000 - < 1,000,000 gpd	<del>((15,968.00))</del> <u>16,687.00</u>	16,687.00
g. 1,000,000 - < 2,500,000 gpd	<del>((20,585.00))</del> <u>21,511.00</u>	21,511.00

INDUSTRIAL FACILITY CATEGORIES	FY <del>((2018))</del> 2020 ANNUAL PERMIT FEE	FY <del>((2019))</del> 2021 ANNUAL PERMIT FEE & BEYOND
h. 2,500,000 - < 5,000,000 gpd	<del>((25,362.00))</del> <u>26,503.00</u>	26,503.00
i. 5,000,000 gpd and greater	<del>((30,061.00))</del> <u>31,414.00</u>	31,414.00
<b>Noncontact Cooling Water Without Additives - General Permit Coverage</b>		
a. < 1,000 gpd	<del>((658.00))</del> <u>688.00</u>	688.00
b. 1,000 - < 10,000 gpd	<del>((1,318.00))</del> <u>1,377.00</u>	1,377.00
c. 10,000 - < 50,000 gpd	<del>((1,975.00))</del> <u>2,064.00</u>	2,064.00
d. 50,000 - < 100,000 gpd	<del>((4,604.00))</del> <u>4,811.00</u>	4,811.00
e. 100,000 - < 500,000 gpd	<del>((7,891.00))</del> <u>8,246.00</u>	8,246.00
f. 500,000 - < 1,000,000 gpd	<del>((11,180.00))</del> <u>11,683.00</u>	11,683.00
g. 1,000,000 - < 2,500,000 gpd	<del>((14,466.00))</del> <u>15,117.00</u>	15,117.00
h. 2,500,000 - < 5,000,000 gpd	<del>((17,755.00))</del> <u>18,554.00</u>	18,554.00
i. 5,000,000 gpd and greater	<del>((21,040.00))</del> <u>21,987.00</u>	21,987.00
<b>Nonferrous Metals Forming</b>	<del>((19,707.00))</del> <u>21,768.00</u>	<del>((20,807.00))</del> <u>22,950.00</u>
<b>Ore Mining</b>		
a. Ore Mining	<del>((3,940.00))</del> <u>4,352.00</u>	<del>((4,160.00))</del> <u>4,588.00</u>
b. Ore mining with physical concentration processes	<del>((7,880.00))</del> <u>8,704.00</u>	<del>((8,320.00))</del> <u>9,177.00</u>
c. Ore mining with physical and chemical concentration processes	<del>((31,529.00))</del> <u>34,827.00</u>	<del>((33,289.00))</del> <u>36,718.00</u>
<b>Organic Chemicals Manufacturing</b>		
a. Fertilizer	<del>((18,790.00))</del> <u>19,636.00</u>	19,636.00
b. Aliphatic	<del>((37,575.00))</del> <u>39,266.00</u>	39,266.00
c. Aromatic	<del>((56,365.00))</del> <u>58,901.00</u>	58,901.00
<b>Petroleum Refining</b>		
a. < 10,000 bbls/d	<del>((37,575.00))</del> <u>39,266.00</u>	39,266.00
b. 10,000 - < 50,000 bbls/d	<del>((74,500.00))</del> <u>77,853.00</u>	77,853.00

INDUSTRIAL FACILITY CATEGORIES	FY <del>((2018))</del> 2020 ANNUAL PERMIT FEE	FY <del>((2019))</del> 2021 ANNUAL PERMIT FEE & BEYOND
c. 50,000 bbls/d and greater	<del>((150,311.00))</del> <u>157,075.00</u>	157,075.00
Photofinishers		
a. < 1,000 gpd	<del>((1,502.00))</del> <u>1,570.00</u>	1,570.00
b. 1,000 gpd and greater	<del>((3,758.00))</del> <u>3,927.00</u>	3,927.00
Power and/or Steam Plants		
a. Steam Generation - Nonelectric	<del>((7,583.00))</del> <u>7,924.00</u>	7,924.00
b. Hydroelectric	<del>((7,583.00))</del> <u>7,924.00</u>	7,924.00
c. Nonfossil Fuel	<del>((11,274.00))</del> <u>11,781.00</u>	11,781.00
d. Fossil Fuel	<del>((30,061.00))</del> <u>31,414.00</u>	31,414.00
Pulp, Paper and Paper Board		
a. Fiber Recyclers/ <u>Nonwood Pulp Mills</u>	<del>((18,787.00))</del> <u>19,632.00</u>	19,632.00
b. Paper Mills	<del>((37,575.00))</del> <u>39,266.00</u>	39,266.00
c. Groundwood Pulp Mills		
1. < 300 tons per day	<del>((56,365.00))</del> <u>58,901.00</u>	58,901.00
2. > 300 tons per day	<del>((112,740.00))</del> <u>117,813.00</u>	117,813.00
d. Chemical Pulp Mills w/o Chlorine Bleaching	<del>((150,304.00))</del> <u>157,068.00</u>	157,068.00
e. Chemical Pulp Mills w/Chlorine Bleaching	<del>((169,088.00))</del> <u>176,697.00</u>	176,697.00
Radioactive Effluents and Discharges (RED)		
a. < 3 waste streams	<del>((36,350.00))</del> <u>37,986.00</u>	37,986.00
b. 3 - < 8 waste streams	<del>((63,124.00))</del> <u>65,965.00</u>	65,965.00
c. 8 waste streams and greater	<del>((103,969.00))</del> <u>108,648.00</u>	108,648.00
RCRA Corrective Action Sites	<del>((26,409.00))</del> <u>27,597.00</u>	27,597.00
Sand and Gravel - <del>((General))</del> <u>Individual</u> Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	<del>((3,392.00))</del> <u>3,581.00</u>	3,581.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
2. Nonoperating site (fee per site)	((139.00)) <u>147.00</u>	147.00
b. Asphalt Production		
1. 1 - < 50,000 tons/yr.	((1,413.00)) <u>1,492.00</u>	1,492.00
2. 50,000 - < 300,000 tons/yr.	((3,393.00)) <u>3,582.00</u>	3,582.00
3. 300,000 tons/yr. and greater	((4,243.00)) <u>4,480.00</u>	4,480.00
4. Nonoperating Asphalt	((139.00)) <u>147.00</u>	147.00
c. Concrete Production		
1. 1 - < 25,000 cu. yds/yr.	((1,413.00)) <u>1,492.00</u>	1,492.00
2. 25,000 - < 200,000 cu. yds/yr.	((3,393.00)) <u>3,582.00</u>	3,582.00
3. 200,000 cu. yds/yr. and greater	((4,243.00)) <u>4,480.00</u>	4,480.00
4. Nonoperating Concrete	((139.00)) <u>147.00</u>	147.00
<p>The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.</p>		
d. Portable Operations		
1. Rock Crushing	((3,392.00)) <u>3,581.00</u>	3,581.00
2. Asphalt	((3,392.00)) <u>3,581.00</u>	3,581.00
3. Concrete	((3,392.00)) <u>3,581.00</u>	3,581.00
4. <u>Nonoperating Site</u>	<u>147.00</u>	<u>147.00</u>
Sand and Gravel - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	((2,373.00)) <u>2,505.00</u>	2,505.00
2. Nonoperating site (fee per site)	((98.00)) <u>103.00</u>	103.00
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	((991.00)) <u>1,046.00</u>	1,046.00
2. 50,000 - < 300,000 tons/yr.	((2,374.00)) <u>2,507.00</u>	2,507.00
3. 300,000 tons/yr. and greater	((2,969.00)) <u>3,135.00</u>	3,135.00



INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
4. Nonoperating Asphalt	((98.00)) <u>103.00</u>	103.00
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	((991.00)) <u>1,046.00</u>	1,046.00
2. 25,000 - < 200,000 cu. yds/yr.	((2,374.00)) <u>2,507.00</u>	2,507.00
3. 200,000 cu. yds/yr. and greater	((2,969.00)) <u>3,135.00</u>	3,135.00
4. Nonoperating Concrete	((98.00)) <u>103.00</u>	103.00
The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	((2,374.00)) <u>2,507.00</u>	2,507.00
2. Asphalt	((2,374.00)) <u>2,507.00</u>	2,507.00
3. Concrete	((2,374.00)) <u>2,507.00</u>	2,507.00
4. <u>Nonoperating</u>	<u>103.00</u>	<u>103.00</u>
Seafood Processing		
a. < 1,000 gpd	((1,878.00)) <u>1,963.00</u>	1,963.00
b. 1,000 - < 10,000 gpd	((4,788.00)) <u>5,003.00</u>	5,003.00
c. 10,000 - < 50,000 gpd	((8,549.00)) <u>8,934.00</u>	8,934.00
d. 50,000 - < 100,000 gpd	((13,432.00)) <u>14,036.00</u>	14,036.00
e. 100,000 gpd and greater	((18,790.00)) <u>19,636.00</u>	19,636.00
Shipyards		
a. Per crane, travel lift, small boat lift	((3,940.00)) <u>4,352.00</u>	((4,160.00)) <u>4,588.00</u>
b. Per drydock under 250 ft in length	((3,940.00)) <u>4,352.00</u>	((4,160.00)) <u>4,588.00</u>
c. Per graving dock	((3,940.00)) <u>4,352.00</u>	((4,160.00)) <u>4,588.00</u>
d. Per marine way/ <u>ramp</u>	((5,910.00)) <u>6,528.00</u>	((6,240.00)) <u>6,882.00</u>
e. Per syncrolift	((5,910.00)) <u>6,528.00</u>	((6,240.00)) <u>6,882.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
f. Per drydock 250 ft and over in length	((7,880.00)) <u>8,704.00</u>	((8,320.00)) <u>9,177.00</u>
g. In-water vessel maintenance	((7,880.00)) <u>8,704.00</u>	((8,320.00)) <u>9,177.00</u>
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstormwater)		
a. Nonputrescible	((7,512.00)) <u>7,850.00</u>	7,850.00
b. < 50 acres	((15,027.00)) <u>15,703.00</u>	15,703.00
c. 50 - < 100 acres	((30,061.00)) <u>31,414.00</u>	31,414.00
d. 100 - < 250 acres	((37,575.00)) <u>39,266.00</u>	39,266.00
e. 250 acres and greater	((56,365.00)) <u>58,901.00</u>	58,901.00
Textile Mills	((75,151.00)) <u>78,533.00</u>	78,533.00
Timber Products		
a. Log Storage	((3,758.00)) <u>3,927.00</u>	3,927.00
b. Veneer	((7,512.00)) <u>7,850.00</u>	7,850.00
c. Sawmills	((15,028.00)) <u>15,704.00</u>	15,704.00
d. Hardwood, Plywood	((26,299.00)) <u>27,482.00</u>	27,482.00
e. Wood Preserving	((36,082.00)) <u>37,706.00</u>	37,706.00
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	((124.00)) <u>130.00</u>	130.00
b. 1,000 - < 5,000 gpd	((251.00)) <u>262.00</u>	262.00
c. 5,000 - < 10,000 gpd	((495.00)) <u>517.00</u>	517.00
d. 10,000 - < 20,000 gpd	((997.00)) <u>1,042.00</u>	1,042.00
e. 20,000 and greater	((1,647.00)) <u>1,721.00</u>	1,721.00
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	((3,758.00)) <u>3,927.00</u>	3,927.00

INDUSTRIAL FACILITY CATEGORIES	FY ((2018)) 2020 ANNUAL PERMIT FEE	FY ((2019)) 2021 ANNUAL PERMIT FEE & BEYOND
b. 0.5 - < 1.0 acre	<del>((7,512.00))</del> <u>7,850.00</u>	7,850.00
c. 1.0 acre and greater	<del>((11,274.00))</del> <u>11,781.00</u>	11,781.00
Vessel Deconstruction	<del>((17,343.00))</del> <u>19,157.00</u>	<del>((18,311.00))</del> <u>20,197.00</u>
Water Plants - Individual Permit Coverage	<del>((5,128.00))</del> <u>5,359.00</u>	5,359.00
Water Plants - General Permit Coverage	<del>((3,590.00))</del> <u>3,752.00</u>	3,752.00
Wineries - Individual Permit Coverage		
<del>a. &lt; 500 gpd</del>	<del>383.00</del>	<del>400.00</del>
b. 500 - < 750 gpd	<u>769.00</u>	<u>804.00</u>
c. 750 - < 1,000 gpd	<u>1,536.00</u>	<u>1,605.00</u>
d. 1,000 - < 2,500 gpd	<u>3,074.00</u>	<u>3,212.00</u>
e. 2,500 - < 5,000 gpd	<u>4,905.00</u>	<u>5,126.00</u>
f. 5,000 gpd and greater	<u>6,731.00</u>	<del>7,034.00))</del>
a. < 24,999 gallons per year (gpy)	<u>423.00</u>	<u>423.00</u>
b. 25,000 - < 39,999 gpy	<u>621.00</u>	<u>621.00</u>
c. 40,000 - < 54,999 gpy	<u>960.00</u>	<u>960.00</u>
d. 55,000 - < 69,999 gpy	<u>1,297.00</u>	<u>1,297.00</u>
e. 70,000 - < 99,999 gpy	<u>1,636.00</u>	<u>1,636.00</u>
f. 100,000 - < 299,999 gpy	<u>2,370.00</u>	<u>2,370.00</u>
g. 300,000 - < 699,999 gpy	<u>7,111.00</u>	<u>7,111.00</u>
h. 700,000 - < 999,999 gpy	<u>16,594.00</u>	<u>16,594.00</u>
i. 1,000,000 - < 1,999,999 gpy	<u>23,762.00</u>	<u>23,762.00</u>
j. 2,000,000 gpy and greater	<u>47,470.00</u>	<u>47,470.00</u>
Wineries - General Permit Coverage		
a. < 24,999 gpy	<u>296.00</u>	<u>296.00</u>
b. 25,000 - < 39,999 gpy	<u>434.00</u>	<u>434.00</u>
c. 40,000 - < 54,999 gpy	<u>671.00</u>	<u>671.00</u>
d. 55,000 - < 69,999 gpy	<u>907.00</u>	<u>907.00</u>
e. 70,000 - < 99,999 gpy	<u>1,144.00</u>	<u>1,144.00</u>
f. 100,000 - < 299,999 gpy	<u>1,657.00</u>	<u>1,657.00</u>
g. 300,000 - < 699,999 gpy	<u>4,973.00</u>	<u>4,973.00</u>
h. 700,000 - < 999,999 gpy	<u>11,604.00</u>	<u>11,604.00</u>
i. 1,000,000 - < 1,999,999 gpy	<u>16,617.00</u>	<u>16,617.00</u>
j. 2,000,000 gpy and greater	<u>33,196.00</u>	<u>33,196.00</u>

(a) Facilities other than those in the sand and gravel, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not

exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Fruit packer (~~and~~), sand and gravel, and winery permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. (~~When required, the department will send the information form to the permit holder.~~) The permit holder shall (~~complete and return the information form~~) submit the information to the department by the required due date. Failure to provide this information (~~will~~) results in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized general partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for fruit packers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the fruit packing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste (~~clean up~~) cleanup sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating sand and gravel operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode may be verified by the appropriate ecology staff. Once operations resume, the permit fee (~~will be returned~~) returns to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period (~~will be~~) are assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit (~~will be~~) are assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

	FY ( <del>2018</del> )	FY ( <del>2019</del> )
	<u>2020</u>	<u>2021</u>
	Annual	Annual
Residential Equivalents (RE)	Annual Permit Fee	Permit Fee & Beyond
< 250,000	\$2.16	\$2.16
> 250,000	( <del>1.89</del> )	( <del>1.98</del> )
	<u>2.07</u>	<u>2.16</u>

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

(i) Holds more than one permit for domestic wastewater facilities; and

(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned and (~~government-owned~~) public-owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned or (~~government-owned~~) public-owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned or (~~government-owned~~) public-owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

	FY ((2018))	FY ((2019))
	<u>2020</u>	<u>2021</u>
	Annual	Annual
Permitted Flows	Permit Fee	Permit Fee & Beyond
.1 MGD and Greater	\$((12,945.00))	\$((13,668.00))
	<u>14,299.00</u>	<u>15,075.00</u>
.05 MGD to < .1 MGD	((5,179.00))	((5,468.00))
	<u>5,721.00</u>	<u>6,032.00</u>
.0008 MGD to < .05 MGD	((2,590.00))	((2,735.00))
	<u>2,861.00</u>	<u>3,016.00</u>
< .0008 MGD	((781.00))	((825.00))
	<u>863.00</u>	<u>910.00</u>

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the

other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

**(4) STORMWATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))**

	<b>FY <del>((2018))</del> 2020</b>	<b>FY <del>((2019))</del> 2021</b>
	<b>Annual Permit</b>	<b>Annual Permit</b>
	<b>Fee</b>	<b>Fee &amp; Beyond</b>
<b>a. Individual Construction or Industrial Stormwater Permits</b>		
1. < 50 acres	<del>\$(5,179.00)</del> <u>5,721.00</u>	<del>\$(5,468.00)</del> <u>6,032.00</u>
2. 50 -< 100 acres	<del>((10,350.00))</del> <u>11,433.00</u>	<del>((10,928.00))</del> <u>12,054.00</u>
3. 100 -< 500 acres	<del>((15,538.00))</del> <u>17,163.00</u>	<del>((16,405.00))</del> <u>18,095.00</u>
4. 500 acres and greater	<del>((20,714.00))</del> <u>22,880.00</u>	<del>((21,870.00))</del> <u>24,122.00</u>
<b>b. Facilities Covered Under the Industrial Stormwater General Permit</b>		
1. Municipalities and state agencies	<del>((1,696.00))</del> <u>1,874.00</u>	<del>((1,791.00))</del> <u>1,976.00</u>
2. New permit holders without historical gross revenue information	<del>((889.00))</del> <u>982.00</u>	<del>((939.00))</del> <u>1,035.00</u>
3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		
Gross Revenue		
Less than \$100,000	<del>((165.00))</del> <u>182.00</u>	<del>((174.00))</del> <u>192.00</u>
\$100,000 -< \$1,000,000	<del>((714.00))</del> <u>789.00</u>	<del>((754.00))</del> <u>832.00</u>
\$1,000,000 -< \$2,500,000	<del>((854.00))</del> <u>944.00</u>	<del>((902.00))</del> <u>995.00</u>
\$2,500,000 -< \$5,000,000	<del>((1,427.00))</del> <u>1,577.00</u>	<del>((1,507.00))</del> <u>1,663.00</u>
\$5,000,000 -< \$10,000,000	<del>((2,141.00))</del> <u>2,365.00</u>	<del>((2,261.00))</del> <u>2,493.00</u>
\$10,000,000 and greater	<del>((2,587.00))</del> <u>2,857.00</u>	<del>((2,731.00))</del> <u>3,012.00</u>

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The doc-

umentation shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

- (b) In the case of a limited partnership, by an authorized general partner;
- (c) In the case of a general partnership, by an authorized partner; or
- (d) In the case of a sole proprietorship, by the proprietor.

The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

c. Construction Activities Covered Under the Construction Stormwater General Permit(s)

1. Less than 5 acres disturbed area	<del>\$(670.00)</del> <u>740.00</u>	<del>\$(707.00)</del> <u>780.00</u>
2. 5 -< 7 acres of disturbed area	<del>((1,089.00))</del> <u>1,203.00</u>	<del>((1,150.00))</del> <u>1,268.00</u>
3. 7 -< 10 acres of disturbed area	<del>((1,470.00))</del> <u>1,624.00</u>	<del>((1,552.00))</del> <u>1,712.00</u>
4. 10 -< 20 acres of disturbed area	<del>((2,006.00))</del> <u>2,216.00</u>	<del>((2,118.00))</del> <u>2,336.00</u>
5. 20 acres and greater of disturbed area	<del>((2,495.00))</del> <u>2,756.00</u>	<del>((2,634.00))</del> <u>2,906.00</u>

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal stormwater permit annual fee for the entities listed below (~~will be~~) is:

Name of Entity	FY <del>((2018))</del> <u>2020</u> Annual Permit Fee	FY <del>((2019))</del> <u>2021</u> Annual Permit Fee & Beyond
King County	<del>\$(58,987.00)</del> <u>65,157.00</u>	<del>\$(62,280.00)</del> <u>68,695.00</u>
Snohomish County	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>
Pierce County	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>
Tacoma, City of	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>
Seattle, City of	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>
Washington Department of Transportation	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>
Clark County	<del>((58,987.00))</del> <u>65,157.00</u>	<del>((62,280.00))</del> <u>68,695.00</u>

(b) Municipal stormwater general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, (~~will be~~) are determined in the following manner: For fiscal year ~~((2018))~~ 2020, ecology will charge ~~\$(1.71)~~ 1.89 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~\$(.84)~~ .93 per housing unit inside the geographic area covered by the permit. For fiscal year ~~((2019))~~ 2021, ecology will charge ~~\$(1.81)~~ 1.99 per housing unit inside the

geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~\$(.89)~~ .98 per housing unit inside the geographic area covered by the permit. Fees will not exceed ~~\$(58,987.00)~~ 65,157.00 for fiscal year ~~((2018))~~ 2020 and ~~\$(62,280.00)~~ 68,695.00 for fiscal year ~~((2019))~~ 2021. The minimum annual fee will not be lower than ~~\$(2,452.00)~~ 2,709.00 for fiscal year ~~((2018 and 2,589.00))~~ 2020 and \$2,856.00 for fiscal year ~~((2019))~~ 2021 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling ~~\$(.84)~~ .93 per housing unit for fiscal year ~~((2018))~~ 2020. The fee amount for FY ~~((2019 will be \$.89))~~ 2021 is \$.98 per housing unit.

(c) Other entities required to have permit coverage under a municipal stormwater general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY <del>((2018))</del> <u>2020</u> Annual Permit Fee	FY <del>((2019))</del> <u>2021</u> Annual Permit Fee
Less than \$100,000	<del>\$(171.00)</del> <u>189.00</u>	<del>\$(181.00)</del> <u>199.00</u>
\$100,000 - < \$1,000,000	<del>((691.00))</del> <u>764.00</u>	<del>((730.00))</del> <u>805.00</u>
\$1,000,000 - < \$5,000,000	<del>((1,726.00))</del> <u>1,906.00</u>	<del>((1,822.00))</del> <u>2,009.00</u>
\$5,000,000 - < \$10,000,000	<del>((2,589.00))</del> <u>2,860.00</u>	<del>((2,734.00))</del> <u>3,015.00</u>
\$10,000,000 and greater	<del>((4,314.00))</del> <u>4,765.00</u>	<del>((4,555.00))</del> <u>5,024.00</u>

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities'

annual operating budget for the entities' previous fiscal year and shall be determined as follows:

(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.

(ii) For ports, the annual operating budget for the port district.

(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.

(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.

(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal stormwater permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal stormwater general permit as determined in (c) of this subsection, the fiscal year ~~((2018))~~ 2020 annual fee for a permit written for a specific entity ~~((shall be \$12,270.00))~~ is \$13,554.00. For fiscal year ~~((2019))~~ 2021, the annual fee ~~((will be \$12,955.00))~~ is \$14,290.00.

(e) Ecology will assess a single permit fee for entities which apply only as copermitees or coapplicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the copermitees had applied separately.

**AMENDATORY SECTION** (Amending WSR 17-16-005, filed 7/20/17, effective 8/20/17)

**WAC 173-224-050 Permit fee computation and payments.** (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the fiscal year to which they apply. The department shall notify permit holders of fee charges by ~~((mailing billing statements. Permit fees must be received by the department))~~ sending an invoice to the permittee on record. The department must receive permit fee payments within forty-five days after the department ~~((mails))~~ sends a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation ~~((for individual permits. Computation of permit fees))~~ shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the permit issuance date ~~((of the permit))~~. In the case of applicants for state waste discharge permits who are deemed to

have a temporary permit under RCW 90.48.200, computation shall begin on the sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon ~~((acceptance of the application by the department))~~ the date the department accepts the application. Any facility that obtains permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the department terminates permit ~~((has been terminated by the department))~~ coverage. Permits terminated during the fiscal year will pay the annual fee assessment regardless of the permit termination date.

(3) Permit fees for sand and gravel general permit holders ~~((will be))~~ are assessed as in subsection (2) of this section and:

(a) Nonoperating sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete and/or asphalt production ~~((will be))~~ are assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees ~~((will be))~~ are based on total production of concrete and/or asphalt.

(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, ~~((will be))~~ are based on the previous calendar year production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous calendar year. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Stormwater, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit.

(4) Fees for fruit packer general permit holders ~~((will be))~~ are assessed as in subsection (2) of this section and ~~((will be))~~ are computed based on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 (2)(c). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee ~~((will be))~~ is determined based on the actual production during the first ~~((year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third))~~ year. Fee calculation for subsequent



years will be based on the average production values of previous years.

(5) Facilities with construction and industrial stormwater general permit coverage will have their annual permit fees begin on the permit issuance date.

(6) Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.

~~((6))~~ (7) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction stormwater general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.

~~((7))~~ (8) Computation of fees shall end on June 30th, the last day of the state's fiscal year regardless of the permit termination date.

~~((8))~~ (9) The applicable permit fee shall be paid using ecology's online payment software or by check or money order payable to the "Department of Ecology" and mailed to the Water Quality Permit Fee Program, P.O. Box 47611, Olympia, Washington 98504-7611.

~~((9))~~ (10) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

~~((10))~~ (11) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts ~~((will be))~~ are processed in the following manner:

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may be turned over for collection. In addition to the amount owed, the collection agent will add a surcharge totaling twenty percent of the delinquent amount owed. The surcharge is to recover the costs for collection. If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

AMENDATORY SECTION (Amending WSR 13-22-051, filed 11/1/13, effective 12/2/13)

**WAC 173-224-090 Permit fee reductions.** With the exception of facilities covered under the industrial stormwater general permit who are not eligible to apply for a fee reduction, any business required to pay a fee ~~((under an industrial or construction fee category))~~ may receive a reduction of its permit fee.

(1) Market research and development.

(a) To qualify for the fee reduction, the operation under permit must be at a research facility with the primary purpose of researching market viability for products and/or processes that reduce or eliminate pollutants or pollutant generating activity.

(b) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions in (a) of this subsection are met. The application shall bear a certification of correctness and be signed:

(i) In the case of a corporation, by an authorized corporate officer;

(ii) In the case of a limited partnership, by an authorized general partner;

(iii) In the case of a general partnership, by an authorized partner;

(iv) In the case of a sole proprietorship, by the proprietor;

or  
(v) In the case of a municipality, state, or other public entity, by either a principal executive officer or a ranking elected official.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(d) The permit fee for market research and development determined to be eligible under (a) of this subsection shall be reduced to twenty-five percent of the assessed annual permit fee.

(e) A site can only be eligible for this reduction for three consecutive fiscal years.

(2) Small business fee reduction.

~~((1))~~ (a) To qualify for the fee reduction, a business must:

~~((a))~~ (i) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

~~((b))~~ (ii) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

~~((c))~~ (iii) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge or stormwater discharge permit; and

~~((d))~~ (iv) Have an original annual fee assessment totaling five hundred dollars or greater.

~~((2))~~ (b) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions ~~((of subsection (1))~~ in (a) of this ~~((section have been))~~ subsection are met. The application shall bear a certification of correctness and be signed:

~~((a))~~ (i) In the case of a corporation, by an authorized corporate officer;

~~((b))~~ (ii) In the case of a limited partnership, by an authorized general partner;

~~((c))~~ (iii) In the case of a general partnership, by an authorized partner; or

~~((d))~~ (iv) In the case of a sole proprietorship, by the proprietor.

~~((3))~~ (c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

~~((4))~~ (d) The permit fee for small businesses determined to be eligible under ~~((subsection (1)))~~ (a) of this ~~((section))~~ subsection shall be reduced to fifty percent of the assessed annual permit fee.

Extreme hardship fee reduction. Any ~~((industrial or construction))~~ small business with annual gross revenue totaling one hundred thousand dollars or less ~~((of the))~~ from goods and services produced using the processes regulated by the waste discharge or stormwater discharge permit may apply for an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below \$128.00.

AMENDATORY SECTION (Amending WSR 08-16-109, filed 8/5/08, effective 9/5/08)

**WAC 173-224-100 Administrative appeals to the department.** Any person aggrieved by a determination made under this chapter by the department may file a written appeal to the department no later than each fiscal year's first billing due date for payment of fees. Such appeal shall state the reasons that the aggrieved person believes that the department's determination is contrary to the requirements of RCW 90.48.465, and specific actions ~~((that he/she is))~~ they are requesting that are consistent with those requirements. The department shall either issue a revised determination or a statement upholding the original determination. A revised determination shall be consistent with the requirements of RCW 90.48.465. Any person feeling aggrieved by the administrative appeals decision made by the department regarding their permit fee may obtain review thereof by filing an appeal with the Pollution Control Hearings Board, P.O. Box 40903, Olympia, Washington 98504-0903, within thirty days of receipt of the department's decision. In addition, a copy of the appeal must be served on the Department of Ecology, Attention: Water Quality Program Permit Fee Unit, P.O. Box 47600, Olympia, Washington 98504-7696, within thirty days of receipt. These procedures are consistent with the provisions of chapter 43.21B RCW and the rules and regulations adopted thereunder.

**WSR 19-07-018**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

[Filed March 11, 2019, 3:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-087.

Title of Rule and Other Identifying Information: WAC 182-531-1730 Telemedicine.

Hearing Location(s): On May 21, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Pear Conference Room 107, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than May 22, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by May 21, 2019.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov), by May 17, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-531-1730 Telemedicine, [to] add renal dialysis centers to the list of originating sites. This addition aligns with RCW 41.05.700.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, and 41.05.700.

Statute Being Implemented: RCW 41.05.021, 41.05.160, and 41.05.700.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Jodi Kunkel, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-9805.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

March 11, 2019  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-20-063, filed 10/1/15, effective 11/1/15)

**WAC 182-531-1730 Telemedicine.** (1) Telemedicine is when a health care practitioner uses HIPAA-compliant, interactive, real-time audio and video telecommunications (including web-based applications) or store and forward technology to deliver covered services that are within his or her scope of practice to a client at a site other than the site where the provider is located. If the service is provided through store and forward technology, there must be an associated office visit between the client and the referring health care provider.

(2) The medicaid agency does not cover the following services as telemedicine:

(a) Email, audio only telephone, and facsimile transmissions;

(b) Installation or maintenance of any telecommunication devices or systems; and

(c) Purchase, rental, or repair of telemedicine equipment.

(3) **Originating site.** An originating site is the physical location of the client at the time the health care service is provided. Approved originating sites are:

(a) Clinics;

(b) Community mental health/chemical dependency settings;

(c) Dental offices;

(d) Federally qualified health centers;

(e) Home or any location determined appropriate by the individual receiving the service;

(f) Hospitals - Inpatient and outpatient;

(g) Neurodevelopmental centers;

(h) Physician or other health professional's office;

(i) Renal dialysis centers, except an independent renal dialysis center:

(j) Rural health clinics;

~~((j))~~ (k) Schools; and

~~((k))~~ (l) Skilled nursing facilities.

(4) **Distant site.** A distant site is the physical location of the health care professional providing the health care service.

(5) The agency pays an additional facility fee per completed transmission to either the originating site or the distant site, as specified in the agency's program-specific billing instructions.

(6) If a health care professional performs a separately identifiable service for the client on the same day as the telemedicine service, documentation for both services must be clearly and separately identified in the client's medical record.

(7) Billing procedures for telemedicine can be found in the agency's program-specific billing instructions.

### WSR 19-07-023

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed March 12, 2019, 1:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-147.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-845-1410 Are there limits to the prevocational services you may receive?

Hearing Location(s): On April 23, 2019, at 10:00 a.m., at 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>.

Date of Intended Adoption: Not earlier than April 24, 2019.

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., April 23, 2019.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by April 9, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to this rule ensure that prevocational services are no longer available as of March 1, 2019. An emergency rule filed as WSR 19-03-123 on January 17, 2019, is currently enacted on this section until the permanent rule-making process is complete.

Reasons Supporting Proposal: Prevocational services do not meet federal integration requirements under 42 C.F.R. Section 441.301 (c)(4) for HCBS settings. The developmental disabilities administration (DDA) must enact this mass change to comply with the Centers for Medicare and Medicaid Services-approved waiver amendments that eliminate prevocational services on the Basic Plus and core waivers by March 1, 2019. DDA is also amending this rule to replace "community access" with the service's new name, "community inclusion."

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.120.

Rule is necessary because of federal law, 42 C.F.R. Section 441.301 (c)(4).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Kari Freer, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1553.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

March 11, 2019

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

**WAC 388-845-1410 Are there limits to the prevocational services you may receive?** The following limits apply to your receipt of prevocational services:

(1) Effective September 1, 2015, no new referrals are accepted for prevocational services.

(2) Effective March 1, 2019, prevocational services are no longer available.

(3) Clinical and support needs for prevocational services are limited to those identified in your developmental disabilities administration (DDA) assessment and documented in your person-centered service plan (~~(individual support plan)~~).

~~((3))~~ (4) You must be age twenty and graduating from high school before your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

~~((4))~~ (5) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual employment plan will include exploration of integrated settings within your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

(a) Compensation at more than fifty percent of the prevailing wage;

(b) Significant progress made toward your defined goals; and

(c) Recommendation by your individual support plan team.

~~((5))~~ (6) You will not be authorized to receive prevocational services in addition to community ~~(needs)~~ inclusion services or supported employment services.

~~((6))~~ (7) Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325.

### WSR 19-07-024

#### PROPOSED RULES

#### DEPARTMENT OF ECOLOGY

[Order 18-02—Filed March 12, 2019, 3:01 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 18-14-011.

Title of Rule and Other Identifying Information: The department of ecology is proposing to amend chapter 173-230 WAC, Certification of operators of wastewater treatment plants. This chapter establishes ecology's wastewater operator certification program and plant classifications for wastewater treatment plants in Washington state.

For more information on this rule making visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rule-making/Rulemaking/WAC-173-230>.

Hearing Location(s): On April 23, 2019, at 1:30 p.m., at the Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98503, presentation, question and answer session followed by the hearing; on April 23, 2019, at 6:00 p.m., webinar only, presentation, question and answer session followed by the hearing. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions <https://watech.webex.com/watech/onstage/g.php?MTID=e65e84fe0507801453a6344d81cb21fe6>; and on April 25, 2019, at 10:00 a.m., at the Moses Lake Civic Center, 401 South Balsam Street, Moses Lake, WA 98837,

presentation, question and answer session followed by the hearing.

Date of Intended Adoption: On or after July 10, 2019.

Submit Written Comments to: Jocelyn Jones, send via mail at Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504-7600 (U.S. mail), or send parcel delivery services to Department of Ecology, Water Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, submit comments by mail, online, or at the hearing(s), online <http://ws.ecology.commentinput.com/?id=gPMjY>, by May 1, 2019.

Assistance for Persons with Disabilities: Contact Teresa Reno, phone 360-407-7285, people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711, email [Teresa.Reno@ecy.wa.gov](mailto:Teresa.Reno@ecy.wa.gov), by April 15, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Legislation passed in 2018 amending chapter 70.95B RCW (chapter 213, Laws of 2018) directing ecology, with the advice of an advisory committee, to establish an initial fee schedule in rule. This rule making does this as well as other necessary updates to modernize and make more clear the requirements and the procedures for obtaining and maintaining an operator certification in Washington state.

As part of this rule making we have focused on the following changes:

- Establishing a new fee schedule as directed by the legislature in 2018.
- Providing for an operator in training (OIT) and respective education and experience qualifications for groups II-IV.
- Updating rule language to acknowledge new technologies in wastewater treatment.
- Reorganizing the rule to create standalone sections where more information and clarity are needed.
- Clarifying rule language to codify existing program practices.

The main anticipated effect of this rule making will be the establishment of a fee schedule in rule that fully funds the operator certification program as directed by the legislature.

The anticipated effects of the other changes proposed include less confusion over requirements and an increase in opportunities for OIT due to the creation of new OIT group levels.

Reasons Supporting Proposal: See answer to "Purpose of the proposal ...."

Statutory Authority for Adoption: Chapter 70.95B RCW, Domestic waste treatment plants—Operators.

Statute Being Implemented: Chapter 70.95B RCW, Domestic waste treatment plants—Operators.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Poppy Carre and Jocelyn Jones, Lacey, 360-407-6321; Implementation and Enforcement: Heather Bartlett, Lacey, 360-406-6405 [360-407-6405].

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jocelyn W. Jones, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6321, people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711, email [Jocelyn.jones@ecy.wa.gov](mailto:Jocelyn.jones@ecy.wa.gov).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Based on the analysis in chapters 1-5 of the preliminary regulatory analyses for this rule making, the proposed amendments only impose compliance costs on operators. Those costs are:

- Increased application fees.
- Increased renewal fees.
- Potential time costs for operators and OIT with experience not under the direction or supervision of a fully certified operator.

Operators are private individuals, though they may be currently employed by waste water treatment plants (WWTP). Certifications, however, do not belong to WWTP, but to the operator or OIT. Based on analysis of the proposed rule amendments, we do not expect WWTPs to incur compliance costs under the proposed amendments, as compared to the baseline.

The Regulatory Fairness Act (RFA) states: "In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320 (1)(a)." The entities that would incur compliance costs are not businesses, so we conclude there are no businesses incurring additional costs under the proposed amendments. Ecology is therefore exempt from the requirements of RFA for this rule making.

March 12, 2019

Polly Zehm

Deputy Director

## NEW SECTION

**WAC 173-230-200 Definitions.** "Activated sludge process" means a biological wastewater treatment process in which a mixture of wastewater and activated sludge is agitated and aerated. The activated sludge is subsequently separated from the treated wastewater by sedimentation or filtration and wasted or returned to the process as needed.

"Biennium" means a two-year period from July 1st of each odd year through June 30th of the next odd year.

"Biofiltration" means the process of passing a liquid through a biological filter that contains fixed media on surfaces which develop zoogeal films that absorb and adsorb

fine suspended, colloidal, and dissolved solids and release end products of biochemical action.

"Certificate" means the certificate of competency issued by the director stating that an individual has met the requirements for a specific classification in the wastewater treatment plant operator certification program.

"Certificate holder" means the individual to whom a certificate is issued.

"CEU" means continuing education unit that is a nationally recognized unit of measurement similar to a college credit. One CEU is awarded for every ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction. Forty-five CEUs is equivalent to one year of education.

"College credits" means credits earned toward a college degree or in course work that is relevant to the operation of a wastewater treatment plant. One year of college is equivalent to forty-five quarter credits or thirty semester credits.

"Department" means the Washington state department of ecology.

"Director" means the director of the department of ecology or the director's designee.

"Effective date of a revocation order" means the date a revocation period ends.

"Extended aeration" means a modification of the activated sludge process that uses long aeration periods and long mean cell residence times for aerobic digestion of the biological mass by endogenous respiration and promotes the growth of nitrifying organisms.

"Exam" means a test recognized by the department to determine the competency of operators for each certification level.

"Exam cycle" means a five-year period from the time a new exam is released.

"Full certification" means holding a Group I, II, III, or IV wastewater treatment plant operator certification issued by the department. Full certification does not include operator in training certifications.

"GED" means a general education development certificate issued by a recognized education institution. A GED is equivalent to a high school diploma.

"Group" and "class" for the purpose of operator certification and wastewater treatment plant classification are the same.

"Lagoon" means any large lined holding or detention pond, usually with earthen dikes, that is used to contain wastewater while sedimentation and biological stabilization occurs.

"Lead operator of a shift" means the individual onsite at a wastewater treatment plant whose primary responsibility is to operate and maintain the wastewater treatment plant on a regularly run shift. The lead operator of a shift is subordinate to the operator in responsible charge. An OIT may not be the lead operator of a shift.

"MBR (membrane bioreactor)" means an activated sludge process that combines a suspended growth biological reactor with solids removal via filtration in a single unit.

"Operating experience" means the routine performance of duties, onsite at a wastewater treatment plant, that affect plant performance or effluent quality.

"Operating shift" means a designated period of time in which a certified operator makes decisions or takes actions that may affect plant operations.

"Operator" means an individual who performs routine duties, onsite at a wastewater treatment plant, that affect plant performance or effluent quality.

"Operator in responsible charge" means the individual who is designated by the owner as the person routinely onsite and in direct charge of the overall operation and maintenance of a wastewater treatment plant. An OIT may not be the operator in responsible charge.

"Operator in training (OIT)" means an individual who passed an exam but has less than the required amount of operating experience to meet the full certification requirements.

"Operator in training certificate" means a certificate issued by the department to an operator in training that is working towards full certification.

"Owner" means in the case of:

- A town or city, the city or town acting through its chief executive officer or the lessee if operated under a lease or contract;
- A county, the chairman of the county legislative authority or the chairman's designee;
- A sewer district, board of public utilities, association, municipality or other public body, the president or chairman of the body or the president's or chairman's designee;
- A privately owned wastewater treatment plant, the legal owner.

"Primary wastewater treatment" means clarification to physically remove settleable and floatable materials in addition to the removal of raw biosolids and preliminary treatment; preliminary treatment consists of one or more of the following: Screening, grit removal and comminution, and grinding.

"Professional growth" means training that is directly related to improving competencies in areas that relate to operating and maintaining a wastewater treatment plant.

"Professional growth reporting period" means a designated period of time, not less than three years, in which a certified operator completes the professional growth requirement in WAC 173-230-300.

"Provisional certificate" means a one-time certificate issued without passing an exam if the plant classification increases solely due to a reclassification based on the criteria in Table 4.

"Reclaimed water" means water derived in any part from a wastewater with a domestic wastewater component that has been adequately and reliably treated to meet the requirements of chapter 173-219 WAC, so that it can be used for beneficial purposes. Reclaimed water is not considered a wastewater.

"Reclaimed water facility" means the treatment plant, equipment, storage, conveyance devices, and dedicated sites for reclaimed water generation.

"Reciprocity" means the mutual exchange of a valid out-of-state wastewater treatment plant operator's certificate achieved by passing a department approved exam for an equivalent level of certification without further examination.

"Revocation" means the department invalidates an operator's certificate.

"Routine" means duties that are performed on a regular basis and not sporadically.

"Sequencing batch reactor (SBR)" means a fill-and-draw activated sludge system where sewage is added to one of several tanks which are alternately filled, aerated, settled, and decanted. A typical system applies a predetermined sequence of operations based on the flow and other inputs using a programmable logic controller and is uniquely suited for wastewater treatment applications characterized by low or intermittent flow conditions.

"Standardized exam" means a national exam with standard questions for all states and not customized for individual states.

"Suspension" means to make an operator's certificate temporarily invalid.

"Tertiary" means advanced physical/chemical or biological treatment of wastewater beyond the conventional secondary stage to remove additional suspended and dissolved substances. These substances may include phosphorus and nitrogen, a high percentage of suspended solids, dissolved inorganic solids, toxic compounds, microorganisms, and complex organic compounds.

"Wastewater certification program coordinator" means an employee of the department who is appointed by the director and who administers the wastewater treatment plant operator certification program.

"Wastewater collection system" means any system of lines, pipes, manholes, pumps, liftstations, or other facilities used to collect and transport wastewater.

"Wastewater treatment plant" means a facility used to treat any liquid or waterborne waste of domestic origin or a combination of domestic, commercial or industrial origin, and that, by its design, requires the presence of an operator for its operation. It does not include any facility used exclusively by a single family residence, septic tanks with subsoil absorption, industrial wastewater treatment plants, or wastewater collection systems.

"Wetland treatment" means natural treatment system wetlands intentionally constructed and managed for the primary purpose of wastewater treatment.

#### NEW SECTION

##### **WAC 173-230-210 Purpose and scope. (1) Purpose.**

The purpose of this regulation is to protect public health and the environment, including waters of the state, by ensuring wastewater treatment plants are properly operated and maintained. By requiring certification of wastewater treatment plant operators, the department ensures they demonstrate competence to operate and maintain wastewater treatment plants or reclaimed water facilities.

(2) **Scope.** This rule establishes the requirements for:

(a) Obtaining and maintaining a wastewater treatment plant operator certification.

(b) Certification level requirements for an operator in responsible charge of a treatment plant.

(c) Certification level requirements for a lead operator of a shift.

- (d) Wastewater treatment plant classifications.
- (e) Enforcement actions for violations of this chapter.

**NEW SECTION**

**WAC 173-230-220 Applicability.** (1) This rule applies to wastewater treatment plant owners, all certified wastewater treatment plant operators, and those seeking certification.

(2) The operator in responsible charge and the lead operator of a shift are required to hold valid certifications.

(3) All individuals operating wastewater treatment plants who are not required to be certified are encouraged to seek certification.

**NEW SECTION**

**WAC 173-230-230 Application required.** (1) Any person seeking certification must submit the following to the department:

- (a) Completed application for the certification level they are seeking on a form provided by the department;
- (b) Fees;
- (c) College transcripts, if applicable;
- (d) Professional growth certificates, if applicable; and
- (e) Supporting documents, if applicable.

(2) If an application to take an exam is approved, the examinee has one year from the date of approval to take and pass the exam.

(a) If the examinee does not take or pass the exam within that one-year period, the application expires.

(b) If an application expires, the examinee needs to submit an updated application.

(3) If the application is denied, the applicant will be notified of the reason for the denial.

**NEW SECTION**

**WAC 173-230-240 Fees.** (1) All persons certified or seeking certification under chapter 70.95B RCW and this chapter must pay an application fee and/or renewal fee to the department each year.

(2) All costs of activities associated with administering this program, as described in RCW 70.95B.095(1), are fee eligible.

(3) Each biennium, the department must conduct a workload analysis and develop a budget estimate based on the process below.

(a) The department must conduct a workload analysis projecting resource requirements for administering the program for the purposes of preparing a budget estimate.

(b) The department must prepare the workload analysis for the two-year period corresponding to each biennium.

(c) The workload analysis must identify the fee eligible administrative activities that it will perform during the biennium and must estimate the resources required to perform these activities.

(4) Ecology must prepare a budget estimate for administering the program for the two-year period corresponding to each biennium. Ecology must base the budget on the resource requirements identified in the workload analysis for the biennium and must take into account the program account balance at the start of the biennium.

and must take into account the program account balance at the start of the biennium.

(5) Table 1 below establishes the fee schedule for Fiscal Year 2020 and 2021.

Table 1  
Fiscal Year 2020 and 2021 Fee Schedule

Category	Amount for Fiscal Year 2020 (July 1, 2019 - June 30, 2020)	Amount for Fiscal Year 2021 (July 1, 2020 - June 30, 2021)
Group I and Group I OIT Applications	\$50.00	\$50.00
Groups II through IV Applications and Groups II through IV OIT Applications	\$59.00	\$67.00
Renewals	\$64.00	\$98.00

(a) After fiscal year 2021, the department must base the fee schedule on the budget and workload analysis described in this section.

(i) Every two years, the department will issue a draft fee schedule with the proposed application and renewal fees for the next biennium for public comment.

(ii) The department will publish the draft fee schedule for the following biennium on or before March 31st of each odd year.

(iii) The comment period on the draft fee schedule is forty-five days.

(iv) The department will publish the final fee schedule for the following biennium on or before June 30th of each odd year.

(6) Fees specified in this section must be made payable to the department.

(a) The department will process applications only when accompanied by an application fee, based on the fee schedule published for that state fiscal year.

(b) The department will process renewals only when accompanied by a renewal fee, based on the fee schedule published for that state fiscal year, and when renewal requirements are met per WAC 173-230-300.

(c) Operators are only required to pay one renewal fee per year.

(d) Fees are not refundable; however, the department may issue refunds at its discretion.

(7) All fees paid pursuant to RCW 70.95B.095 and any other receipts realized in the administration of this program must be deposited into the wastewater treatment plant operator certification account.

NEW SECTION

**WAC 173-230-250 Education and experience requirements for Groups I through IV certifications.** (1) Applicants must meet the following education and experience requirements.

(2) Groups I through IV education, operating experience requirements, and allowable substitutions include the following:

(a) Operating experience must be gained by working under the direction or supervision of a fully certified operator.

(b) Up to half of the operating experience for Groups II through IV, listed below in Table 2, can be substituted with relevant experience.

(c) Relevant experience is work that does not meet the definition of operating experience, but can be used to substitute for operating experience, and includes, but is not limited to:

- (i) Wastewater collection system operator;
- (ii) Wastewater pump station operator;
- (iii) Water distribution system operator and/or manager;
- (iv) Water treatment plant operator; or
- (v) Other relevant experience will be considered on a case-by-case basis with a written description of the duties performed on the job by the applicant.

(d) Education substituted for operating experience must be in excess of the required education and cannot be used for both the education requirement and substitutions.

Table 2  
Operator Certification Requirements and Substitutions

Operator Certification Requirements and Substitutions					
Certification level	Required education	Substitutions allowed for education	Required operating experience	Education substitutions allowed for operating experience	Relevant experience substitutions allowed for operating experience
Group I	High school diploma or GED	One year of relevant experience for each year of education through twelfth grade	1 year	None	None
Group II	High school diploma or GED	One year of relevant experience for each year of education through twelfth grade	3 years	Up to 67.5 relevant credits/CEUs	Up to 1 year and 6 months of relevant experience
Group III	High school diploma or GED and 2 years of college (90 credits or CEUs)	Up to 4 years of excess operating experience: • 1 year of excess operating experience for the first 45 credits/CEUs • 3 years of excess operating experience for the last 45 credits/CEUs	4 years, with at least 2 years at a Class II or higher plant	Up to 90 relevant credits/CEUs	Up to 2 years relevant experience
Group IV	High school diploma or GED and 4 years of college (180 credits or CEUs)	Up to 8 years of excess operating experience • 1 year of excess operating experience for each 45 credits/CEUs for the first 90 credits/CEUs • 3 years of excess operating experience for each 45 credits for the second 90 credits/CEUs	4 years, with at least 2 years at a Class III or higher plant	Up to 90 relevant credits/CEUs	Up to 2 years of relevant experience

NEW SECTION

**WAC 173-230-260 Education and experience requirements for Groups I through IV OIT certifications.** (1) Applicants who do not meet the requirements in Table 2 but do meet the requirements in Table 3 may apply to become an OIT I through IV, except as described in (a) and (b) of this subsection.



- (a) Applicants who hold a full certification may only apply for an OIT certification one level above their full certification level.
- (b) Applicants who do not hold a full certification are only eligible to apply for the Group I OIT.

Table 3  
Operator in Training Certification Requirements and Substitutions

<b>Operator in Training Certification Requirements and Substitutions</b>					
<b>Certification level</b>	<b>Minimum required education</b>	<b>Substitutions allowed for education</b>	<b>Minimum required operating experience</b>	<b>Education substitutions allowed for operating experience</b>	<b>Relevant experience substitutions allowed for operating experience</b>
Group I Operator in Training	High school diploma or GED	One year of relevant experience for each year of education through twelfth grade	3 months	3.0 credits/CEUs	3 months relevant experience
Group II Operator in Training	High school diploma or GED	One year of relevant experience for each year of education through twelfth grade	1 year and 6 months	Up to 67.5 relevant credits/CEUs	Up to 1 year and 6 months of relevant experience
Group III Operator in Training	High school diploma or GED and 2 years of college (90 credits or CEUs)	Up to 4 years of excess operating experience: <ul style="list-style-type: none"> <li>• 1 year of excess operating experience for the first 45 credits/CEUs</li> <li>• 3 years of excess operating experience for the last 45 credits/CEUs</li> </ul>	2 years	Up to 90 relevant credits/CEUs	Up to 2 years relevant experience
Group IV Operator in Training	High school diploma or GED and 4 years of college (180 credits or CEUs)	Up to 8 years of excess operating experience <ul style="list-style-type: none"> <li>• 1 year of excess operating experience for each 45 credits/CEUs for the first 90 credits/CEUs</li> <li>• 3 years of excess operating experience for each 45 credits for the second 90 credits/CEUs</li> </ul>	2 years	Up to 90 relevant credits/CEUs	Up to 2 years of relevant experience

(2) The department will issue OIT certificates to applicants who pass the exam as described in WAC 173-230-270.

(3) An existing certified operator continues to hold their full certification as well as the OIT certification until they upgrade from an OIT certification to a full certification, or until their OIT certificate expires.

(a) Groups II through IV OIT certificates will expire after two exam cycles, up to ten years.

(b) To upgrade from an OIT certification to a full certification, the OIT operator must apply as described in WAC 173-230-230.

(c) To upgrade from an OIT certification to a full certification, a Group I through IV OIT must gain the necessary operating experience required for full certification working under the direction or supervision of a fully certified operator.

(d) When an application for an upgrade from OIT to full certification is approved, the operator will no longer hold the lower-level certification or be certified as an OIT. They will be certified only at the higher-level certification.

(4) OIT professional growth and renewal requirements:

(a) Operators who hold both a full certification and an OIT certification must only meet the professional growth and renewal requirements for their full certification and are only required to pay one renewal fee as described in WAC 173-230-240.

(b) Operators who only hold an OIT certification must meet professional growth and renewal requirements as described in WAC 173-230-300 and 173-230-310.

NEW SECTION

**WAC 173-230-270 Exam requirements.** (1) The department will use exams to determine the competency of operators for each certification level.

(2) Certificates will be issued to examinees that receive a passing score approved by Washington state.

(3) If the department uses exams prepared by another organization, the examinee will pay any associated exam costs.

(4) The department or designated testing organization will score all exams and notify examinees of the results.

(5) Exams will not be released to the examinee.

(6) An examinee who does not take or pass the exam within one year of approval must apply as described in WAC 173-230-230. The department may grant extensions.

NEW SECTION

**WAC 173-230-280 Reciprocity.** (1) The department may issue a certificate without an exam to an applicant who holds an equivalent certificate from a certifying authority that has reciprocity with Washington state.

(2) Persons requesting reciprocity must submit a completed application as described in WAC 173-230-230, including a copy of their current certificate and, if applicable, their validation card.

(3) The department will consider an application for reciprocity if:

(a) The applicant meets the education and experience requirements as described in WAC 173-230-250 and/or 173-230-260.

(b) The applicant received a Washington state approved passing score on an Association of Boards of Certification (ABC) standardized exam within the current exam cycle or previous exam cycle.

(c) The certificate is verified by the department as being valid and in good standing from the certifying authority in which the applicant is certified.

NEW SECTION

**WAC 173-230-290 Certificate.** (1) The certificate term is January 1st to December 31st each year.

(a) Certificates issued prior to October 1st are valid through December 31st of the same calendar year.

(b) Certificates issued on October 1st or later are valid through December 31st of the following calendar year.

(c) The certificate term does not change when an existing certified operator upgrades to a higher certification level. The certificate term ends December 31st each year regardless of when the upgraded certificate was issued.

(2) It is the operator's responsibility to keep the department updated when their address or employer changes.

NEW SECTION

**WAC 173-230-300 Professional growth.** (1) A professional growth cycle is a three-year period beginning on January 1st and ending on December 31st.

(a) Operators who become certified during a professional growth cycle will have the remainder of the current professional growth period and all of the next professional growth period to meet their professional growth requirement.

(b) The professional growth cycle does not change when an existing certified operator upgrades to a higher certification level.

(2) Certificate holders must demonstrate continued professional growth to maintain their certification and be eligible for certification renewal.

(a) The following are ways to demonstrate professional growth:

(i) Accumulate a minimum of three CEUs or college credits in approved wastewater courses or training;

(ii) Advance by exam to a higher certification level in Washington's wastewater treatment plant operator certification program.

(b) Advancement from OIT to full certification does not meet the professional growth requirement.

(c) Advancement by reciprocity does not meet the professional growth requirement.

(3) Professional growth credit can only be received one time for the exact same course during a professional growth period.

(4) A trainer will earn CEUs for administering training one time per professional growth period.

(a) Trainers will earn the same number of CEUs as attendees if they administer the entire training session.

(b) Trainers will earn CEUs for their portion of the training if they do not administer the entire training session and do not attend the entire session.

(5) Excess CEUs cannot be carried over from one professional growth cycle to the next professional growth cycle.

(6) Each certified operator must submit documentation to the department to demonstrate compliance with this section by the end of the professional growth cycle.

(7) The department will notify certified operators who have not fulfilled the professional growth requirement.

(8) If this requirement is not met, the operator may not renew their certificate. Failure to renew an operator certification for any reason will be administered per WAC 173-230-310.

NEW SECTION

**WAC 173-230-310 Renewal requirements.** (1) To be eligible for certificate renewal a certified operator must:

(a) Provide documentation of their continued professional growth as described in WAC 173-230-300.

(b) Pay a renewal fee as described in WAC 173-230-240.

(2) The department will notify certified operators of their eligibility and/or fee for renewal.

(3) Renewal fees mailed to the department must be post-marked by December 31st.

(4) If the renewal fee is not paid, the department will send a notice of suspension to the certified operator that their certificate is suspended for up to sixty calendar days.

(a) Renewal fees not paid by January 21st, may incur a late fee.

(b) Upon processing the renewal payment, the certificate is no longer suspended and becomes valid.

(5) If the renewal fee is not paid during the suspension period, the department will send a notice of revocation to the certified operator's last known employer and the certified operator at their last known address.

(a) The notice of revocation will be sent by certified mail to the certified operator.

(b) If the certificate is not renewed, the certificate will be revoked ten business days after the revocation notice is sent.

**NEW SECTION**

**WAC 173-230-320 Temporary certificate.** (1) The department may issue a temporary certificate, for up to one year, to fill an operator in responsible charge position or lead operator of a shift position when the designated certified operator unexpectedly vacates the position.

(2) An owner may request a temporary certificate for an individual who meets, or is within six months of meeting, the certification requirements in Table 2 for the level of temporary certification being requested. A temporary certificate request must include:

(a) A cover letter explaining why the temporary certificate is needed, the facility name, and the name of the operator to be given the temporary certification.

(b) An application for the operator named in the cover letter.

(c) An application fee.

(3) A temporary certificate:

(a) May not exceed a one-year period.

(b) Is not renewable.

(c) Cannot be transferred to another individual.

(d) Expires either on the date specified, when the designated temporary operator passes the appropriate exam, or within one year of issuance, whichever comes first.

**NEW SECTION**

**WAC 173-230-330 Classification of wastewater treatment plants.** (1) The director shall classify all wastewater treatment plants according to the criteria in Table 4.

(2) If Table 4 indicates multiple classifications, the department will classify the wastewater treatment plant at the higher classification.

(3) The operator in responsible charge of the wastewater treatment plant must be certified at a level equal to or higher than the plant classification.

(4) When the plant is operated on more than one daily shift, the lead operator of each shift must be certified no lower than one level below the plant classification.

Table 4  
Treatment Plant Classification Criteria

Treatment Plant Classification Criteria		
Treatment Type	Design Flow MGD	Classification
Primary	≤ 1	I
	> 1 ≤ 10	II
	> 10 ≤ 20	III
	> 20	IV
Lagoon (Non-aerated)	All	I
Lagoon (Aerated)	≤ 1	I
	> 1	II
Biofiltration	≤ 1	II
	> 1 ≤ 10	III
	> 10	IV
Extended aeration	≤ 5	II
	> 5	III
Activated sludge	≤ 1	II
	> 1 ≤ 10	III
	> 10	IV
SBR	≤ 1	II
	> 1 ≤ 10	III
	> 10	IV
Wetland treatment	≤ 1	I
	> 1 ≤ 5	II
	> 5	III
Tertiary	≤ 5	III
	> 5	IV
MBR	≤ 1	II
	> 1 ≤ 10	III
	> 10	IV

(5) Plants may be classified differently than indicated in Table 4 if:

(a) They have characteristics that make operation more or less complex or difficult than other similar plants with the same flow range.

(b) The conditions of flow or the use of the receiving waters require an unusually high degree of plant operational control.

(c) They use an approved method of wastewater treatment that is not included in this section.

**NEW SECTION**

**WAC 173-230-340 Provisional certificate.** (1) If a wastewater treatment plant's classification increases solely due to a reclassification based on the criteria in Table 4, the department may issue a one-time provisional certificate to the

certified operator in responsible charge and the lead operator of each shift.

(a) The provisional certificate issued to the operator in responsible charge, will be for the same level as the plant classification.

(b) The provisional certificate issued to the lead operator of a shift, will be for one level lower than the plant classification.

(2) The provisional certificate will not be issued if the classification of a plant increases due to a:

- (a) Plant upgrade.
- (b) Change to the treatment processes.
- (c) Change to flow.

(3) The provisional certificate will be issued only for the operation of a specific plant and may not be transferred.

(4) When a certified operator holding a provisional certificate leaves employment with that plant, their certification level will return to their former certification level.

(5) The holder of a provisional certificate must continue to meet all certification requirements.

(6) When a certified operator holding a provisional certificate upgrades their certification level, they will no longer hold a provisional certificate.

#### NEW SECTION

**WAC 173-230-350 Violations.** (1) Violation of this chapter is a misdemeanor.

(2) Each day of operation in violation constitutes a separate offense.

(3) Upon conviction, violators are subject to fines not exceeding one hundred dollars for each offense.

(4) Injunctions may be obtained for continuing violations.

#### NEW SECTION

**WAC 173-230-360 Suspension of a certificate.** (1) A certificate will be suspended immediately when the director is notified by the department of social and health services that a person is not in compliance with a support order or a residential or visitation order.

(a) The department will notify a certified operator when their certification is suspended.

(b) The certificate will be reissued when the director is notified by the department of social and health services that the person is in compliance with the order.

(2) For reinstatement the operator must meet certification requirements in WAC 173-230-310 during the suspension period.

#### NEW SECTION

**WAC 173-230-370 Revocation of a certificate.** (1) Certificates may be revoked for a period of one or more years, when the department finds:

- (a) Fraud or deceit in obtaining the certificate.
- (b) Gross negligence in the operation of a wastewater treatment plant.
- (c) Violation of the requirements of this chapter or the statute it implements or of any lawful rule, regulation, or

order of the department, this includes, but is not limited to, violations of a permit and false statements.

(2) No revocation will be made under this section unless the operator has been notified that revocation is proposed, been advised of the reason, and been given an opportunity to appear before the director and be heard on the matter.

(3) If an operator's certificate is revoked:

(a) The operator will not be eligible to apply for a new certification as described in WAC 173-230-230 until the revocation period has ended.

(b) The operator must take an exam per WAC 173-230-270 for a new certification.

(c) An operator holding a certificate issued before or during a revocation period, is not eligible for reciprocity. For a new certification through reciprocity, the operator must meet (a) and (b) of this subsection after their revocation period has ended.

#### NEW SECTION

**WAC 173-230-380 Appeals.** Decisions of the director under this chapter to issue, revoke or suspend a certificate may be appealed to the pollution control hearings board as required by chapters 43.21B RCW and 371-08 WAC, within thirty days from the date of receipt of notice.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-230-010 What is the purpose of this regulation?

WAC 173-230-020 Definitions.

WAC 173-230-040 To whom does this rule apply?

WAC 173-230-061 Levels of certificates and qualifications.

WAC 173-230-065 How do I apply?

WAC 173-230-070 Examination.

WAC 173-230-080 Certificate term and renewal conditions.

WAC 173-230-090 Fees.

WAC 173-230-100 Suspension and revocation of a certificate.

WAC 173-230-110 Reciprocity.

WAC 173-230-120 Appeals.

WAC 173-230-130 Violations.

WAC 173-230-140 Classification of wastewater treatment plants.

**WSR 19-07-025**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed March 12, 2019, 3:36 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 357-13-045 Who is responsible for completing the position description form?, 357-19-297 What are the notification requirements for appointing an employee to a cyclic year position?, 357-28-095 Can an employer authorize additional pay to support recruitment and/or retention of a position?, 357-28-100 When must an employer receive director approval to authorize additional pay to support recruitment or retention of an employee or candidate for a position?, 357-31-165 At what rate do general government employees accrue vacation leave?, 357-58-035 What is the definition of a manager or managerial employee?, 357-58-042 What happens when it has been determined that a position no longer meets the definition of manager found in WAC 357-58-035?, 357-58-055 What civil service rules do not apply to Washington management service (WMS)?, 357-58-065 Definitions for Washington management service (WMS), 357-58-085 Can Washington management service (WMS) salaries be set outside the maximum of an assigned management band?, 357-58-095 May agencies provide salary increases for Washington management service (WMS) employees?, 357-58-115 What is a voluntary demotion and what changes may occur in salary?, 357-58-125 What is an involuntary downward movement and how does that affect the salary?, 357-58-126 How is the employee affected when the employee's position is involuntarily moved downward as described in WAC 357-58-125?, 357-58-130 Do salary increases greater than five percent for a group of employees need approval?, 357-58-136 Can an employer authorize a lump sum payment to support recruitment and/or retention of a WMS position?, 357-58-145 When may an agency authorize lump sum relocation compensation?, 357-58-170 What about other pay issues?, 357-58-175 Can an employer authorize lump sum vacation leave or accelerate vacation leave accrual rates to support the recruitment and/or retention of an employee or candidate for a Washington management service (WMS) position?, 357-58-180 Must an agency have a policy regarding authorization of additional leave to support the recruitment of a candidate or the retention of an employee for a WMS position?, 357-58-205 Under what conditions may an employer reassign a Washington management service (WMS) employee?, 357-58-207 How much notice must an employer give when reassigning a Washington management service (WMS) employee?, 357-58-210 When may a Washington management service (WMS) employee transfer to a Washington general service (WGS) position and vice versa?, 357-58-215 May a permanent employee voluntarily demote to a Washington general service (WGS) position?, 357-58-225 What return rights must an employer provide to a permanent Washington management service (WMS) employee who accepts a nonpermanent appointment to a Washington general service (WGS) position?, 357-58-230 May a permanent Washington

management service (WMS) employee accept an appointment to a project position in the general service and does the employee have any return right to the employee's permanent WMS position?, 357-58-255 May a permanent Washington management service (WMS) employee accept a project appointment within WMS and does the employee have any return rights to the employee's permanent WMS position?, 357-58-275 May a permanent Washington management service (WMS) employee accept an acting WMS appointment and what are the employee's return rights at the conclusion of the acting appointment?, 357-58-290 How long does the review period last?, 357-58-355 Can a permanent employee voluntarily revert during a review period?, 357-58-375 When permanent WMS employees promote or demote to positions in the general service and fail to complete the trial service period what reversion rights do permanent WMS employees have?, 357-58-395 What is the role of the department of enterprise services?, 357-58-438 What is the impact of a lay-off?, 357-58-480 What provisions govern(§) separation due to disability for Washington management service (WMS) employees?, 357-58-485 What provisions govern(§) non-disciplinary separation for Washington management service (WMS) employees?, 357-58-490 What provisions govern(§) separation for unauthorized absence for Washington management service (WMS) employees?, 357-58-500 May an employee request withdrawal of the employee's resignation?, 357-58-515 When a Washington management service (WMS) employee disagrees with an employer's action, can the employee request the employer reconsider the action that was taken?, 357-58-540 What type of records are agencies required to keep and report for WMS employees?, 357-58-552 Under the provisions of temporary layoff, what happens if an employer has less than twenty hours per week of work for a Washington management service (WMS) employee to perform?, 357-58-555 At the conclusion of a temporary layoff, does a Washington management service (WMS) employee have the right to return to the position that was held immediately prior to being temporarily laid off?, and 357-58-565 What mechanism must be used to report WMS inclusion and evaluation activities?

Hearing Location(s): On May 9, 2019, at 8:30 a.m., at the Office of Financial Management, Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501.

Date of Intended Adoption: May 16, 2019.

Submit Written Comments to: Brandy Chinn, Office of Financial Management (OFM), P.O. Box 47500, Olympia, WA 98501, email Brandy.Chinn@ofm.wa.gov, fax 360-586-4694, by May 2, 2019.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments are housekeeping in nature and provide clarification for consistent rule application.

Reasons Supporting Proposal: In April 2018, the WMS coordinator's group requested a review of chapter 357-58 WAC. As a result, a subgroup of five agencies met to review the chapter to determine if there were any updates needed. Additional amendments were a result of questions that have

been received from stakeholders. As a result of amending chapter 357-58 WAC it was determined that similar amendments were required for WAC 357-13-045, 357-19-297, 357-28-095, 357-28-100 and 357-31-165 for consistency purposes. These rules were discussed at the February 15, 2019, rules meeting. The ultimate goal is to improve transparency and consistency of WMS as a whole.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: [OFM], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brandy Chinn, 128 10th Avenue, Olympia, WA 98501, 360-407-4141.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

March 12, 2019

Roselin Marcus

Assistant Director of

Legal and Legislative Affairs

**AMENDATORY SECTION** (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

**WAC 357-13-045 Who is responsible for completing the position description form?** The manager of the position is responsible for completing the position description form. If the position is filled, input from the ((~~incumbent's~~)) employee is recommended.

**AMENDATORY SECTION** (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-297 What are the notification requirements for appointing an employee to a cyclic year position?** Upon appointment and before the start of each annual cycle, ((~~incumbents~~)) employees of cyclic year positions must be informed in writing of their scheduled periods of leave without pay in the ensuing annual cycle. Scheduled, cyclic leave without pay does not constitute a break in service and is not deducted from the employees' seniority and does not affect the employees' vacation leave accrual rate.

**AMENDATORY SECTION** (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-095 Can an employer authorize additional pay to support recruitment and/or retention of a position?** (1) Employers may authorize additional pay to

support the recruitment or retention of the incumbent or candidate for a **specific position**. At the employer's discretion, up to a fifteen percent premium may be added to the employee's base salary or paid on a lump sum basis as described in subsection (2). An employee may not receive more than fifteen percent of his/her annual base salary over a twelve month period under the provisions of this section.

(2) In advance of authorizing a lump sum recruitment or retention payment, employers must establish express conditions in writing for the payment. The conditions must include a specified period of employment or continued employment. Any lump sum payment under this section must only be made after services have been rendered in accordance with conditions established by the employer and become part of the ((~~incumbent's~~)) employee's annual compensation for work performed prior to receipt of any funds.

(3) Any additional pay granted under this section is a premium that is not part of base salary. The premium is to be used only as long as the circumstances it is based on are in effect.

**AMENDATORY SECTION** (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

**WAC 357-28-100 When must an employer receive director approval to authorize additional pay to support recruitment or retention of an ((~~incumbent~~)) employee or candidate for a position?** (1) Director approval is required for employers to authorize:

(a) Premiums exceeding fifteen percent under the provisions of WAC 357-28-095; and

(b) Additional pay to support the recruitment and/or retention of **like positions** at a specific work location.

(2) In advance of authorizing a director approved lump sum recruitment or retention payment, employers must establish express conditions in writing for the payment. The conditions must include a specified period of employment or continued employment. Any lump sum payment under this section must only be made after services have been rendered in accordance with conditions established by the employer and become part of the ((~~incumbent's~~)) employee's annual compensation for work performed prior to receipt of any funds.

(3) Additional pay granted under this section is a premium that is not part of base salary. The premium is to be used only as long as the circumstances it is based on are in effect.

**AMENDATORY SECTION** (Amending WSR 18-17-132, filed 8/20/18, effective 9/21/18)

**WAC 357-31-165 At what rate do general government employees accrue vacation leave?** (1) Full-time general government employees accrue vacation leave at the following rates:

(a) During the first and second years of current continuous state employment - Nine hours, twenty minutes per month;

(b) During the third year of current continuous state employment - Ten hours per month;

(c) During the fourth year of current continuous state employment - Ten hours, forty minutes per month;

(d) During the fifth and sixth years of total state employment - Eleven hours, twenty minutes per month;

(e) During the seventh, eighth and ninth years of total state employment - Twelve hours per month;

(f) During the tenth, eleventh, twelfth, thirteenth and fourteenth years of total state employment - Thirteen hours, twenty minutes per month;

(g) During the fifteenth, sixteenth, seventeenth, eighteenth and nineteenth years of total state employment - Fourteen hours, forty minutes per month;

(h) During the twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth years of total state employment - Sixteen hours per month; and

(i) During the twenty-fifth and succeeding years of total state employment - Sixteen hours, forty minutes per month.

(2) As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or ~~((incumbent))~~ employee for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection (1)(i) of this section.

(3) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited.

(c) Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-035 What is the definition of a manager or managerial employee?** In accordance with RCW 41.06.022, a manager or managerial employee is defined as the ~~((incumbent))~~ employee of a position that:

(1) Formulates statewide policy or directs the work of an agency or agency subdivision;

(2) Administers one or more statewide policies or programs of an agency or agency subdivision;

(3) Manages, administers~~((s))~~ and controls a local branch office of an agency or an agency subdivision, including the physical, financial~~((s))~~ or personnel resources;

(4) Has substantial responsibility in personnel administration, legislative relations, public information~~((s))~~ or the preparation and administration of budgets; and/or

(5) Functions above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment.

AMENDATORY SECTION (Amending WSR 06-15-068, filed 7/13/06, effective 8/14/06)

**WAC 357-58-042 What happens when it has been determined that a position no longer meets the definition**

**of manager found in WAC 357-58-035?** When an agency has determined that the duties of a position no longer meet the definition of manager, found in WAC 357-58-035, and is no longer appropriate in Washington management service (WMS), then provisions of chapter 357-58 WAC ((357-58)) no longer apply. The Washington general service (WGS) rules on reallocation ~~((WAC 357-13))~~ (chapter 357-13 WAC) will apply. The employee will retain existing status.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

**WAC 357-58-055 What civil service rules do not apply to Washington management service (WMS)?**

Except where specifically stated otherwise, the following WAC chapters do not apply to positions or employees included in the Washington management service (WMS):

Chapter 357-01 WAC, Definitions;

Chapter 357-13 WAC, Classification;

Chapter 357-16 WAC, Recruitment, assessment, and certification;

Chapter 357-19 WAC, Appointments and reemployment;

Chapter 357-28 WAC, Compensation;

Chapter 357-46 WAC, Layoff and separation; and

Chapter 357-49 WAC, Director's reviews.

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

**WAC 357-58-065 Definitions for Washington management service (WMS).** The following definitions apply to chapter 357-58 WAC:

(1) **Break in service.** An employee has a break in continuous state service if the employee is separated, dismissed or resigns from state service. A furlough for the purposes of temporary layoff as provided in WAC 357-58-550 is not considered a break in continuous state service.

(2) **Competencies.** Those measurable or observable knowledge, skills, abilities and behaviors critical to success in a key job role or function.

~~((2))~~ (3) **Director.** State human resources director within the office of financial management.

~~((3))~~ (4) **Dismissal.** The termination of an individual's employment for disciplinary ~~((purposes))~~ reasons.

~~((4))~~ (5) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

~~((5))~~ (6) **Evaluation points.** ~~((Evaluation points are))~~ The points resulting from an evaluation of a position using the managerial job value assessment chart.

~~((6))~~ (7) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

~~((7))~~ (8) **Management bands.** ~~((Management bands are))~~ A series of management levels included in the Washington management service (WMS). Placement in a band reflects the nature of management, decision-making environ-

ment and policy impact and scope of management accountability and control assigned to the position.

~~((8))~~ **(9) Performance management confirmation.** Approval granted by the director to an employer allowing the employer to factor in individual employee performance when granting recognition leave and when making layoff decisions.

~~((9))~~ **(10) Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions or circumstances associated with the job.

~~((10))~~ **(11) Reassignment.** ~~((A reassignment is))~~ An employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and ~~((its incumbent))~~ the employee in that position from one section, department or geographical location to another section, department or geographical location.

~~((11))~~ **(12) Review period.** ~~((The review period is))~~ A period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

~~((12))~~ **(13) Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

~~((13))~~ **(14) Separation.** Separation from state employment for nondisciplinary ~~((purposes))~~ reasons.

~~((14))~~ **(15) Suspension.** An absence without pay for disciplinary ~~((purposes))~~ reasons.

~~((15))~~ **(16) Transfer.** ~~((A WMS transfer is))~~ An employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

~~((16))~~ **(17) Washington general service (WGS).** ~~((Washington general service is))~~ The system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

~~((17))~~ **(18) Washington management service (WMS).** ~~((Washington management service is))~~ The system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

**WAC 357-58-085 Can Washington management service (WMS) salaries be set outside the maximum of an assigned management band?** Compensation for a Washington management service (WMS) position may be set outside the maximum of the assigned management band when allowed under ~~((any provision of this chapter))~~ WAC 357-58-125 or when approved by the director.

AMENDATORY SECTION (Amending WSR 16-05-056, filed 2/12/16, effective 3/14/16)

**WAC 357-58-095 May agencies provide salary increases for Washington management service (WMS) employees?** Employers may provide salary increases to Washington management service (WMS) employees in recognition of the employee's demonstrated growth and development in accordance with WAC 357-58-100.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-115 What is a voluntary demotion and what changes may occur in salary?** A voluntary demotion is a voluntary movement by an employee to a position ~~((with))~~ that has a lower salary standard and/or lower evaluation points. Such movement may result in a salary decrease.

AMENDATORY SECTION (Amending WSR 17-11-048, filed 5/15/17, effective 6/19/17)

**WAC 357-58-125 What is an involuntary downward movement and how does that affect the salary?** An involuntary downward movement is based on a nondisciplinary reassignment of duties that results in a lower salary standard and/or lower evaluation points for an employee's current position. A Washington management service (WMS) employee occupying a position that is ~~((affected))~~ affected by an involuntary downward movement must be placed within the salary standard established for the WMS position at an amount equal to ~~((his/her))~~ the employee's previous base salary. If the previous base salary exceeds the new salary standard, the employee's base salary must be set equal to the maximum of the salary standard for the position. The employee's base salary may be set higher than the salary standard maximum, but not exceeding the previous base salary, if allowed by the employer's salary administration policy.

AMENDATORY SECTION (Amending WSR 14-06-007, filed 2/20/14, effective 3/24/14)

**WAC 357-58-126 How is the employee affected when ~~((his/her))~~ the employee's position is involuntarily moved downward as described in WAC 357-58-125? When an employee's position is moved involuntary downward as described in WAC 357-58-125, the following applies:**

(1) If the employee meets the position requirements and chooses to remain in the position the employee retains appointment status and ~~((his/her))~~ the employee's salary is set in accordance with WAC 357-58-125.

(2) If the employee chooses to vacate the position or does not meet the position requirements, the employer's Washington management service (WMS) layoff procedure applies.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

**WAC 357-58-130 Do salary increases greater than five percent for a group of employees need approval?** Sal-



ary (~~changes~~) increases greater than five percent proposed for any group of five or more employees must be reviewed and approved by the director. A group of employees means five or more employees with the same working title.

AMENDATORY SECTION (Amending WSR 17-18-027, filed 8/28/17, effective 10/2/17)

**WAC 357-58-136 Can an employer authorize a lump sum payment to support recruitment and/or retention of a WMS position?** (1) With director approval, employers may authorize up to a fifteen percent lump sum payment in addition to the employee's base salary to support the recruitment and/or retention of the (~~incumbent~~) employee or candidate for a specific WMS position.

(2) An employee may not receive more than fifteen percent of their annual base salary over a twelve-month period.

(3) In advance of authorizing a lump sum payment for recruitment and/or retention, employers must establish express conditions in writing for the payment. The conditions must include a specified period of employment or continued employment. Any lump sum payment under this section must only be made after services have been rendered in accordance with conditions established by the employer.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-145 When may an agency authorize lump sum relocation compensation?** An agency director may authorize lump sum relocation compensation, within existing resources, whenever:

(1) It is reasonably necessary that a (~~person move his or her home to accept a transfer or~~) new or existing employee move their primary domicile to accept an appointment; or

(2) It is necessary to successfully recruit or retain a qualified candidate or employee who will have to move (~~his or her home~~) in order to accept the position.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-170 What about other pay issues?** Each agency may establish policies and practices for additional compensation (~~such as~~) for shift differential, call back pay(~~s~~) and standby pay in accordance with the provisions of chapter 357-28 WAC. Other additional compensation may be allowed when approved by the director.

AMENDATORY SECTION (Amending WSR 17-18-028, filed 8/28/17, effective 10/2/17)

**WAC 357-58-175 Can an employer authorize lump sum vacation leave or accelerate vacation leave accrual rates to support the recruitment and/or retention of an (~~incumbent~~) employee or candidate for a Washington management service (WMS) position?** In addition to the vacation leave accruals as provided in WAC 357-31-165, an employer may authorize additional vacation leave as follows to support the recruitment and/or retention of an (~~incumbent~~)

employee or candidate for a specific Washington management service (WMS) position:

(1) Employers may authorize an accelerated accrual rate for an (~~incumbent~~) employee or candidate. The WMS employee would remain at the accelerated accrual rate until the WMS employee's anniversary date caught up to the accrual rate amount in accordance with WAC 357-31-165; and/or

(2) Employers may authorize a lump sum accrual of up to eighty hours of vacation leave for the (~~incumbent~~) employee or candidate.

Vacation leave accrued under this section must be used in accordance with the leave provisions of chapter 357-31 WAC.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-180 Must an agency have a policy regarding authorization of additional leave to support the recruitment of a candidate or the retention of an (~~incumbent~~) employee for a WMS position?** In order to authorize additional leave for the recruitment and/or retention of a candidate or (~~incumbent~~) employee for a WMS position, an agency must have a written policy that:

(1) Identifies the reasons for which the employer may authorize additional leave; and

(2) Requires that lump sum accruals only be granted after services have been rendered in accordance with express conditions established by the employer.

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

**WAC 357-58-205 Under what conditions may an employer reassign a Washington management service (WMS) employee?** At any time, an agency may reassign an employee or a position and its (~~incumbent~~) employee to meet client or organizational needs. If the new location is within a reasonable commute of the employee's domicile, as defined by the agency, the employee must accept the reassignment.

If the reassignment is beyond a reasonable commute of the employee's domicile and the employee does not agree to the reassignment, the employee has layoff rights in accordance with this chapter.

#### NEW SECTION

**WAC 357-58-207 How much notice must an employer give when reassigning a Washington management service (WMS) employee?** An employer must give fifteen calendar days' written notice to a Washington management service (WMS) employee who is being reassigned unless the employer and employee agree to waive the fifteen days' notice period.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-210** When may a Washington management service (WMS) employee transfer to a Washington general service (WGS) position and vice versa? A permanent employee may transfer from a Washington management service (WMS) position to a Washington general service (WGS) position if ~~((his/her))~~ the employee's salary is within the salary range of the WGS position.

A permanent employee may transfer from a WGS position to a WMS position if ~~((his/her))~~ the employee's salary is within the management band assigned to the WMS position.

AMENDATORY SECTION (Amending WSR 05-21-053, filed 10/13/05, effective 11/15/05)

**WAC 357-58-215** May a permanent employee voluntarily demote to a Washington general service (WGS) position? A permanent employee may voluntarily demote from a Washington management service (WMS) position to a Washington general service (WGS) position at a lower pay level than ~~((his/her))~~ the employee's current position.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-225** What return rights must an employer provide to a permanent Washington management service (WMS) employee who accepts a nonpermanent appointment to a Washington general service (WGS) position? (1) When a permanent Washington management service (WMS) employee has accepted a nonpermanent appointment to a Washington general service (WGS) position within the **same** agency and the nonpermanent appointment ends, the agency must at a minimum provide the employee the layoff rights of ~~((his/her))~~ the employee's permanent WMS position. If returning to a permanent WMS position the employee's salary must not be less than the salary of the previously held permanent WMS position.

(2) When a permanent WMS employee has accepted a nonpermanent appointment to a WGS position within ~~((the))~~ a different agency, the original agency must provide layoff rights as specified in subsection (1) of this section for six months from the time the employee is appointed. Any return right after six months is negotiable between the employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment. If the employee does not return on the agreed upon date, the employee can request placement in the general government transition pool per WAC 357-46-095.

(3) In lieu of the rights provided in subsection (1) or (2) of this section, the agency and the employee may agree to other terms.

AMENDATORY SECTION (Amending WSR 05-21-053, filed 10/13/05, effective 11/15/05)

**WAC 357-58-230** May a permanent Washington management service (WMS) employee accept an appointment to a project position in the general service and does

the employee have any return right to ~~((his/her))~~ the employee's permanent WMS position? A permanent Washington management service (WMS) employee may accept an appointment to a project Washington general service (WGS) position as provided in chapter 357-19 WAC. Any right to return to the employee's permanent WMS position is negotiable between the employer and employee and must be agreed to prior to the employee accepting the WGS position. If no return right is agreed to, the employee has the rights provided by chapter 357-46 WAC upon layoff from the project.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

**WAC 357-58-255** May a permanent Washington management service (WMS) employee accept a project appointment within WMS and does the employee have any return rights to ~~((his/her))~~ the employee's permanent WMS position? A permanent Washington management service (WMS) employee may accept an appointment to a project WMS position. Any right to return to the employee's permanent WMS position is negotiable between the employer and employee and must be agreed to prior to the employee accepting the project position. If no return right is agreed to, the permanent employee has the rights provided by WAC 357-58-465 upon layoff from the project.

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

**WAC 357-58-275** May a permanent Washington management service (WMS) employee accept an acting WMS appointment and what are the employee's return rights at the conclusion of the acting appointment? Permanent Washington management service (WMS) employees may accept acting appointments to WMS positions.

(1) When a permanent WMS employee has accepted an acting appointment within the **same** agency and the acting appointment ends~~((, the agency must at a minimum provide the employee the layoff rights of his/her permanent WMS position. If returning to a permanent WMS position the employee's salary must not be less than the salary of the previously held permanent WMS position))~~ the following applies:

(a) The agency may agree to return the employee to a permanent WMS position. If returning to a permanent WMS position, the employee's salary must not be less than the salary of the previously held permanent WMS position.

(b) The agency at a minimum provide the employee the layoff rights of the employee's permanent WMS position in accordance with WAC 357-58-465.

(2) When a permanent WMS employee has accepted an acting appointment within a **different** agency, the original agency must provide layoff rights as specified in subsection (1) of this section for six months from the time the employee is appointed. Any return right after six months is negotiable between the employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment. If the employee does not return on the agreed upon

date, the employee can request placement in the general government transition pool per WAC 357-46-095.

(3) In lieu of the rights provided in subsection (1) and (2) of this section, the agency and the employee may agree to other terms.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

**WAC 357-58-290 How long does the review period last?** Based on the nature of the job and the skills of the appointee, the review period will be between twelve and eighteen months as determined by the appointing authority. At the time of the appointment, the appointing authority will inform the appointee in writing of the length of the review period. If an employee in a Washington management service (WMS) review period accepts a nonpermanent position in a Washington general service (WGS) position, upon return to the WMS position the employer may suspend the review period and allow the employee to resume where the employee left off or start the review period over.

AMENDATORY SECTION (Amending WSR 05-21-053, filed 10/13/05, effective 11/15/05)

**WAC 357-58-355 Can a permanent employee voluntarily revert during a review period?** Within the first thirty calendar days of any review period, a permanent employee may request to voluntarily revert to ~~((his/her))~~ the employee's former employer. If the former employer authorizes the reversion, the following applies:

(1) If the employee holds permanent status in Washington management service (WMS), the employer must place the employee in a vacant funded WMS position for which the employee is qualified~~((;))~~ and that is comparable to the employee's position and salary prior to the last WMS appointment.

(2) If the employee holds permanent status in Washington general service (WGS) and has not yet gained permanent status in WMS, the employee has reversion rights in accordance with WAC 357-19-115, 357-19-117~~((;))~~ and 357-19-120.

AMENDATORY SECTION (Amending WSR 14-24-025, filed 11/21/14, effective 12/22/14)

**WAC 357-58-375 When permanent WMS employees promote or demote to positions in the general service and fail to complete the trial service period what reversion rights do permanent WMS employees have?** (1) When a permanent WMS employee **promotes** to a WGS position within the **same** agency and is reverted during the trial service period, the agency must place the employee in a vacant funded WMS position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the WGS appointment. If no vacant funded positions are available, the agency must place the employee in a WMS position for which the employee is qualified and which is similar to the employee's previous position and salary. If the reversion of the employee causes the total number of employ-

ees to exceed the total number of positions to be filled, the employer may implement a layoff.

(2) When a permanent WMS employee **demotes** to a WGS position in the **same** agency and is reverted during the trial service period the agency must place the employee in a vacant funded WMS position for which the employee is qualified and with a salary that is equal to or less than the salary range maximum of the class from which the employee is reverting. If no vacant funded positions are available, the agency must place the employee in a WMS position for which the employee is qualified and which is similar to the employee's previous position and salary. If the reversion of the employee causes the total number of employees to exceed the total number of positions to be filled, the employer may implement a layoff.

(3) When a permanent WMS employee **promotes or demotes** to a WGS position in a **different** agency and is reverted during the trial service period, the employer may separate the employee by providing fifteen calendar days' written notice. The employee may apply for the general government transition pool.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

**WAC 357-58-395 What ~~((will be))~~ is the role of the department of enterprise services?** The department of enterprise services shall assist state agencies by providing a quality developmental and leadership training program and consultative and technical assistance to help agencies address the development needs of their managers.

AMENDATORY SECTION (Amending WSR 06-03-075, filed 1/12/06, effective 2/13/06)

**WAC 357-58-438 What is the impact of a layoff?** Layoff is an employer-initiated action taken in accordance with WAC 357-58-445 that results in:

- (1) Separation from service with an employer;
- (2) Employment in a Washington management service (WMS) position with a lower salary standard or evaluation points or a Washington general service (WGS) position with a lower salary range maximum~~((;))~~ ~~((3))~~ Reduction in the work year; or
- ~~((4))~~ (3) Reduction in the number of work hours.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

**WAC 357-58-480 What provisions govern~~((s))~~ separation due to disability for Washington management service (WMS) employees?** Washington management service (WMS) employees may be separated due to disability in accordance with WAC 357-46-160, 357-46-165, 357-46-170, and 357-46-175.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

**WAC 357-58-485 What provisions govern~~((s))~~ non-disciplinary separation for Washington management ser-**

**vice (WMS) employees?** Employers may separate Washington management service (WMS) employees for nondisciplinary reasons in accordance with WAC 357-46-195, 357-46-200(;) and 357-46-205.

**AMENDATORY SECTION** (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

**WAC 357-58-490 What provisions govern((s)) separation for unauthorized absence for Washington management service (WMS) employees?** Employers may separate Washington management service (WMS) employees for unauthorized absence in accordance with WAC 357-46-210, 357-46-215, 357-46-220 and 357-46-225.

**AMENDATORY SECTION** (Amending WSR 05-12-072, filed 5/27/05, effective 7/1/05)

**WAC 357-58-500 May an employee request withdrawal of ((his/her)) the employee's resignation?** An appointing authority or employing official may permit withdrawal of a resignation at any time prior to the effective date.

**AMENDATORY SECTION** (Amending WSR 14-24-023, filed 11/21/14, effective 12/22/14)

**WAC 357-58-515 When a Washington management service (WMS) employee disagrees with an employer's action, can the employee request the employer reconsider the action that was taken?** Each agency will develop procedures to reconsider agency actions at the request of the employee. The agency's procedure must identify those actions for which an employee may request reconsideration. At a minimum, the agency's procedure must allow an employee to request reconsideration of the following:

(1) Salary adjustment (or lack thereof) when the responsibilities of the permanent employee's position have been changed.

(2) Placement following reversion of a permanent employee.

(3) Decisions about whether or not a position is included in the Washington management service (WMS). When reconsidering decisions concerning inclusion in WMS the following apply:

(a) The final agency internal decision must be made by the agency director or designee.

(b) If the ((incumbent)) employee disagrees with the agency director/designee's decision, ((he/she)) the employee may request a review by the director, as long as such request is made within fifteen calendar days of notification of the decision. Such review will be limited to relevant documents and information and will be final.

**AMENDATORY SECTION** (Amending WSR 06-07-048, filed 3/9/06, effective 4/10/06)

**WAC 357-58-552 Under the provisions of temporary layoff, what happens if an employer has less than twenty hours per week of work for a Washington management service (WMS) employee to perform?** If an employer has less than twenty hours per week of work for a Washington

management service (WMS) employee to perform during a period of temporary layoff, the employer must ((notify)) provide notification to the WMS employee that ((he/she)) is being furloughed. The employer may then offer the available work hours to the WMS employee as an acting appointment under the provisions of WAC 357-58-265.

**AMENDATORY SECTION** (Amending WSR 06-07-048, filed 3/9/06, effective 4/10/06)

**WAC 357-58-555 At the conclusion of a temporary layoff, does a Washington management service (WMS) employee have the right to return to the position ((he/she)) that was held immediately prior to being temporarily laid off?** At the conclusion of the temporary layoff, the Washington management service (WMS) employee has the right to resume the position ((he/she)) that was held immediately prior to being temporarily laid off. The employee returns with the same status and percentage of appointment ((he/she)) that was held prior to the layoff.

#### **REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 357-58-540 What type of records are agencies required to keep and report for WMS employees?
- WAC 357-58-565 What mechanism must be used to report WMS inclusion and evaluation activities?

### **WSR 19-07-035**

#### **PROPOSED RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed March 13, 2019, 4:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-21-003.

Title of Rule and Other Identifying Information: Chapter 192-500 WAC, Definitions: WAC 192-500-110 Week, 192-500-120 Employee fraud, 192-500-130 Nondisclosure, 192-500-140 Willful nondisclosure, 192-500-150 Misrepresentation, 192-500-160 Continued claim, and 192-500-170 Self-employed.

Chapter 192-510 WAC, Assessing and collecting premiums: WAC 192-510-025 What wages are reportable to the department for premium assessment purposes?

Chapter 192-610 WAC, Initial applications for benefits: WAC 192-610-070 Can an employee cancel a claim after it has been submitted to the department?, 192-610-075 Can an employer require an employee to take paid time off in place of paid family or medical leave benefits?, 192-610-080 When should an employee reopen a claim?, and 192-610-085 How should an employee reopen a claim?

Chapter 192-620 WAC, Weekly benefits: WAC 192-620-005 What is the minimum claim duration?, 192-620-010 How should employees request benefit payments?, 192-620-020 What information will the department request from employees when filing for weekly benefits?, and 192-620-025 What happens if an employee is being conditionally paid benefits?

Chapter 192-630 WAC, Claim determinations: WAC 192-630-005 What happens if there is a question regarding whether an employee is qualified for benefits?, 192-630-010 What happens if an interested party does not respond to the department's request for information?, and 192-630-015 How will a determination be made about an employee's eligibility for benefits?

Chapter 192-800 WAC, Practice and procedure: WAC 192-800-005 What is the standard the department will use to determine fraud?, 192-800-010 How will the disqualification periods and penalties be assessed for an employee who is determined to have committed fraud?, and 192-800-015 When will the department change an occurrence of fraud?

Hearing Location(s): On May 22, 2019, at 1:00 p.m., at 640 Woodland Square Loop S.E., Lacey, WA 98503, meeting will be in the Park Place Conference Room; and on May 29, 2019, at 9:00 a.m., at the DoubleTree Hilton, Spokane City, Center 322 North Spokane Falls Court, Spokane, WA 99201.

Date of Intended Adoption: May 30, 2019.

Submit Written Comments to: Christina Streuli, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email [cstreuli@esd.wa.gov](mailto:cstreuli@esd.wa.gov), online portal [https://www.peakdemocracy.com/portals/289/forum\\_home?phase=open](https://www.peakdemocracy.com/portals/289/forum_home?phase=open), by May 29, 2019.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer, phone 360-902-9354, TTY 711, email [TEckstein@esd.wa.gov](mailto:TEckstein@esd.wa.gov), by May 22, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules will further define paid family and medical leave requirements for premium assessment and collection, application for benefits, weekly benefits, claim determinations, and provide practices and procedures for fraud determinations.

Reasons Supporting Proposal: The rules will assist in meeting the requirements to implement payment of benefits to eligible employees by January 1, 2020, as mandated by Title 50A RCW.

Statutory Authority for Adoption: RCW 50A.04.215.

Statute Being Implemented: RCW 50A.04.010, 50A.04.-020, 50A.04.035, 50A.04.115, 50A.04.040, 50A.04.045, 50A.04.050, 50A.04.065, 50A.04.105, 50A.04.185, 50A.04.-510, 50A.04.085, and 50A.04.260.

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

Name of Proponent: Employment security department, paid family and medical leave division, governmental.

Name of Agency Personnel Responsible for Drafting: Christina Streuli, Lacey, Washington, 360-791-6710; Implementation and Enforcement: Matt Buelow, Lacey, Washington, 360-742-7311.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. All proposed rules are exempt under RCW 34.05.328(5). After review of the proposed rules, the agency determined the rules do not impose more-than-minor costs on businesses. Rules proposed are either interpretive or procedural. Definitions provided in these proposed rules clarify verbiage for processes in determining fraud, defining continued claim, and defining self-employed. The definitions do not impact procedures. Rules related to premium assessment and claims detail processes and procedures and add clarity to previous rules. Because of the connection to previous rules, there are no additional costs to businesses. Additional proposed rules address processes and procedures for employees benefit claims and would not produce costs.

Please see significance analysis for more information.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 34.05.328 (5)(c)(i) and (ii), and 19.85.025(5).

Explanation of exemptions: RCW 34.05.328 (5)(c)(ii) creates an exemption for interpretive rules. This exemption applies to portions of the proposal. RCW 34.05.328 (5)(c)(i) creates an exemption for procedural rules. This exemption applies to portions of the proposal.

March 13, 2019

Matthew J. Buelow

Policy and Rules Manager  
for Paid Family and Medical Leave

#### NEW SECTION

**WAC 192-500-110 Week.** A "week" is a period of seven consecutive calendar days beginning on Sunday 12:00 a.m. and ending at 11:59 p.m. the following Saturday.

#### NEW SECTION

**WAC 192-500-120 Employee fraud.** (1) "Fraud" means an action taken by an employee where either of the following is determined to have occurred:

(a) Willful nondisclosure as defined in WAC 192-500-140; or

(b) Misrepresentation as defined in WAC 192-500-150.

(2) A finding of fraud will result in a disqualification of benefits and applicable penalties under Title 50A RCW.

#### NEW SECTION

**WAC 192-500-130 Nondisclosure.** "Nondisclosure" occurs when information that is known or should have been known by the employee at the time it is requested by the department, is not disclosed either inadvertently or through unintentional oversight.

NEW SECTION

**WAC 192-500-140 Willful nondisclosure.** "Willful nondisclosure" occurs when:

- (1) An employee omits or fails to disclose information;
- (2) The employee either knew or should have known that the information should have been provided;
- (3) The information concerned a fact that was material to the employee's rights and responsibilities under Title 50A RCW; and
- (4) The employee omitted or did not disclose the information with the intent that the department would take action on other information the employee did provide.

NEW SECTION

**WAC 192-500-150 Misrepresentation.** "Misrepresentation" occurs when:

- (1) The employee has made a statement or provided information;
- (2) The statement was false;
- (3) The employee either knew or should have known the statement or information was false when making or submitting it;
- (4) The statement or submission concerned a fact that was material to the employee's rights and responsibilities under Title 50A RCW; and
- (5) The employee made the statement or submitted the information with the intent that the department would rely on the statement or information when taking action.

NEW SECTION

**WAC 192-500-160 Continued claim.** (1) An employee is a "continued claim" recipient if the employee:

- (a) Is eligible for benefits; and
  - (b) Has received credit for the waiting period or payment of benefits for one or more weeks in a claim year and in the current continued claim series.
- (2) Continued claim status will end following four or more consecutive weeks for which the employee does not file a claim or is not taking paid family or medical leave.

NEW SECTION

**WAC 192-500-170 Self-employed.** (1) A "self-employed" person is:

- (a) A sole proprietor;
  - (b) A joint venturer or a member of a partnership that carries on a trade or business, contributes money, property, labor or skill and shares in the profits or losses of the business;
  - (c) A member of a limited liability company;
  - (d) An independent contractor who works as described in RCW 50A.04.010 (7)(b); or
  - (e) Otherwise in business for oneself as indicated by the facts and circumstances of the situation, including a part-time business.
- (2) A corporate officer is an employee and not self-employed.

NEW SECTION

**WAC 192-510-025 What wages are reportable to the department for premium assessment purposes?** (1) Examples of wages reportable to the department for premium assessment purposes include, but are not limited to:

- (a) Salary or hourly wages;
  - (b) Cash value of goods or services given in the place of money;
  - (c) Commissions or piecework;
  - (d) Bonuses;
  - (e) Cash value of gifts or prizes;
  - (f) Cash value of meals and lodging when given as compensation;
  - (g) Holiday pay;
  - (h) Paid time off, including vacation and sick leave, as well as associated cash outs;
  - (i) Bereavement leave;
  - (j) Separation pay including, but not limited to, severance pay, termination pay, and wages in lieu of notice;
  - (k) Value of stocks at the time of transfer to the employee if given as part of a compensation package;
  - (l) Compensation for use of specialty equipment, performance of special duties, or working particular shifts; and
  - (m) Stipends/per diems unless provided to cover a past or future cost incurred by the employee as a result of the performance of the employee's expected job functions.
- (2) Examples of what the department will not consider wages include, but are not limited to:

- (a) A supplemental payment from an employer benefit that is not part of the employee's standard compensation.

**Example:** While on paid medical leave, an employee receives 61 percent of the employee's typical weekly wage from the state. Through an internal short-term disability benefit, the employer pays the employee the remaining 39 percent of the employee's typical weekly wage as a supplemental benefit payment, bringing the employee's total benefit to 100 percent of the employee's typical weekly wage. Since this supplemental benefit payment is not part of the employee's standard compensation, it is not considered a wage, and should not be reported on either the employee's weekly claim or the employer's quarterly report.

- (b) Any payment made to an employee to cover a past or future cost incurred by the employee related to the performance of the employee's expected job functions. Such costs include, but are not limited to, costs of meals and travel.

**Example:** An employer pays a per diem to an employee on a business trip to cover the cost of local travel and meals. This amount is not considered a wage, even if the per diem exceeds the actual cost incurred.

- (c) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment) to, or on behalf of, an individual or the individual's dependents under a plan or system established by an employer which makes provision generally for individuals performing service for the employer (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of:

- (i) Retirement;
- (ii) Sickness or accident disability;

- (iii) Medical or hospitalization expenses in connection with sickness or accident disability; or
- (iv) Death.

NEW SECTION

**WAC 192-610-070 Can an employee cancel a claim after it has been submitted to the department?** (1) If an employee has not been issued a payment on the claim, an employee may cancel a claim within thirty days of the date of the submitted application for benefits.

(2) The commissioner, at the commissioner's discretion, may permit cancellation of a claim without an issued payment after thirty days from the date of the submitted application for benefits in extreme and unusual circumstances.

(3) An employee may not cancel a claim that has been issued a payment. The department will only cancel a claim that has been issued a payment in any amount if the department made the payment due to departmental error.

(4) If the department has denied benefits before the request to cancel the claim was received, the denial will remain in effect.

(5) The denial of a request to cancel a claim is not subject to appeal.

NEW SECTION

**WAC 192-610-075 Can an employer require an employee to take paid time off in place of paid family or medical leave benefits?** Employers may not require employees to take paid vacation leave, paid sick leave, or other forms of paid time off provided by the employer before, in place of, or concurrently with paid family or medical leave benefits.

NEW SECTION

**WAC 192-610-080 When should an employee reopen a claim?** (1) When an employee has an existing claim year and more than four consecutive weeks have passed since the employee filed a weekly claim for benefits, or the employee experiences a new qualifying event, the employee must reopen the claim in order to receive benefit payments.

(2) If the duration of leave for a qualifying event has not expired:

(a) The employee can reopen the claim and file weekly claims as necessary.

(b) If the employee requests to claim the weeks prior to the date the claim is reopened, the employee must have good cause as defined in WAC 192-610-040 to claim prior weeks.

(3) If the duration of leave for the qualifying event has expired or the reason for leave is not the same as the previous qualifying event, the employee must reopen the claim by updating the application as required under WAC 192-610-010 before benefits will be paid.

NEW SECTION

**WAC 192-610-085 How should an employee reopen a claim?** An employee may reopen a claim by:

- (1) By using the department's online services;

- (2) Contacting the paid family and medical leave customer care center by telephone; or
- (3) Alternate methods authorized by the commissioner.

**Chapter 192-620 WAC****WEEKLY BENEFITS**NEW SECTION

**WAC 192-620-005 What is the minimum claim duration?** (1) The minimum claim duration for paid family or medical leave is eight consecutive hours in a week.

(2) If an employee on leave typically works less than eight-hour shifts, the employee will meet the requirement of a minimum claim when the employee has missed eight consecutive hours in a week the employee typically would have been scheduled.

**Example:** An employee typically works four-hour shifts. The employee will need to take two consecutive shifts of leave in a week to have a minimum claim.

NEW SECTION

**WAC 192-620-010 How should employees request benefit payments?** (1) An employee must file a weekly claim to receive benefits.

(2) An employee may file a weekly claim by:

- (a) Using the department's online services;
- (b) Using the department's telephone services; or

(c) The commissioner may authorize alternative methods of filing weekly claims.

(3) A weekly claim can only be made after the end of the week being claimed.

(4) A weekly claim must be completed in its entirety. Incomplete weekly claims will not be processed.

(5) No more than four weeks of claims can be made at one time, except in limited circumstances, such as backdating for good cause as defined in WAC 192-610-040.

NEW SECTION

**WAC 192-620-020 What information will the department request from employees when filing for weekly benefits?** (1) The department must determine if an employee qualifies for benefits when the employee files a weekly claim for the payment of benefits. For the week that the employee is claiming, the department will ask if the employee:

(a) Worked during the week, and for the hours associated with that work;

(b) Received any paid leave such as sick leave, vacation leave, or other paid time off provided by the employer, and the hours associated with that leave;

(c) Received any benefit that may disqualify the employee for paid family or medical leave, such as unemployment insurance; and

(d) Experienced a change in the qualifying event that affects the eligibility for, or duration of, paid family or medical leave benefits.

(2) The employee may be asked to provide additional information.

#### NEW SECTION

**WAC 192-620-025 What happens if an employee is being conditionally paid benefits?** (1) If an employee is a continued claim recipient, and eligibility is questioned by the department, the employee will be conditionally paid benefits for weeks the employee claims without delay.

(2) The employee may request the department to hold conditional payments until the question of eligibility is resolved when the employee has been notified the department questions their eligibility.

(3) An overpayment for a conditionally paid week cannot be waived and must be repaid.

### Chapter 192-630 WAC

#### CLAIM DETERMINATIONS

#### NEW SECTION

**WAC 192-630-005 What happens if there is a question regarding whether an employee is qualified for benefits?** (1) The department will send interested parties a notice when the department has a question of whether an employee is qualified for benefits prior to making a determination on the claim. The notice will include:

(a) The department's questions regarding the employee's qualification for benefits; and

(b) The date by which the interested parties must respond. This date will be no earlier than five calendar days from the date the notice is sent. Reasonable mailing time will be added when the notice is sent via postal service.

(2) The employee has a right to respond to the department on qualification issues.

#### NEW SECTION

**WAC 192-630-010 What happens if an interested party does not respond to the department's request for information?** (1) If an interested party fails to respond by the due date on the notice provided under WAC 192-630-005, the department will make a determination based on available information.

(2) Subject to RCW 50A.04.510, if benefits are denied because the employee did not respond to a request for information, the denial will remain in effect until the employee provides sufficient information to establish that the employee is qualified for paid family or medical leave.

#### NEW SECTION

**WAC 192-630-015 How will a determination be made about an employee's eligibility for benefits?** (1) When the department has issued a notice under WAC 192-630-005 the department will not make a determination on whether an employee qualifies for paid family or medical leave until all interested parties have had an opportunity to

provide information about the question of eligibility by the due date indicated on the notice.

(2) If new facts are discovered before the determination is made, the department will provide interested parties with an opportunity to respond to the new information.

(3) After the department makes a determination, all interested parties will be provided with a copy of that determination.

(4) If the department receives new and relevant information after a determination is made:

(a) The information will be considered by the department;

(b) Interested parties will be given an opportunity to respond, if necessary; and

(c) The department may make a new determination based on the newly provided information.

#### NEW SECTION

**WAC 192-800-005 What is the standard the department will use to determine fraud?** The department will determine if fraud has been committed under WAC 192-500-120 based on a showing of clear, cogent, and convincing evidence.

#### NEW SECTION

**WAC 192-800-010 How will the disqualification periods and penalties be assessed for an employee who is determined to have committed fraud?** (1) The department will assess disqualification periods and penalties for each fraud determination individually under RCW 50A.04.045(3).

(2) All disqualifications and penalties in RCW 50A.04.045(3) are in addition to the required repayment of any benefits paid as a result of fraud.

(3) The department will assess the fraud penalties established under RCW 50A.04.045(3) based on the percentage of benefits paid for those weeks in which the fraud occurred or that were paid as a result of fraud. The penalty will not apply to other weeks that may be included in the same eligibility decision.

(4) The penalty amount, if not a multiple of one dollar, is rounded up to the next higher dollar.

#### NEW SECTION

**WAC 192-800-015 When will the department change an occurrence of fraud?** (1) Determinations of fraud are appealable. If an employee has been assessed with multiple determinations of fraud and any determination changes due to a redetermination or an appeal, the department will send a new fraud determination showing the corrected disqualification period and penalty under Title 50A RCW.

**Example:** The department issues a determination that an employee has committed a third occurrence of fraud. Through appeal, the second occurrence is overturned. The department will send a redetermination of the third occurrence indicating that it is now the second occurrence of fraud and the appropriate penalties will apply.

(2) Although the revised determination in subsection (1) of this section does not restart the appeal period included in



the original decision, employees may appeal a change in the penalty amount or length of disqualification.

**WSR 19-07-050**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

[Filed March 15, 2019, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-20-013.

Title of Rule and Other Identifying Information: WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage and 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment.

Hearing Location(s): On April 23, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Pear Conference Room 107, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than April 24, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by April 23, 2019.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov), by April 19, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising these sections to clarify coverage and authorization criteria, as well as limitation extension requirements. The agency is also revising this section to update limited and comprehensive treatment payment methodology in order for providers to receive more timely payments.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Janice Tadeo, P.O. Box 45502, Olympia, WA 98504-2716, 360-725-1583.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's

analysis showing how costs were calculated. The revisions to this rule do not impose additional compliance costs or requirements on providers.

March 15, 2019

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage.** Coverage and authorization of covered services is subject to the requirements and limitations in this chapter and other applicable WAC.

(1) ~~((Subject to the limitations in this section and other applicable WAC,))~~ The medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or agency-recognized craniofacial team ~~((and do not require prior authorization))~~.

(a) Cleft lip and palate, cleft palate, or cleft lip with alveolar process involvement.

(b) The following craniofacial anomalies including, but not limited to:

- (i) Hemifacial microsomia;
- (ii) Craniosynostosis syndromes;
- (iii) Cleidocranial dental dysplasia;
- (iv) Arthrogyrposis;
- (v) Marfan syndrome;
- (vi) Treacher Collins syndrome;
- (vii) Ectodermal dysplasia; or
- (viii) Achondroplasia.

(2) ~~((Subject to prior authorization requirements and the limitations in this section and other applicable WAC, the agency covers))~~ The agency authorizes orthodontic treatment and orthodontic-related services ~~((for))~~ when the following criteria are met:

(a) Severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of twenty-five or higher~~((The agency determines the final HLD Index Score based on documentation submitted by the provider))~~ as determined by the agency;

(b) The client has established caries control; and

(c) The client has established plaque control.

(3) The agency may cover orthodontic treatment for dental malocclusions other than those listed in subsections (1) and (2) of this section on a case-by-case basis and when prior authorized. The agency determines medical necessity based on documentation submitted by the provider.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

- (a) Orthodontic treatment for cosmetic purposes;
- (b) Orthodontic treatment that is not medically necessary (as defined in WAC 182-500-0070);
- (c) Orthodontic treatment provided out-of-state, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities);

(d) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC; or

(e) Case studies that do not include a definitive orthodontic treatment plan.

(5) The agency covers the following orthodontic treatment and orthodontic-related services with prior authorization (~~(, subject to the following limitations (providers must bill for these services according to WAC 182-535A-0060):~~

(a) ~~Panoramic radiographs (X-rays) when medically necessary;~~

~~(b)) when medically necessary;~~

(a) ~~Interceptive orthodontic treatment ((, when medically necessary)).~~

~~((e)) (b) Limited orthodontic treatment ((, when medically necessary;~~

~~(i) Approval for limited orthodontic treatment includes up to twelve months of treatment. (See subsection (7)(a) of this section for information on limitation extensions.)~~

~~(ii) The agency may approve a single impacted tooth for limited orthodontic treatment.~~

~~(d)) The agency may approve limited orthodontic treatment for treatment of a single impacted tooth.~~

~~(c) Comprehensive full orthodontic treatment on adolescent dentition ((, when medically necessary. The treatment must be completed within thirty months from the date of the original appliance placement)) (see subsection ((7)) (8)(a) of this section for information on limitation extensions).~~

~~((e) Replacement retainers after the first replacement retainer and within six months of debanding.~~

~~(f) Orthodontic appliance removal as a stand-alone service only when:~~

~~(i) The client's appliance was placed by a different provider or dental clinic; and~~

~~(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.~~

~~(g) Other medically necessary)) (d) Case study.~~

~~(e) Other orthodontic treatment ((and orthodontic-related services)) subject to review for medical necessity as determined by the agency.~~

~~(6) The ((treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not obtained, clear documentation must be kept in the client's record explaining why treatment was discontinued or not completed or why treatment goals were not achieved.~~

~~(7)) agency covers the following orthodontic-related services with prior authorization when medically necessary:~~

~~(a) Clinical oral evaluations according to WAC 182-535-1080.~~

~~(b) Cephalometric films that are of diagnostic quality, dated, and labeled with the client's name.~~

~~(c) Replacement retainer.~~

~~(d) Orthodontic appliance removal as a stand-alone service only when:~~

~~(i) The client's appliance was placed by a different provider or dental clinic; and~~

~~(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.~~

~~(7) The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not achieved, the provider must:~~

~~(a) Keep clear documentation in the client's record explaining why treatment was discontinued or not completed, or why treatment goals were not achieved.~~

~~(b) Notify the agency.~~

~~(8) The agency evaluates a request for orthodontic treatment or orthodontic-related services:~~

~~(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and~~

~~(b) That are listed as noncovered according to WAC 182-501-0160.~~

~~((8)) (9) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 182-534-0100.~~

AMENDATORY SECTION (Amending WSR 17-20-097, filed 10/3/17, effective 11/3/17)

**WAC 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment.** (1) The medicaid agency pays providers for furnishing covered orthodontic treatment and orthodontic-related services described in WAC 182-535A-0040 according to this section and other applicable WAC.

(2) ~~((The agency considers that))~~ A provider who furnishes covered orthodontic treatment and orthodontic-related services to an eligible client accepts the agency's fees as published in the agency's fee schedules according to WAC 182-502-0010.

(3) ~~((The agency requires a provider to))~~ Providers must deliver services and procedures that are of acceptable quality to the agency. The agency may recoup payment for services ~~((that are))~~ determined to be below the standard of care or of an unacceptable product quality.

(4) **Interceptive orthodontic treatment.** The agency pays for interceptive orthodontic treatment on primary or transitional dentition in one payment that includes all professional fees, laboratory costs, and required follow-up.

(5) **Limited orthodontic treatment.** The agency pays for limited orthodontic treatment on transitional or adolescent dentition as follows:

(a) The first three months of treatment starts on the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

(i) The replacement of brackets and lost or broken orthodontic appliances;

(ii) Appliance removal;

(iii) The initial ~~((and the first replacement))~~ retainer fee ~~((s within the first six months after debanding));~~ and

(iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed ~~((after each three-month treatment interval during the treatment))~~ as periodic orthodontic treatment visits.

(i) Payments are allowed once every six weeks during treatment, beginning three months after the initial appliance placement.

~~((d))~~ (ii) Payment for treatment provided ((after twelve months from the date the appliance is placed)) in addition to the six periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040((8)) (9).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

**(6) Comprehensive full orthodontic treatment.** The agency pays for comprehensive full orthodontic treatment on adolescent dentition as follows:

(a) The first ~~((six))~~ three months of treatment starts the date the initial appliance is placed and includes active treatment for the first ~~((six))~~ three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

(i) The replacement of brackets and lost or broken orthodontic appliances;

(ii) Appliance removal;

(iii) The initial ~~((and the first replacement))~~ retainer fee((s within six months after debanding)); and

(iv) The final records (photos, a panoramic X-ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed ~~((after each three month treatment interval, with the first three-month interval beginning six))~~ as periodic orthodontic treatment visits.

(i) Payments are allowed once every six weeks during treatment, beginning three months after the initial appliance placement.

~~((d))~~ (ii) Payment for treatment provided ((after thirty months from the date the appliance is placed)) in addition to the fourteen periodic orthodontic treatment visits requires a limitation extension. See WAC 182-535A-0040((8)) (9).

(iii) If treatment is discontinued or treatment objectives are not achieved, providers must notify the agency. See WAC 182-535A-0040(7).

**(7) Case study.** The agency pays for a case study, which includes:

(a) Preparation of comprehensive diagnostic records (additional photos, study casts, cephalometric examination film and panoramic film);

(b) Formation of diagnosis and treatment plan from such records; and

(c) Formal case conference.

(8) Payment for orthodontic treatment and orthodontic-related services is based on the agency's published fee schedule.

~~((8))~~ (9) Orthodontic providers who are in agency-designated bordering cities must:

(a) Meet the licensure requirements of their state; and

(b) Meet the same criteria for payment as in-state providers, including the requirements to contract with the agency.

~~((9))~~ (10) If the client's eligibility for orthodontic treatment under WAC 182-535A-0020 ends before the conclusion of the orthodontic treatment, payment for any remaining

treatment is the client's responsibility. The agency does not pay for these services.

~~((10) Any))~~ (11) The agency does not pay for orthodontic treatment provided after the client's twenty-first birthday ((will not be paid for by the agency and will become the client's financial responsibility.

~~((11))~~ Payment for treatment that continues after the client's twenty-first birthday is the responsibility of the client.

(12) The client is responsible for payment of any orthodontic service or treatment received during any period of medicaid ineligibility, even if the treatment was started when the client was eligible((-The agency does not pay for these services)).

~~((12))~~ (13) See WAC 182-502-0160 and 182-501-0200 for when a provider or a client is responsible to pay for a covered service.

## WSR 19-07-051

### PROPOSED RULES

### HEALTH CARE AUTHORITY

[Filed March 15, 2019, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-088.

Title of Rule and Other Identifying Information: WAC 182-538A-060 Fully integrated managed care and choice and 182-538A-130 Exemptions and ending enrollment in fully integrated managed care (FIMC).

Hearing Location(s): On April 23, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Pear Conference Room 107, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than April 24, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by April 19, 2019.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov), by April 19, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-538A-060 Fully integrated managed care and choice and 182-538A-130 Exemptions and ending enrollment in fully integrated managed care (FIMC), to remove language indicating that enrollment in a behavioral health services managed care organization is mandatory for American Indian and Alaska Native clients and their descendants or add language to stipulate there is no mandatory enrollment, whichever is appropriate.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, and 74.09.873.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Greg Sandoz, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1624.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The changes to the proposed rules apply to clients so they do not impose any costs on businesses.

March 15, 2019  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-051, filed 2/11/16, effective 4/1/16)

**WAC 182-538A-060 Fully integrated managed care and choice.** (1) Except as provided in subsection (2) of this section, the medicaid agency requires a client to enroll in a fully integrated managed care (FIMC) managed care organization (MCO) when that client:

- (a) Is eligible;
- (b) Resides in a mandatory enrollment FIMC regional service area; and
- (c) Is not exempt from FIMC enrollment under WAC 182-538A-130.

(2)(a) American Indian and Alaska native (AI/AN) clients and their descendants may choose one of the following:

- (i) Enrollment with an FIMC MCO available in their regional service area;
- (ii) Enrollment with a primary care case management (PCCM) provider through a tribal clinic or urban Indian center available in their area, which includes ~~((mandatory))~~ enrollment into a behavioral health services only (BHSO) MCO; or
- (iii) The agency's fee-for-service system ~~((which includes mandatory enrollment into a BHSO MCO))~~.

(b) To enroll with an FIMC MCO or PCCM provider, an AI/AN client may:

- (i) Call the agency's toll-free enrollment line at 800-562-3022;
- (ii) ~~((Mail or fax the following to the agency's unit responsible for FIMC enrollment:~~  
~~(A) Form HCA 13-664; or~~  
~~(B) Form HCA 13-862 found online at <https://www.hca.wa.gov/medicaid/forms/pages/index.aspx>.~~  
~~((iii)))~~ Enroll online through the Washington Healthplanfinder at <https://www.wahealthplanfinder.org>; or  
~~((iv)))~~ (iii) Go to the ProviderOne client portal at <https://www.waproviderone.org/client> and follow the prompts.

(3) A client must enroll with an FIMC MCO available in the regional service area where the client resides.

(4) The agency enrolls all family members with the same FIMC MCO, if available.

(5) If a family member is enrolled in the patient review and coordination (PRC) program, that family member must follow the rules in WAC 182-501-0135.

(6) When a client requests enrollment with an FIMC MCO or PCCM provider, the agency enrolls a client effective the first day of the current month a client becomes eligible.

(7) To enroll with an FIMC MCO, a client may:

- (a) Call the agency's toll-free enrollment line at 800-562-3022;
- (b) ~~((Mail or fax the following to the agency's unit responsible for FIMC enrollment:~~  
~~(i) Form HCA 13-664; or~~  
~~(ii) Form HCA 13-862 found online at <https://www.hca.wa.gov/medicaid/forms/pages/index.aspx>.~~  
~~((c)))~~ Enroll online through the Washington Healthplanfinder at <https://www.wahealthplanfinder.org>; or  
~~((d)))~~ (c) Go to the ProviderOne client portal at <https://www.waproviderone.org/client> and follow the prompts.

(8) The agency assigns a client who does not choose an FIMC MCO or PCCM provider as follows:

- (a) If the client has a family member or members enrolled with an FIMC MCO, the client is enrolled with that FIMC MCO;
- (b) If the client has a family member or members enrolled with a PCCM provider, the client is enrolled with that PCCM provider;
- (c) The client is reenrolled within the previous six months with their prior MCO plan if:
  - (i) The agency identifies the prior MCO and the program is available; and
  - (ii) The client does not have a family member enrolled with an agency-contracted MCO or PCCM provider.
- (d) If the client has a break in eligibility of less than two months, the client will be automatically reenrolled with his or her previous MCO or PCCM provider and no notice will be sent; or
- (e) If the client cannot be assigned according to (a), (b), (c), or (d) of this subsection, the agency assigns the client according to agency policy.

(9) An FIMC enrollee's selection of a primary care provider (PCP) or assignment to a PCP occurs as follows:

- (a) An FIMC enrollee may choose:
  - (i) A PCP or clinic that is in the enrollee's FIMC MCO's provider network and accepting new enrollees; or
  - (ii) A different PCP or clinic participating with the enrollee's FIMC MCO's provider network for different family members.
- (b) The FIMC MCO assigns a PCP or clinic that meets the access standards described in the relevant managed care contract if the enrollee does not choose a PCP or clinic.
- (c) An FIMC enrollee may change PCPs or clinics for any reason, provided the PCP or clinic is within the enrollee's FIMC MCO's provider network and accepting new enrollees.
- (d) An FIMC enrollee may file a grievance with the FIMC MCO if the FIMC does not approve an enrollee's request to change PCPs or clinics.

(e) Enrollees required to participate in the agency's PRC program may be limited in their right to change PCPs (see WAC 182-501-0135).

AMENDATORY SECTION (Amending WSR 17-07-087, filed 3/20/17, effective 4/20/17)

**WAC 182-538A-130 Exemptions and ending enrollment in fully integrated managed care (FIMC).** (1) Fully integrated managed care (FIMC) and behavioral health services only (BHSO) are mandatory for individuals residing in FIMC regional service areas.

(2) The medicaid agency enrolls a client residing in an FIMC regional service area in either FIMC or BHSO, depending on the client's eligibility, in accordance with WAC 182-538A-060.

(3) The agency may end enrollment of an enrollee in FIMC or authorize an exemption of a client from enrollment in FIMC according to the rules in WAC 182-538-130.

(4) If the agency authorizes a request to end enrollment of an enrollee in FIMC or authorizes exemption of a client from enrollment in FIMC based on WAC 182-538-130, the enrollee is required to enroll in BHSO if eligible.

(5) American Indian and Alaska native (AI/AN) clients and their descendants are exempt from mandatory enrollment in FIMC. See WAC 182-538A-060(2) for coverage options for AI/AN clients.

**WSR 19-07-055**  
**PROPOSED RULES**  
**PARKS AND RECREATION**  
**COMMISSION**

[Filed March 15, 2019, 3:44 p.m.]

Supplemental Notice to WSR 18-18-057.

Preproposal statement of inquiry was filed as WSR 18-08-073.

Title of Rule and Other Identifying Information: Chapter 352-40 WAC, Public records.

Hearing Location(s): On July 18, 2019, at 9:00 a.m. to 5:00 p.m., at the Kitsap Conference Center, 100 Washington Avenue, Bremerton, WA 98337.

Date of Intended Adoption: July 18, 2019.

Submit Written Comments to: Brian Thrasher, Records and Forms Manager, P.O. Box 42650, Olympia, WA 98504-2650, email brian.thrasher@parks.wa.gov, by July 11, 2019.

Assistance for Persons with Disabilities: Contact Brian Thrasher, records and forms manager, phone 360-902-8514, TTY 800-833-6388, email brian.thrasher@parks.wa.gov, by July 11, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The intent of this supplemental proposal is to update previously submitted language that stated access to public records would only be available at parks' headquarters in Olympia and to remove language that required a public record request be made in writing, including that any oral request received would be reduced to writing to memorialize the request.

Reasons Supporting Proposal: The original update and the supplemental are being made at the recommendation of the Washington state office of the attorney general.

Statutory Authority for Adoption: Chapter 79A.05 RCW.

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

Name of Proponent: Andy Woo, assistant attorney general, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brian Thrasher, Parks Records Office, 360-902-8514.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chris Leeper, Operating Budget Manager, P.O. Box 42650, Olympia, WA 98504-2650, phone 360-902-8542, TTY 800-833-6388, email christeen.leeper@parks.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

March 15, 2019  
Valeria Veasley  
Management Analyst

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-010 What is the purpose of this chapter?** The purpose of this chapter is to ~~((implement the procedural requirements that))~~ set forth the procedures by which state parks will respond to public records requests made under the Public Records Act, chapter 42.56 RCW~~((places on state agencies))~~.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-030 When and where can I access state parks' public records?** Most public records of the commission and the agency are located at the ~~((Olympia))~~ state parks' headquarters office~~((Copies of certain records may be accessible at regional offices.~~

~~((1) The director and administrative offices are located at the headquarters office at 1111 Israel Road S.W., Tumwater, WA 98501. Mailing address for the headquarters office is:~~

~~**Washington State Parks and Recreation Commission**  
P.O. Box 42650  
Olympia, WA 98504-2650  
360-902-8500  
FAX: 360-753-1594  
TDD: 360-664-3133~~

(a) The public affairs office is available to assist with media inquiries and general public information requests.

Phone: 360-902-8561  
Email: [pao@parks.wa.gov](mailto:pao@parks.wa.gov)

(b) The public records officer is available to assist with public records requests or questions.

Phone: 360-902-8514  
Email: [public.disclosure@parks.wa.gov](mailto:public.disclosure@parks.wa.gov)

(2) Location of regional offices:

**Southwest Region**

Headquarters Office  
11838 Tilley Road S.E.  
Olympia, WA 98512-9167  
360-956-4800

**Northwest Region**

Headquarters Office  
220 N. Walnut  
Burlington, WA 98233  
360-755-9231

**Eastern Region**

Headquarters Office  
270 9th St. N.E., Suite 200  
East Wenatchee, WA 98802  
509-665-4319

**Puget Sound Region**

2840 Riverwalk Drive S.E.  
Auburn, WA 98002-8207  
253-931-3907) in Tumwater. Appropriate parks staff will determine where physical records can be inspected. Requests for such inspections can be made by contacting the agency's public records officer.

Mailing address:  
P.O. Box 42650  
Olympia, WA 98504-2650

Physical address:  
1111 Israel Road S.W.  
Tumwater, WA 98501  
Email: [public.disclosure@parks.wa.gov](mailto:public.disclosure@parks.wa.gov)  
Phone: 360-902-8514

The communications office is available to assist with media inquiries and general public information requests.

Phone: 360-902-8562  
Email: [washington.state.parks@parks.wa.gov](mailto:washington.state.parks@parks.wa.gov)

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-040 How is the agency organized and how is it operated?** The Washington state park system includes approximately one hundred (~~twenty~~) twenty-four developed parks, recreation programs, trails, boating safety and winter recreation.

(1) State parks is governed by a commission consisting of seven citizens of the state, appointed by the governor to provide policy direction for the agency.

(2) The director is the commission appointed executive head of the agency.

(3) (~~The deputy director is the chief operating officer.~~

(4) ~~Regional directors are responsible for management of regional headquarters and parks within their regions.)~~ An executive leadership team reports to the director. These team members manage various aspects of agency operations such as operations, parks development, administrative services, communications, human resources, and policy and governmental affairs.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-060 Who do I contact to request state parks' public records?** The agency public records officer, located at headquarters, is responsible for:

(1) Receiving and reviewing requests for public records.

(2) Coordinating agency records management (~~and agency indexing standards~~) to ensure protection of, and prompt access to, public records.

(3) Implementing and ensuring compliance by the commissioners and staff with the public records disclosure requirements of chapter 42.56 RCW.

Mailing address:  
P.O. Box 42650  
Olympia, WA 98504-2650  
Physical address:  
1111 Israel Road S.W.  
Tumwater, WA 98501  
Email: [public.disclosure@parks.wa.gov](mailto:public.disclosure@parks.wa.gov)  
Phone: 360-902-8514  
(~~FAX: 360-586-5875~~)

(4) Contact information and (~~our form for requesting public records from state parks are also~~) general information regarding public records requests, a current fee schedule, and access to our public records form is available on our web site (~~www.parks.wa.gov~~) ([www.parks.wa.us](http://www.parks.wa.us)).

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-070 When can I inspect public records?** Public records are available for inspection by appointment only during regular business hours, Monday through Friday, excluding legal holidays.

(~~It is recommended that you make arrangements in advance as the records that you wish to inspect may not be readily available for immediate inspection.~~)

Agency facilities shall be made available to any person for the inspection of public records except when and to the extent that this would unreasonably disrupt the operations of the agency.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-080 How do I request copies of state parks' public records?** ~~((Call, mail, email, fax or drop your request at any state park office.))~~ While not required, using ~~((our))~~ parks' request ~~((form, while not required))~~ for public record form, provides the information we need to assist you and provides you with our copy and mailing fees.

(1) The information that we will need is:

(a) The name, address ~~((and)),~~ phone number, and email address (if available) of the person requesting the record;

(b) The date on which the request is made;

(c) ~~((If inspection of the record is requested, the day and time you wish to inspect the public records;~~

~~((d))~~ A description, with as much detail as you can provide, to help identify the record(s) requested;

~~((e))~~ (d) A statement that the information will not be used for commercial purposes.

(2) Oral requests will be reduced to writing and provided to the requestor to memorialize the records being requested.

(3) The agency does not distinguish among persons requesting records under the Public Records Act and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute that exempts or prohibits disclosure of specific information or records to certain persons.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-090 Will I have to pay to ~~((view))~~ inspect or get copies of state parks' public records?** The agency does not charge a fee for the inspection of public records.

The agency will charge an amount necessary to recover its costs for producing and mailing copies of records, as provided for by RCW 42.56.120.

~~((A list of copy charges is provided with state parks' "Request for Public Records" form, or you can contact the public records officer for a list of copy and mailing fees.))~~ Our fee schedule can be found on the request for public record form and on our web site ([www.parks.wa.us](http://www.parks.wa.us)). Payment is required prior to receiving copies of records.

Charges totaling less than five dollars ~~((will))~~ may be waived.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-100 Can my request be denied?** (1) ~~((Yes,))~~ A request can be denied if it is for records that are exempt from disclosure under the provisions of the Public Records Act, chapter 42.56 RCW ~~((State parks may also deny access to records, or parts of records, that are exempt from disclosure by)),~~ or other statute including RCW 79A.60.210 ~~((;))~~ and 79A.60.220 ~~((5.60.060 (2)(a), 46.52-080, 7.69A.030(4) and 13.50.050(3))).~~

(2) Whenever possible, the agency will make requested records available after exempt information has been ~~((deleted or))~~ redacted.

(3) Under the provisions of RCW 42.56.070 ~~((9))~~ (8), public records requests will also be denied if the purpose of the request is to sell or use the information for commercial purposes.

If a request is denied, or if a record is withheld entirely or redacted, the agency will specify in writing the reason for the denial, withholding, or redaction, including ~~((a state-ment))~~ identification of the specific exemption authorizing the withholding or redaction of the record and a brief explanation of how the exemption applies to the record withheld or redacted.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-110 What can I do if I object to the agency's denial to inspect or receive a copy of a public record?** You have options. You can:

(1) Request an internal administrative review of the denial for access.

(a) Provide state parks' public records officer with your written request for a review of the decision. Include a copy of the denial or refer specifically to the denial statement in your petition.

(b) The public records officer will promptly provide the petition and any other relevant information to the director or designee to conduct a review.

(c) The director or designee will ~~((immediately))~~ consider the matter and, within two business days of receiving the petition, or within such time as state parks and the requestor mutually agree, either affirm or reverse the denial. If the director or designee has not responded to the requestor by the end of the two business days following denial of access, then the request is deemed denied.

(2) Ask the attorney ~~((general))~~ general's office to review the matter. Pursuant to RCW 42.56.530, the attorney ~~((gen-eral))~~ general's office will provide a written opinion on whether the record is exempt.

(3) Initiate an action in the superior court ~~((where the record is located. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial)).~~

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-120 ~~((How does the agency protect))~~ What rules must be followed when inspecting public records?** (1) The following ~~((guidelines))~~ rules have been put in place to help the agency protect the public records under its care:

(a) You may not remove any public record from the agency premises.

(b) ~~((You must have))~~ State parks may require that a designated agency employee be present while inspecting public records.

(c) You may not mark or deface a public record in any manner during inspection.

(d) You may not dismantle public records that are maintained in a file or jacket or in chronological or other filing order.

(2) Access to file cabinets, shelves, vaults, or other storage areas is restricted to agency personnel unless other arrangements are made with the public records officer or designee.

(3) State parks follows rules established under RCW 40.14.060 regarding destruction of public records. The destruction of records responsive to a public records request will be delayed until the request is resolved.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

**WAC 352-40-130 How are agency records indexed?**

Records retention schedules established and maintained under the directives of RCW 40.14.060 serve as an index for the ~~((identification and location of agency))~~ agency's records.

~~((The records retention schedule indexes records according to the originating program or section, and then the record series title. Each title is further identified by a statement of function or purpose, and the minimum required retention period. With the assistance of the public records officer or designee, the records retention schedule is available to the public for inspection and copying.~~

~~A separate index of policy statements as defined in RCW 34.05.010(15) entered after June 30, 1990, is maintained by the agency.~~

~~In addition,))~~ The agency has a functional ~~((index coding))~~ indexing system for ~~((physical files,))~~ commission policy~~((;))~~ and the agency's administrative policy and ~~((agency))~~ procedures.

Commission meetings minutes and agenda items are indexed by year~~((, month, and agenda item number. They are also summarized by topic))~~ and month.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 352-40-020 How do we define terms?

**WSR 19-07-071**

**PROPOSED RULES**

**GAMBLING COMMISSION**

[Filed March 19, 2019, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-095.

Title of Rule and Other Identifying Information: WAC 230-16-005 Transporting, displaying, and selling gambling equipment at trade shows and conventions and 230-06-050 Review of electronic or mechanical gambling equipment.

Hearing Location(s): On May 9, 2019, at 9:00 a.m., at the Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662. Hearing will take place at the May commission meeting. The meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) about seven days before the meeting, select "May Commission Meeting" to confirm the hearing date, location, and start time.

Date of Intended Adoption: May 9, 2019.

Submit Written Comments to: Ashlie Laydon, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, email [rules.coordinator@wsgc.wa.gov](mailto:rules.coordinator@wsgc.wa.gov), fax 360-486-3624, by May 1, 2019.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email [Julie.anderson@wsgc.wa.gov](mailto:Julie.anderson@wsgc.wa.gov), by May 1, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes made to WAC 230-16-005 clarify what types of gambling devices can be brought into the state, for what purpose, and in what manner they can be displayed at trade shows. Specific changes include defining the terms "trade show," "gambling equipment," and "demonstration mode"; clarifying what equipment can be displayed at trade shows and the manner in which it is displayed, providing parameters for how long unapproved equipment can remain in the state, establishing a method of notifying the Washington state gambling commission, and allowing for onsite inspection of equipment by the gambling commission at a trade show.

Changes made to WAC 230-06-050 are necessary to be consistent with WAC 230-16-005.

Reasons Supporting Proposal: These changes clarify what equipment can be displayed at trade shows and the manner in which the equipment can be displayed.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Considine, Managing Staff Attorney, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3469; Implementation: David Trujillo, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512; and Enforcement: Tina Griffin, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule change does not have any costs associated with it.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Most, if not all, manufacturers impacted by this rule do not qualify as a small business under RCW 19.85.020(3). Additionally, this rule change codifies current practice and should not impose more-than-minor costs, RCW 19.85.020(2), and may possibly allow licensed manufacturers better ability to market and sell gambling products and equipment.



March 19, 2019  
Ashlie Laydon  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-09-037, filed 4/11/14, effective 7/1/14)

**WAC 230-06-050 Review of electronic or mechanical gambling equipment.** (1) When you submit gambling equipment, supplies, services, or games for our review to verify compliance with chapter 9.46 RCW and Title 230 WAC, you must pay the application deposit before we perform the review. You must also reimburse us for any additional costs of the review. All costs must be paid in full prior to the completion of the review.

(2) The gambling equipment submitted for review must be identical or substantially similar to what will be marketed, distributed, and deployed in Washington. If the equipment is not sufficient for testing and review, we may require additional equipment or information.

(3) If your application is incomplete or we request additional information, you must provide us with the required items within thirty days of notification or we may administratively close your application.

(4) You can begin ~~((selling or leasing the))~~ accepting orders for gambling equipment when you are licensed ((and the gambling equipment has been approved by the director or director's designee)).

(5) Only gambling equipment approved by the director or director's designee is allowed in Washington except as provided under WAC 230-16-005.

(6) We may include security or surveillance requirements as part of gambling equipment approval.

~~((6))~~ (7) Gambling equipment must operate as approved by the director or director's designee.

~~((7))~~ (8) We may keep equipment submitted for review to allow for continued testing and training as long as the equipment remains in play in Washington. We are not liable for any damage to equipment while in our possession.

~~((8))~~ (9) If you do not agree with the director or director's designee's decision, you may file a petition for declaratory order with the commission according to RCW 34.05.240 and chapter 230-17 WAC.

AMENDATORY SECTION (Amending WSR 07-19-069, filed 9/17/07, effective 1/1/08)

**WAC 230-16-005 Transporting, displaying, and selling gambling equipment at trade shows ~~((and conventions))~~.** ~~((Licensed manufacturers and distributors selling gambling equipment authorized by state or federal law may transport, display, and accept orders for the sale or lease of their products at trade shows and conventions as long as:~~

~~(1) They notify us in writing of the nature, date, and location ten days before the trade show or convention; and~~

~~(2) Their target audience of the trade show or convention are operators of authorized gambling activities in Washington; and~~

~~(3) They deliver all gambling equipment purchased or leased at the trade show or convention to the operator's authorized location.))~~ (1) "Trade show" when used in this section

means an exhibition where licensed manufacturers and distributors promote their products and services to operators of authorized gambling activities in Washington; the exhibition is not open to the public; and it is of limited duration.

(2) "Gambling equipment" as used in this section has the same meaning as in WAC 230-03-200.

(3) "Demonstration mode" when used in this section means when gambling equipment cannot be used for actual wagering and the equipment's coin or bill acceptor is removed or physically restricted from use.

(4) Licensed manufacturers and distributors may transport, display, and accept orders for the sale or lease of their products at trade shows only under the following conditions:

(a) All products must be manufactured by a licensed manufacturer for: Activities authorized by state laws or tribal-state compacts, or is Class II gaming equipment as authorized by federal law for use on tribal lands; and

(b) All gambling equipment physically displayed must be in demonstration mode and either:

(i) Approved for sale or lease in the state; or

(ii) Not approved by us but is only used for authorized activities under state laws or tribal-state compacts, or is Class II gaming equipment as authorized by federal law for use on tribal lands, and is transported into the state no more than ten days before a trade show begins and is removed from the state within ten days following the last day of a trade show.

(c) Gambling equipment must have a sign posted in close proximity to the device that contains the phrase, "No one under 18 years of age is allowed to operate this machine."

(5) Licensed manufacturers and distributors must provide notification that they will be transporting, displaying, or accepting orders for gambling equipment on a form prescribed by the gambling commission at least ten days before a specified trade show.

(6) Gambling equipment at a trade show is subject to on-site inspection by the gambling commission.

**WSR 19-07-075**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Securities Division)  
[Filed March 19, 2019, 4:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-029.

Title of Rule and Other Identifying Information: The securities division is proposing to amend WAC 460-42A-030, which provides that certain municipal securities are exempt from registration under RCW 21.20.310(1) if they receive requisite ratings from designated ratings agencies. Specifically, the securities division proposes to amend WAC 460-42A-030 to correct an inadvertent drafting error.

Hearing Location(s): On May 7, 2019, at 9:00 a.m., at 150 Israel Road S.W., Room 319, Tumwater, WA 98501.

Date of Intended Adoption: May 8, 2019.

Submit Written Comments to: Michelle Webster, 150 Israel Road S.W., Tumwater, WA 98501, email michelle.webster@dfi.wa.gov, fax 360-902-0524, by May 6, 2019.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, phone 360-902-8760, fax 360-902-0524, TTY 360-664-8126, email Carolyn.Hawkey@dfi.wa.gov, by May 6, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2014, the securities division amended WAC 460-10A-160 to update references to securities manuals for the purpose of the "manual exemption." As part of this update, Moody's Investors Service was replaced with a reference to Mergent's Investor Service to reflect current publishers of securities manuals. In an early 2017 update to our rules to remove references to discontinued securities manuals, the securities division inadvertently replaced a reference to Moody's Investors Service with a reference to Mergent, Inc. in WAC 460-42A-030, the exemption for municipal securities that receive requisite ratings from designated ratings agencies. However, Mergent, Inc. does not publish such municipal securities ratings, while Moody's Investors Service, Inc. is a well-known ratings organization.

The securities division had no intent to disqualify offerings with the requisite rating from Moody's Investors Service, Inc. from relying on the municipal securities exemption in WAC 460-42A-030. Accordingly, the securities division proposes to amend WAC 460-42A-030 to replace references to Mergent, Inc. with references to Moody's Investors Service, Inc.

Beyond the 2017 drafting error, WAC 460-42A-030 has not been significantly amended since 1989. Accordingly, the securities division also proposes to amend WAC 460-42A-030 to recognize equivalent ratings by Fitch Ratings, a nationally recognized statistical rating organization that also issues credit ratings to municipal securities.

Reasons Supporting Proposal: As WAC 460-42A-030 implements the exemption contained in RCW 21.20.310(1) [21.20.310(1)], and the prior amendments were made in error, the Division proposes to amend these rules to rectify its prior inadvertent drafting error, and to promote capital formation.

Statutory Authority for Adoption: RCW 21.20.310(1), 21.20.450

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: Department of financial institutions, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Michelle Webster, Esq., 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8736; Implementation: Faith Anderson, Program Manager, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; and Enforcement: William Beatty, Securities Administrator, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not an agency identified in RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: A portion of the proposal seeks to correct an inadvertent drafting error that was made in 2017.

March 14, 2019  
Gloria Papiez  
Director

**AMENDATORY SECTION** (Amending WSR 17-05-002, filed 2/1/17, effective 3/4/17)

**WAC 460-42A-030 Exemption of securities pursuant to RCW 21.20.310(1).** Any security which would otherwise be exempt from registration under RCW 21.20.310(1) except that it is payable from a nongovernmental industrial or commercial enterprise shall be exempt from registration if it meets the requirements of either subsection (1) or (2) of this section:

(1) The security receives a rating of "AA" or better from Standard and Poor's Corporation or an equivalent rating from ~~((Mergent))~~ Moody's Investors Service, Inc. or Fitch Ratings, Inc.; or

(2)(a) The security is issued to fund a single-family mortgage loan program established and operated by a state housing finance agency; and

(b) The security receives a rating of at least "A+" from Standard and Poor's Corporation or an equivalent rating from ~~((Mergent))~~ Moody's Investors Service, Inc. or Fitch Ratings, Inc.

## WSR 19-07-077

### PROPOSED RULES

### UTILITIES AND TRANSPORTATION

### COMMISSION

[Docket TP-180402—Filed March 20, 2019, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-051.

Title of Rule and Other Identifying Information: The purpose of this rule making is to implement SSB 6519, chapter 107, Laws of 2018, enacted during the 2018 legislative session, and effective on July 1, 2019. This rule making is recorded as Docket TP-180402 at the commission.

Hearing Location(s): On April 24, 2019, at 9:30 a.m., at Commission Hearing Room 206, 2nd Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250.

Date of Intended Adoption: April 24, 2019.

Submit Written Comments to: Washington Utilities and Transportation Commission (UTC), 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, email records@utc.wa.gov, fax 360-586-1150, by April 19, 2019.

Assistance for Persons with Disabilities: Contact Susan Holman, phone 360-664-1243, TTY 360-586-8230, email susan.holman@utc.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2018 legislature passed and the governor signed SSB 6519 which transfers marine pilotage tariff rate-setting authority from the board of pilotage commissioners (BPC) to UTC effective July 1, 2019. The bill allows any person with a substantial interest in marine pilotage tariffs, including marine pilots and shippers, to file a proposed tariff with UTC and also transfers consideration of the Port of Grays Harbor tariff rate recommendations for pilotage services within its district from BPC to UTC. The legislation authorizes UTC to include in marine pilotage tariffs its reasonable costs for tariff rate setting.

Reasons Supporting Proposal: In 2018, the legislature passed SSB 6519, chapter 107, Laws of 2018, which transferred marine pilotage rate-setting authority from BPC to UTC effective July 1, 2019. The legislation also transfers to UTC consideration of the Grays Harbor port district's tariff rate recommendations for pilotage services, and authorizes UTC to include in rates the reasonable costs for setting tariff rates. To ensure the timely adoption of rules, RCW 81.116.900 allows UTC to adopt rules prior to July 1, 2019. This rule making will establish rules for general rate proceedings for marine pilotage services, including a detailed description of the information required for such filings.

Statutory Authority for Adoption: RCW 81.116.020, 81.116.900.

Statute Being Implemented: RCW 53.08.390, 81.16.035, 81.16.061, 81.16.070, 81.16.120, and 81.16.130.

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

Name of Proponent: UTC, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Lewis, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, 360-664-1206; Implementation and Enforcement: Mark L. Johnson, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, 360-664-1115.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to UTC as it is not one of the listed agencies in RCW 34.05.328 (5)(a)(i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. UTC is proposing to adopt rules that establish a process for setting rates, terms, and conditions for pilotage services that is comparable to the general rate-making process UTC has long used for utilities and other transportation companies the commission regulates. On January 18, 2019, UTC mailed a notice to all stakeholders interested in the rule making, providing a copy of the draft rules and an opportunity to respond to a small business economic impact statement questionnaire. The notice requested that entities affected by the proposed rules

provide information about possible cost impacts of the rules with specific information for each rule that the entity identified as causing an impact. UTC did not receive any information in response to the questionnaire. Based on the information available to it, UTC determined that the proposed rules merely implement the statute and extend existing UTC procedures to marine pilotage services as required by the legislature.

March 20, 2019  
Mark L. Johnson  
Executive Director and Secretary

AMENDATORY SECTION (Amending WSR 17-06-051, filed 2/28/17, effective 3/31/17)

**WAC 480-07-140 General requirements for submitting documents to the commission. (1) General.**

(a) *Informal submissions.* Informal submissions are oral or written comments or communications directed to the commission that do not seek, or respond to, formal commission action, are not required by statute or commission rule, and generally are not filed in a docket. Informal submissions include, but are not limited to, consumer complaints other than complaints requesting commencement of an adjudicative proceeding, and public comments made on matters the commission considers at an open public meeting or in an adjudication when submitted by persons who are not, and do not seek to be, parties to that adjudication. A person may make informal submissions by using the comment form available on the commission's web site or by contacting the commission records center or consumer protection section by telephone, letter, or email at the contact information listed in WAC 480-07-125.

(b) *Formal filings.* Formal filings are written submissions that seek or respond to formal commission action or are required by statute or commission rule and that the commission may file in a docket. Unless otherwise provided in this chapter, all documents submitted to the commission for formal filing, including documents that contain confidential information, must be submitted electronically to the commission records center in conformance with this rule. The commission will not accept a document for formal filing unless the commission receives that document in electronic form.

(2) **Where to send written communications.** Persons should send written communications to the commission using the contact information contained in WAC 480-07-125 or on the commission's web site. Correspondence directed to the commission should be addressed to the commission secretary.

(3) **Cover letters.** Persons submitting documents to the commission for formal filing must include a cover letter with the submission unless the sole document submitted is a letter or the document is one page in length and includes the information identified in subsection (4) of this section.

(4) **Requirements.** The following requirements enable the commission to identify submissions and to facilitate prompt delivery of communications to commission personnel.

(a) *Identification of sender.* All persons who communicate with the commission should provide their full name,

mailing address, telephone number, and email address to assist the commission in responding. Persons who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, and the name of the entity on whose behalf they are sending the communication. All submissions on behalf of a company the commission regulates must identify the company using the exact name of the company in the commission's records. The commission's web site includes a list of all such companies by the names in the commission's records. The commission may reject or require resubmission of any submission that does not comply with this requirement.

(b) *Identification of permit, license, or certificate.* Any person or entity holding a commission-issued permit, license, or certificate must identify the permit, license, or certificate number (if any), including the exact name under which the authority is held, when communicating with the commission concerning the permit, license, or certificate.

(c) *Identification of proceeding.* Persons who communicate with the commission concerning a formal commission proceeding (e.g., rule-making or adjudication) must identify the proceeding to the best of their ability, including the docket number and name of the proceeding.

(d) *Identification of documents.* All documents submitted to the commission must be named in conformance with subsection (6)(b) of this section.

(5) **Electronic submission of documents.** The commission accepts only electronic versions of documents for formal filing. Unless required in a specific rule or order, the commission does not require a paper copy of the document.

(a) *Electronic submission via web portal.* Documents submitted electronically must be submitted using the commission's records center web portal except as provided in this rule.

(i) How to use the web portal. To use the web portal to submit documents for filing, persons should navigate to, and follow the instructions on, the web portal at the address specified in WAC 480-07-125.

(ii) Official commission receipt. The commission officially receives a document submitted through the web portal on the date and at the time registered by the portal; provided that documents the commission receives after 5:00 p.m. are not considered officially received or filed until the next business day. The web portal will send an automated notification to the person submitting the document when the commission has received the document.

(iii) Insufficient capacity. If a submission exceeds the size limitations of the commission's web portal for a single submission, the person may submit the documents in multiple web portal submissions, via one or more emails as provided in subsection (6)(c) of this section, or on a disc or other commonly used electronic storage medium delivered by mail or hand delivery. The commission includes on its web site the current size limitation of submissions on the web portal and instructions for making multiple web portal submissions.

(b) *Electronic submission via email.* If a person is unable to use the web portal to submit documents for filing, the commission will accept a submission via email. The commission may also accept correspondence or comments directed to the commission in the form of an email. An email transmitting

documents must explain the reason the documents are not being submitted via the web portal and must comply with the following requirements:

(i) Where to send electronic documents. Emails and emailed submissions for filing must be directed to the commission's records center at the email address specified in WAC 480-07-125. Courtesy or informational copies may be sent to other email addresses for individual commission personnel. The commission will receive for filing only email submissions sent to the records center.

(ii) When deemed received. An email and any transmitted documents are deemed received only when the email and the entire document or set of documents successfully reach the commission's records center electronic mailbox. Emails or documents wholly or partly received by email in the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day.

(iii) Insufficient capacity. If a submission exceeds the size limitations of the commission's email system for a single message, the person may submit the documents in multiple messages as provided in subsection (6)(c) of this section or on a disc or other commonly used electronic storage medium delivered via mail or hand delivery. The commission includes on its web site the current size limitation of a single email.

(c) *Electronic submission by mail or hand delivery.* A person may submit for filing electronic copies of documents on a disc or other commonly used electronic storage medium by mail or hand delivery (e.g., courier delivery service) to the commission's business address. The commission deems it has received an electronic document submitted by mail or hand delivery when the commission's records center physically receives it. Documents delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day.

(d) *Additional requirements.* The following additional requirements apply when submitting documents in the circumstances identified below.

Submissions in these dockets or types of documents:	Must comply with these rules and:
Rule-making dockets	Part II of this chapter
Adjudicative dockets	Part III of this chapter, <b>plus</b> any requirements in the specific adjudication
Utility tariffs and contracts	Chapter 480-80 WAC and WAC 480-07-141
Transportation tariffs and time schedules	WAC 480-07-141; and
(a) For auto transportation companies	(a) Chapter 480-30 WAC;
(b) For commercial ferry companies	(b) Chapters 480-51 and 480-149 WAC;
(c) For solid waste collection companies	(c) Chapter 480-70 WAC
<u>(d) For marine pilotage services</u>	<u>(d) Chapter 480-160 WAC</u>

Submissions in these dock-ets or types of documents:	Must comply with these rules and:
For public records requests	Chapters 42.56 RCW and 480-04 WAC

(6) **Electronic file format requirements.** Electronic versions of all documents filed with the commission must conform to the following file format requirements.

(a) *Acceptable format.*

(i) All documents other than spreadsheets as described in (a)(ii) of this subsection and email correspondence or comments must be filed in searchable .pdf (adobe acrobat or comparable software) format and to the extent feasible should be saved or otherwise converted directly from the native format in which the document was created. Parties that cannot create .pdf files directly from the document in its native format must provide a copy of the document converted to .pdf via scanning or other available technology. Scanned documents must be searchable unless readily available software does not support searchable scanned documents.

(ii) Any document in the form of a spreadsheet that displays results of calculations based on formulas must be filed in its native Excel format (~~((.xls,))~~ .xlsx(~~(, .xlsm))~~) or the updated version of, or successor to, that software program. The commission will accept spreadsheets created using a different software program only if the commission has a license to use that program and personnel who know how to use it. Spreadsheets must include all formulas and may not include locked, password protected, or hidden cells or tabs, or any other restrictions that impair or hamper the commission's ability to review or modify the data in those cells.

(iii) Correspondence or comments in the form of an email must conform to generally accepted conventions for email communications.

(b) *File naming conventions.* Documents must be named in a way that describes the contents. Each document a person submits must be labeled with the docket number of the proceeding (except in the case of original submissions), any confidentiality designation, the name of the document, the name of the person or party on whose behalf the document is submitted, the last name of any witness sponsoring the document, and the date the document is submitted. The prefix to the docket number (e.g., UE-, TG-, etc.) may be omitted, and words may be abbreviated as necessary in the file name of an electronic document if the full name is too long. The cover letter accompanying the submission must list all of the documents included in the submission using the same identifying information. The commission maintains a sample list of acceptable file names and abbreviations on its web site.

(c) *Acceptable organization.* Except as provided in WAC 480-07-160 (~~((4)(d)(vii))~~) when submitting documents that include information designated as confidential, highly confidential, or exempt, all files required to meet a single deadline must be submitted at the same time and in the same message, if possible, or on the same disc or commonly used electronic storage medium. A person may submit files in more than one submission or message when submitting those files via the commission's web portal or via email as authorized in subsection (5)(a)(iii) and (b)(iii) of this section if the total size of the submission exceeds the size constraints of the

commission's web portal or email system for a single submission. If the documents are submitted in multiple email messages, each email message must prominently identify which one it is in the sequence of messages and, to the extent possible, the total number of messages used (e.g., "Message 2 of 4"). The first and final messages in the sequence must be identified as such. The first message also must explain the reason for the multiple messages and must include the cover letter and any required certificate of service. All such messages must be submitted as close to simultaneously as practicable.

AMENDATORY SECTION (Amending WSR 18-18-041, filed 8/29/18, effective 9/29/18)

**WAC 480-07-500 General rate proceedings—Statement of policy.** (1) **Scope of this subpart.** This subpart explains the special requirements for certain filings to change rates charged by electric, natural gas, pipeline, telecommunications, and water companies, low-level radioactive waste sites, solid waste collection companies, and commercial ferries, and marine pilotage services.

(2) **Inconsistencies with subpart A requirements.** If there is any inconsistency between the requirements in subpart B of these rules and those in subpart A, the requirements in subpart B control.

(3) **Purpose of special rules.** The special requirements in subpart B are designed to standardize presentations, clarify issues, and speed and simplify processing of general rate proceedings.

(4) **Failure to comply.** The commission, pursuant to WAC 480-07-141, may reject, or require the company to revise, any filing to initiate a general rate proceeding that does not conform to the requirements of subpart B of these rules. The commission will provide a written statement of its reasons if it rejects a filing. The company may revise or refile a filing that remedies the noncompliance the commission has identified and otherwise fully complies with the rules consistent with the requirements in WAC 480-07-141(2), which governs the date on which the commission considers a filing to have been made.

(5) **Less than statutory notice.** The commission may grant requests to alter tariffs on less than statutory notice for good cause shown, in accordance with RCW 80.28.060 or 81.28.050. A company or pilotage service provider that seeks to implement general rate proceeding tariff changes on less than statutory notice must include with its filing a complete explanation of the reasons that support such treatment.

AMENDATORY SECTION (Amending WSR 18-18-041, filed 8/29/18, effective 9/29/18)

**WAC 480-07-505 General rate proceedings—Definition—Tariff suspension.** (1) **Filings that initiate general rate proceedings.** Except as otherwise provided in this rule or RCW 80.04.130 (2)(a) (governing rate decreases for telecommunications companies), the commission will initiate a general rate proceeding in response to a filing by any public service company identified in WAC 480-07-500 requesting to change its rates if that filing meets any of the following criteria:

(a) The rates a company requests would alter its gross annual revenue from activities the commission regulates by three percent or more.

(b) Tariffs would be restructured such that the gross revenue provided by any customer class would increase by three percent or more.

(c) The company requests a change in its authorized rate of return on common equity or a change in its capital structure.

(d) The company is a solid waste collection company regulated under chapter 81.77 RCW.

(e) Any petition to change the rates, charges, or rules of marine pilotage services tariff.

**(2) Filings under Title 80 RCW that will not initiate general rate proceedings.** The commission generally will not initiate general rate proceedings in response to the following filings, even though the revenue the company requests may vary by three percent or more from the company's current gross annual revenue from Washington regulated operations:

(a) Periodic rate adjustments the commission has generally authorized for electric and natural gas companies (e.g., power cost adjustments, purchased gas cost adjustments, or decoupling adjustments);

(b) Emergency or other rate increases a company requests on short notice as a result of disasters, adverse weather, or other causes beyond the company's control that unexpectedly and substantially increase a public service company's expenses; or

(c) Rate changes designed to recover only the costs a company incurs to comply with government actions that directly impact the company's costs to provide regulated service (e.g., changes to tax laws or local fees) or to comply with federal or state rules concerning the level of rates for telecommunications companies.

**(3) Filings under chapter 81.77 RCW that will not initiate general rate proceedings.** The commission generally will not initiate general rate proceedings in response to the following filings by solid waste collection companies regulated under chapter 81.77 RCW even though the request may meet one or more criteria identifying general rate proceedings:

(a) Filings by companies:

(i) That provide specialized hauling services restricted to certain specific waste products that are limited to specific customers; or

(ii) That provide only on-call or nonscheduled service (i.e., Class C companies, as defined in WAC 480-70-041).

(b) Filings seeking only to pass through a change in fees unilaterally established and imposed by governmental or unaffiliated private entities, including disposal, recycling, yard waste, or processing fees, or to pass through changes to fees charged by affiliated entities if the public service company demonstrates that the total cost of transfer, transport, and fees at the affiliate's facilities is equal to or lower than other reasonable and currently available alternatives;

(c) Filings for rate changes designed to recover only the costs a company incurs to comply with government actions that directly impact the company's costs to provide regulated

service (e.g., changes to state or local fees, charges, or taxes directly related to the collection or disposal of solid waste);

(d) Filings implementing new solid waste collection programs; or

(e) Filings for periodic rate adjustments through a cost adjustment mechanism the commission has generally authorized for solid waste collection companies (e.g., fuel or recycling commodity adjustments).

**(4) Filings under chapter 81.116 RCW that will not initiate general rate proceedings.** The following filings are not considered general rate proceedings for pilotage services regulated under chapter 81.116 RCW:

(a) Filings by a countywide port district located in part or in whole within the Grays Harbor pilotage district, as defined by RCW 88.16.050 that meets the filing requirements in RCW 53.08.390;

(b) Filings to fund the stipend the board of pilotage commissioners is authorized to pay to pilot trainees and to use in its pilot training program under RCW 88.16.035;

(c) Filings to reflect any automatic periodic or annual adjustment to pilotage rates previously established and approved by the commission in a general rate proceeding;

(d) Any filing to collect by a countywide port district the cost of the commission for setting tariff rates; and

(e) Any filing to collect tariff surcharges authorized by the legislature or to recover changes in state, local or federal taxes or fees applicable to pilotage services.

**(5) Commission discretion.** The commission retains discretion to determine whether to initiate a general rate proceeding in response to any filing described in this section or to convert any rate proceeding to a general rate proceeding, following notice and an opportunity to comment, if the commission finds that such action is consistent with the public interest. The commission may require that any filing or proposal by a public service company or pilotage service provider to change rates for any customer class, or to restructure rates, be subject to the procedures and protections in subpart B of these rules.

~~((5))~~ **(6) Suspension of tariffs.** The commission may take action at a regularly scheduled open public meeting to suspend the tariff sheets included in any filing that seeks to change rates. A company may waive its right to commission consideration of the filing at an open meeting and request immediate suspension of the tariffs, either in the cover letter accompanying the filing or in a subsequent document. If commission staff confirms that the filing is complete and complies with the applicable rules in subpart B of these rules, the commission may enter a complaint and order suspending the tariffs without further process. The company, or pilotage service provider, and statutory parties may engage in discovery pursuant to WAC 480-07-400 through 480-07-415 after the commission issues a notice of prehearing conference prior to the commission entering a prehearing conference order.

#### NEW SECTION

**WAC 480-07-525 General rate proceedings—Marine pilotage services in Puget Sound.** General rate proceeding filings for marine pilotage services must include the

information described in this section. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to a petitioner's right to refile its request in conformance with this section.

(1) Testimony and exhibits. When the filing is suspended and a hearing scheduled the petitioner must file with the commission one paper copy and an electronic copy for all testimony and exhibits that the petitioner intends to present as its direct case. The electronic copy of all filed material must be in the format identified in WAC 480-07-140(6). The commission may require the petitioner to file additional paper copies if the commission suspends and conducts a hearing on the filing.

(2) Proposed tariff. Proposed tariff sheets must be filed in electronic form supplemented by one paper copy. The proposed tariff sheets should be in legislative format (i.e., with strike-through to indicate the material to be deleted or replaced and underlining to indicate the material to be inserted) consistent with the requirements in WAC 480-160-110 through 480-160-140, as well as copies of any tariff sheets that are referenced in the new or amended tariff sheets. The electronic copy must be submitted in the format identified in WAC 480-07-140(6).

(3) Transmittal letter. A transmittal letter prepared in compliance with the provisions of WAC 480-07-141.

(4) Work papers. One paper and one electronic copy of all supporting work papers for the test period, which is the most recent twelve-month period for which financial data are available. The electronic copy must be submitted in the format identified in WAC 480-07-140(6). Work papers reflecting the test year must include:

- (a) Schedule of fixed or long-term assets.
- (b) Computation of revenue requirement for the rate effective year.
- (c) An accrual basis income statement and balance sheet.
- (d) An income statement with restating actual and pro forma adjustments, including all supporting calculations and documentation for all adjustments. The filing must identify dollar values and underlying reasons for each restating actual and pro forma adjustment.
- (e) A calculation of the revenue impact of the proposed tariff revisions.
- (f) An income statement listing all revenue and expense accounts by month.
- (g) If nonregulated revenue represents more than ten percent of total test period revenue, a detailed separation of all revenue and expenses between regulated and nonregulated operations.
- (h) A detailed list of all nonregulated operations, including the rates charged for the services rendered. Copies of all contracts must be provided on request.
- (i) Schedule reconciling, within five percent, rates and charges:
  - (i) Earned during the test year to actual reported revenues; and
  - (ii) Expected to be earned during the rate year to computed revenue requirement.
- (j) At the time the petitioner makes its general rate case filing, the petitioner must provide to commission staff one paper and one electronic copy of all supporting work papers

of each witness in a format as described in this subsection. When the filing is suspended and a hearing scheduled, if the testimony, exhibits, or work papers refer to a document including, but not limited to, a report, study, analysis, survey, article or decision, that document must be included as a work paper unless it is a reported court or agency decision, in which case the reporter citation must be provided in the testimony. If a referenced document is voluminous, it need not be provided, but the petitioner must identify clearly the materials that are omitted and their content. Omitted materials must be provided or made available if requested by the commission.

(k) Organization. Work papers must be plainly identified and well organized, and must include an index and tabs. All work papers must be cross referenced and include a description of the cross referencing methodology.

(l) Electronic documents. Parties must provide all electronic files supporting their witnesses' work papers. The electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support the exhibits and work papers must be provided using logical file paths, as necessary, by witness, and using identifying file names.

(m) Projected changes in vessel assignments and a detailed portrayal of vessel assignments for the previous twelve months along with the associated tariff and fees charged to vessel operators for pilotage services as required in chapter 480-160 WAC.

(n) The number of pilots licensed in the pilotage district. At a minimum, work papers must provide the board of pilotage commissioners' determination pursuant to WAC 363-116-065(2).

(o) The known increases or decreases in state fees and taxes.

(p) Normalized annual costs of any major capital investment or other recurring expenses.

(q) Revenues generated by tariff and fees for the test period, and any restating or pro forma adjustments based on available projected vessel assignments, vessel type, vessel tonnage, routes, number of pilots or other tariff-based billing determinates.

(r) Necessary tariff surcharge to fund the stipend the board of pilotage commissioners is authorized to pay to pilot trainees and to use in its pilot training program under RCW 88.16.035.

(s) Change in methodologies for adjustments. If a party proposes to calculate an adjustment in a manner different from the method that the commission most recently accepted or authorized for the petitioner, it must also present a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission, and a brief narrative describing the change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless so specified in the order approving the settlement.

AMENDATORY SECTION (Amending WSR 18-18-041, filed 8/29/18, effective 9/29/18)

**WAC 480-07-540 General rate proceedings—Burden of proof.** Public service companies and the petitioner seeking to establish or modify tariff rates for marine pilotage services bear the burden of proof in the general rate proceedings described in RCW 80.04.130 or 81.04.130. The burden of proof includes the burden of going forward with evidence and the burden of persuasion. The commission will consider the company's or petitioner's initial filing and any supplemental filings the commission authorized to be the company's or petitioner's full direct case in support of its rate change request for purposes of deciding any prehearing motion to dismiss under WAC 480-07-380.

AMENDATORY SECTION (Amending WSR 18-18-041, filed 8/29/18, effective 9/29/18)

**WAC 480-07-700 Alternative dispute resolution.** The commission supports parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest. Alternative dispute resolution (ADR) includes any mechanism to resolve disagreements, in whole or in part, without contested hearings.

(1) **No delegation of commission authority.** The commission cannot delegate to parties the power to make final decisions in any adjudicative proceeding. The commission will determine whether to approve and adopt any proposed settlement or other agreement and the extent to which it resolves some or all of the issues presented in the proceeding consistent with the public interest.

(2) **Pilot training program stipend.** Any proposed settlement or agreement for pilotage rates must include the necessary tariff surcharge to fund the stipend the board of pilotage commissioners is authorized to pay to pilot trainees and to use in its pilot training program under RCW 88.16.035.

(3) **Commission fee to set pilotage service rates.** The parties to any proposed settlement or agreement must allow for the commission to apply its reasonable fee for setting rates for marine pilotage services.

(4) **Forms of ADR.** The commission provides the following nonexclusive forms of ADR:

(a) *Voluntary negotiation.* Parties to a dispute that is within the commission's jurisdiction may agree to negotiate with any other parties at any time without commission oversight.

(b) *Commission-directed negotiation.* The commission may direct parties to meet or consult as provided in subsection ~~((3))~~ (5) of this section, or may establish or approve a collaborative process as provided in WAC 480-07-720.

(c) *Mediation.* The commission may assign commission staff trained in ADR principles and techniques to serve as neutral third parties (e.g., mediator or facilitator) to assist the parties in formal or informal mediation.

(d) *Assignment of settlement judge.* The commission may assign a settlement judge to assist the parties to resolve their dispute through negotiation in appropriate circumstances.

(e) *Arbitration.* The commission may provide an arbitrator whose decision is subject to commission review in matters for which arbitration is authorized.

~~((3))~~ (5) **Settlement conference.** A settlement conference is any discussion or other communication between two or more parties in an adjudicative proceeding intended to resolve one or more disputed issues. Settlement conferences do not include requests for information, for clarification, or in aid of discovery, or communications to identify whether a dispute exists or whether another party is willing to negotiate resolution of a disputed issue. Settlement conferences must be informal and without prejudice to the rights of the parties. The parties may waive the procedural requirements of this section relating to settlement conferences if all parties and the commission agree. Any party and any person who has filed a petition to intervene may participate in an initial or early settlement conference as defined in this section. An intervenor's participation in a settlement conference is limited to the interests supporting its intervention, except by agreement of other participants in the conference. No party is required to attend a settlement conference, but any party that attends and participates must make a good faith effort to resolve one or more disputed issues in which the party has a substantial interest.

(a) *Initial settlement conference.* The commission will include in the procedural schedule for each adjudicative proceeding the date for at least one settlement conference. Parties may reschedule a settlement conference included in the procedural schedule without seeking to modify the schedule if all parties agree, but the parties must provide notice to the presiding officer of the rescheduled date.

(b) *Early settlement conference.* Any party may initiate a settlement conference with any other party after the commission opens a docket and before the initial prehearing conference, but in general rate proceedings for electric, natural gas, or Class A telecommunications companies, the party initiating the settlement conference must provide ten days prior notice of any such conference to the commission, any statutory party, any person who has submitted a petition to intervene or notice of appearance, and any person who was a party in the most recent proceeding of the same type involving the same filing party and respondent, if any. Such persons may participate in the early settlement conference, as may any other person who submits a petition to intervene prior to the early settlement conference.

~~((4))~~ (6) **Settlement negotiation guidelines.** In any settlement negotiation, including collaboratives, settlement conferences, and mediations, the following apply unless all participants agree otherwise:

(a) No statement, admission, or offer of settlement made during negotiations is admissible in evidence in any formal hearing before the commission without the consent of the participants or unless necessary to address the process of the negotiations;

(b) Information exchanged exclusively within the context of settlement negotiations will be treated as confidential and will be privileged against disclosure to the extent permitted by law;

(c) Participants in a commission-sanctioned ADR process must periodically advise any nonparticipating parties and the commission of any substantial progress made toward



settlement and must immediately advise the commission if that process is without substantial prospects of resolving the issue or issues under discussion (i.e., if the participants agree that they are at an impasse or any neutral third party who is assisting the participants in the ADR process declares an impasse); and

(d) Any mediator, facilitator, or settlement judge who assists the participants in an ADR process will not participate in any adjudication, arbitration, or approval process for the same proceeding unless all parties consent in writing.

## Chapter 480-160 WAC

### PILOTAGE RULES

#### NEW SECTION

**WAC 480-160-001 Purpose of chapter.** (1) **Puget Sound pilotage district** - The legislature has declared that tariffs for pilotage services provided under chapter 88.16 RCW in the Puget Sound pilotage district shall be established by the commission. The purpose of these rules is to administer chapter 81.116 RCW in setting or amending pilotage tariff rates or charges for pilotage services.

(2) **Grays Harbor pilotage district** - The legislature has declared that in setting rates or charges for pilotage services provided by the Grays Harbor pilotage district under chapter 88.16 RCW, the commission will consider the recommendation of the port district. The purpose of these rules is to administer chapter 81.116 RCW in setting or amending pilotage tariff rates or charges for pilotage services.

#### NEW SECTION

**WAC 480-160-005 Application.** Except for the vessels exempted under RCW 88.16.070, every vessel that operates in the waters of the Puget Sound pilotage district or Grays Harbor pilotage district must employ a pilotage service provider licensed under the provisions of RCW 88.16.090 and must pay the applicable pilotage rates and charges in accordance with the applicable tariff.

#### NEW SECTION

**WAC 480-160-010 Resolving disputes about the meaning of these rules.** Any person subject to these rules may seek a commission interpretation of a rule by filing with the commission a petition for declaratory order pursuant to WAC 480-07-930 or a petition under WAC 480-07-370 requesting clarification.

#### NEW SECTION

**WAC 480-160-020 Definitions.** "**Commission**" means the utilities and transportation commission.

"**File with the commission**" means filed with the commission's executive secretary pursuant to WAC 480-07-140.

"**Grays Harbor pilotage district**" shall have the same meaning as in RCW 88.16.050(2).

"**Person with a substantial interest**" means:

(a) A pilot or a group or association of pilots licensed under chapter 88.16 RCW;

(b) A vessel operator or other person using the services of a licensed pilot and paying pilotage fees and charges for such services or an organization representing vessel operators or persons; or

(c) Any other person or business entity that can show that a requested tariff change would be likely to have a substantial economic impact on its operations.

"**Pilotage service provider**" means a person licensed by the state to provide marine pilotage services in the Grays Harbor pilotage district or Puget Sound pilotage district.

"**Pro forma adjustments**" means a mechanism that gives effect for the test period to all known and measurable changes that are not offset by other factors.

"**Puget Sound pilotage district**" shall have the same meaning as in RCW 88.16.050(1).

"**Rate design**" and "**rate structure**" mean arrangement or system of rates and charges that produce revenues necessary to recover the costs of service and support economic and social goals and policies.

"**Rates**" and "**charges**" mean prices for services that, when multiplied by the number of times a service is performed, determines the amount owed for the services.

"**Serve**" or "**provide**" means to deliver to commission staff and parties in a proceeding documents that are filed with the commission or documents that are not filed with the commission but are formally exchanged between parties.

#### NEW SECTION

**WAC 480-160-030 Change of address, telephone number, or email.** A pilotage service provider must notify the commission in writing of any change in physical business address, business mailing address, business telephone number, or business email. This notice must be filed at least ten days before the effective date of the change.

#### NEW SECTION

**WAC 480-160-040 Exemptions from rules in chapter 480-160 WAC.** The commission may grant an exemption from the provisions of any rule in this chapter in the same manner, consistent with the standards, and according to the procedures set forth in WAC 480-07-110.

#### NEW SECTION

**WAC 480-160-050 Records retention.** (1) **General provisions.** A pilotage service provider must keep all business records and reports for at least three years following the date those documents are created unless otherwise specified in these rules or unless a longer retention period is required by another governmental entity.

(2) A pilotage service provider is deemed in compliance with the requirements of this section (records retention), WAC 480-160-060 (reporting requirements), and 480-160-160 (complaints) if the information required is provided by an organization of licensed pilots or an employer on the pilotage service provider's behalf.

(3) **Customer service records.** A pilotage service provider must maintain complete and accurate customer service records for all customers the provider serves.

(a) A pilotage service provider must keep customer service records on file in the provider's general office for at least three years.

(b) Customer service records must be retained either in a searchable electronic format, or in alphabetical, service address, or service route order.

(c) Customer service records must show at least the following information:

- (i) The name and service address of the customer;
- (ii) The billing address of the customer, if different than the service address;
- (iii) Categories and quantity of pilotage or other services provided, including extra services provided;
- (iv) Information required to provide, on customer request, a detailed description of the amount billed the customer;
- (v) Amounts billed;
- (vi) Amounts collected; and
- (vii) Any balance due.

NEW SECTION

**WAC 480-160-060 Reporting requirements.** (1) **Annual reports.** An annual report is an end-of-the-year summary of financial activity that each pilotage service provider is required to file with the commission.

(a) Each year the commission will make available on the commission web site an annual report form and instructions for completing the form.

(b) A pilotage service provider must file a complete and accurate annual report showing all requested information by May 1st of the succeeding year. Information provided in the annual report must be consistent with source documents maintained at the provider's offices.

(c) The commission may grant an extension of time to allow a pilotage service provider to file its annual report after the May 1st due date if the commission receives a request for extension before April 15th.

(d) The commission may issue penalty assessments if a provider fails to file its required annual report by May 1st or any extended due date the commission has established.

(2) **Other reports.** The commission may require a pilotage service provider to file periodic or other special reports.

NEW SECTION

**WAC 480-160-070 Commission compliance policy.** (1) The commission encourages voluntary compliance with statutes, rules, and commission orders.

(2) The commission will enforce statutes, rules, and commission orders through:

- (a) A program emphasizing education and technical assistance.
- (b) A compliance program including:
  - (i) Investigation and resolution of complaints;
  - (ii) Economic compliance audits including, but not limited to, rates, charges, and billing practices; and

(iii) Cooperative agreements with other agencies to enable effective enforcement and appropriate use of resources.

(3) Where necessary to ensure compliance with statutes, rules, and commission orders, the commission will pursue administrative actions with the intent of ensuring future compliance, by the violating pilotage district service provider including, but not limited to, warnings, sanctions, or penalty assessments under the provisions of chapter 81.04 RCW.

NEW SECTION

**WAC 480-160-080 Fees.** The commission will assess fees to recover the reasonable costs the commission incurs to establish or amend the tariff rates of Grays Harbor pilotage district and Puget Sound pilotage district, respectively. The fees must be included in the respective marine pilotage tariffs and shall be appropriated from the pilotage account established in RCW 88.16.061.

NEW SECTION

**WAC 480-160-090 Pilots must charge only approved rates.** No pilotage service provider shall charge, collect, or receive, and no person, firm, corporation, or association shall pay for pilotage or other services performed that is any greater, less, or different amount, directly or indirectly, than the rates or charges approved by the commission.

NEW SECTION

**WAC 480-160-100 Tariffs and rates—General.** (1) A tariff is a publication containing the rates and charges for pilotage services, including rules that govern how rates and charges are assessed.

(2) The commission establishes and amends the tariffs that pilotage service providers serving the Puget Sound pilotage district and Grays Harbor pilotage district must use.

(3) All regulated pilotage service providers must comply with the rates, terms, conditions, and all other requirements in the applicable tariff.

(4) Any person with a substantial interest may petition the commission to update or modify the rates, terms, or conditions contained in the applicable marine pilotage district tariff.

(5) Any proposed changes to the tariff must be provided using the electronic template the commission provides.

NEW SECTION

**WAC 480-160-110 Tariffs—Changes must be identified.** Each change in rates, charges, terms, or conditions in a tariff must be clearly identified by including the appropriate code symbol immediately to the left of the material being changed. Symbols to indicate the type of changes are:

Code Symbol	Used to indicate:
(R)	Reductions in rates or charges
(I)	Increases in rates or charges

Code Symbol	Used to indicate:
(C)	Changes resulting in neither increases nor decreases
(N)	New rates, terms, or conditions
(W)	Wording changes

NEW SECTION

**WAC 480-160-120 Changing commission-published tariff—Puget Sound pilotage district.** (1) A person with a substantial interest may petition the commission to modify the Puget Sound pilotage district tariff, and the commission may propose tariff changes on its own initiative.

(2) Persons must file their proposed changes electronically using the commission's records portal.

(3) Proposed changes must:

(a) Be made on the appropriate page(s) of the existing tariff using the commission's tariff template.

(b) Identify the tariff item to be changed.

(c) Fully describe the proposed change.

(d) State clearly the reason(s) for the proposed change.

(e) Include any information or documents that justify the proposed change.

(f) Provide name, title, address, telephone number, and email address of the person or entity proposing the changes.

(4) If the commission modifies the Puget Sound pilotage district tariff, the commission will enter an appropriate order. The order and the modified tariff will state the date on which the revised rates, terms, or conditions become effective. The commission will serve a copy of the modified tariff in electronic format on the Puget Sound pilotage service providers.

NEW SECTION

**WAC 480-160-130 Changing commission-published tariffs—Grays Harbor pilotage district.** (1) When the Grays Harbor pilotage district files a notice of its recommended pilotage service tariff with the commission, it must include:

(a) The district pilotage budget;

(b) The prior year pilotage financial statement; and

(c) Official notice of the public hearing held on the proposed tariff.

(2) If a person with a substantial interest petitions the commission to modify the Grays Harbor pilotage district tariff, the person must submit all of the following:

(a) The name of the petitioner;

(b) A description of why the existing tariff is not fair, just, reasonable, and sufficient;

(c) A description of each proposed change and a brief statement of the reason for the change;

(d) The dollar and percentage amounts that revenue generated under the tariff will change if the commission approves the filing;

(e) The percentage amount that rates will change if approved by the commission;

(f) A contact person's name, mailing address, telephone number, and email address;

(g) An electronic copy of the proposed tariff; and

(h) Information demonstrating the petition was submitted to and subsequently rejected by the Port of Grays Harbor.

(3) If the commission modifies the Grays Harbor pilotage district tariff, the commission will enter an appropriate order. The order and the modified tariff will state the date on which the revised rates, terms, or conditions become effective. The commission will serve a copy of the modified tariff electronically on the Grays Harbor pilotage service providers.

NEW SECTION

**WAC 480-160-140 Tariffs—Approval.** The commission's receipt of a filing to modify tariff rates, terms, or conditions does not mean that the proposed modifications are immediately effective or that the commission approves those revisions. Petitioners may not implement any proposed tariff modifications until the commission approves them or until the modified tariff becomes effective by operation of law.

NEW SECTION

**WAC 480-160-150 Tariffs—Suspension by the commission.** (1) Upon receiving a complaint or protest concerning rates or charges, or on its own initiative, the commission may suspend tariff rates, terms, or conditions as provided in RCW 81.04.130.

(2) The commission will not take action to suspend a tariff, or any part of a tariff, based on a complaint or protest concerning rates or charges unless the complaint or protest is filed in compliance with the commission's rules of practice and procedure in chapter 480-07 WAC.

NEW SECTION

**WAC 480-160-160 Complaints—Rates and charges.**

(1) **Pilotage service provider responsibility.**

(a) **Complaints from customers.** When a pilotage service provider receives a complaint from a customer or an applicant concerning rates or charges, it must:

(i) Acknowledge the complaint;

(ii) Investigate the matter promptly;

(iii) Report the results of the investigation to the complainant;

(iv) Take corrective action, if warranted, as soon as appropriate under the circumstances;

(v) Inform the complainant that the pilotage service provider's initial decision may be appealed to a higher level representative of the pilotage service provider, if any;

(vi) Inform the complainant, if still dissatisfied after speaking with the higher level representative, of the commission's availability for review of the complaint; and

(vii) Provide the complainant with the commission's mail and email addresses and toll free telephone number.

(b) **Complaint referred by commission.** When commission consumer protection staff refers an informal complaint regarding rates or charges to the pilotage service provider, the pilotage service provider must:

(i) Investigate and report the results to the commission consumer protection staff within two business days (the com-

mission consumer protection staff may grant an extension of time for responding to the complaint if requested and warranted);

(ii) Keep the commission consumer protection staff informed of progress toward the solution; and

(iii) Inform the commission consumer protection staff of the final result.

(c) **Complaint record.** A pilotage service provider must keep a record of all complaints against it concerning rates or charges for at least one year. The record of complaints must be made readily available for commission review. The record must contain:

(i) The complainant's name and address;

(ii) Date and nature of the complaint;

(iii) Action taken; and

(iv) Final result.

(2) **Complaints to commission.** Applicants, customers, or their representatives may file with the commission either:

(a) An informal complaint against the pilotage service provider under the provisions of WAC 480-07-910; or

(b) A formal complaint against the pilotage service provider under the provisions of WAC 480-07-370.

**WSR 19-07-080**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed March 20, 2019, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-02-052.

Title of Rule and Other Identifying Information: WAC 415-106-010 Public safety employees' retirement system (PSERS) definitions, 415-106-100 Am I eligible for PSERS membership?, and 415-106-110 If I am a member of PERS may I change my membership to PSERS?

Hearing Location(s): On April 24, 2019, at 10:00 a.m., at the Department of Retirement Systems, 6835 Capitol Boulevard S.E., Tumwater, WA 98501.

Date of Intended Adoption: April 25, 2019.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by April 23, 2019.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend the PSERS definitions and incorporate changes implemented by chapter 241, Laws of 2018.

Reasons Supporting Proposal: These proposed amendments reflect the changes to PSERS membership that were enacted by chapter 241, Laws of 2018.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.37.010, 41.37.301.

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Implementation: Amy McMahan, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7307.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not a listed agency in RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4) as the rule only affects public employers and members of the public safety employees' retirement system, and does not affect small businesses.

March 20, 2019

Jilene Siegel

Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-17-128, filed 8/23/16, effective 9/23/16)

**WAC 415-106-010 Definitions.** The definitions in RCW 41.37.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.37 RCW are defined in this chapter.

(1) **AFC** means average final compensation as defined in RCW 41.37.010(14).

(2) **City corrections department** means any subsection or unit of a city employing correctional employees.

(3) **County corrections department** means any subsection or unit of a county employing correctional employees.

(4) **Employer** means the state or local government entities as defined in RCW 41.37.010(4) employing members eligible for PSERS.

(5) **Full-time employee** means an employee who is regularly scheduled to provide at least one hundred sixty hours of compensated service for an employer each calendar month.

(6) **LEOFF** means the law enforcement officers' and firefighters' retirement system.

(7) **Nursing care**, for purposes of membership eligibility under RCW 41.37.010(19), refers to services provided on behalf of a qualifying PSERS employer in which an employee is required to hold a valid certification and/or license in the state of Washington and the primary duty is to provide direct patient nursing care. Services include the identification of, and discrimination between, the individual's physical and psychosocial needs, treatment, counseling, patient education, self-care and the administration of medication.

(8) **PERS** means the public employees' retirement system.

~~((8))~~ (9) **Primary responsibility** means the fundamental, crucial job duty performed in a position. It does not include marginal responsibilities, which are extra or incidental to the primary responsibility. The primary responsibility

of a position may be considered the primary responsibility because:

- (a) The position exists to perform that function; or
  - (b) There are a limited number of employees available who could perform that function; or
  - (c) The function is highly specialized, and the incumbent is hired for special expertise or ability to perform it.
- ~~((9))~~ (10) **PSERS** means the public safety employees' retirement system.
- ~~((10))~~ (11) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.37.010(6).
- ~~((11))~~ (12) **SERS** means the school employees' retirement system.
- ~~((12))~~ (13) **TRS** means the teachers' retirement system.
- ~~((13))~~ (14) **WSPRS** means the Washington state patrol retirement system.

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

**WAC 415-106-100 Am I eligible for PSERS membership?** ~~((On or after July 1, 2006,))~~ (1) You are eligible for PSERS membership ~~((according to the provisions in this section:~~

~~(1) Subject to the exceptions in subsection (2) of this section, you will be a PSERS member on the date you become employed in a full-time position for an employer as defined in WAC 415-106-010, provided one or more of the following applies:~~

- ~~(a) The position requires completion of a certified criminal justice training course and you are authorized by your employer to arrest, conduct criminal investigations, enforce the criminal laws of the state of Washington, and carry a fire arm as part of the job.~~
- ~~(b) Your primary responsibility is to ensure the custody and security of incarcerated or probationary individuals.~~
- ~~(c) You are a limited authority Washington peace officer, as defined in RCW 10.93.020.~~
- ~~(d) Your primary responsibility is to supervise members eligible under this section) if you meet the definition of member in RCW 41.37.010.~~

~~(2) You are exempt from PSERS membership if:~~

- ~~(a) One or more of the exemptions in RCW 41.37.020 apply to you;~~
- ~~(b) You are a retirement system retiree, estopped from membership under RCW 41.04.270;~~
- ~~(c) You are, or have been, a public employees' retirement system (PERS) Plan 1 member; or~~
- ~~(d) You were a PERS Plan 2 or 3 member ((on July 1, 2006, and are)) and were not required to join PSERS membership according to WAC 415-106-110.~~

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

**WAC 415-106-110 If I am a member of PERS, may I change my membership to PSERS?** You may have the right to change your retirement system membership from PERS to PSERS according to the requirements in this section.

(1) You may change retirement system membership from PERS to PSERS if:

- ~~(a) You were a member of either PERS Plan 2 or Plan 3 ((prior to)) before July 1, 2006; and~~
- ~~(b) On July 1, 2006, you meet the requirements for membership in ((WAC 415-106-100.~~
- ~~(2) If you meet the conditions in subsection (1) of this section and wish to change membership from PERS to PSERS, you must)) RCW 41.37.010 (19)(a), (b), (c) or (f); and~~

~~(c) You submit a properly completed election form to your employer ((during the election period that begins on)) between July 1, 2006, and ((ends on)) September 30, 2006.~~

~~(2) You may also change retirement system membership from PERS to PSERS if:~~

~~(a) You were a member of either PERS Plan 2 or Plan 3 before January 1, 2019; and~~

~~(b) On January 1, 2019, you met the requirements for membership in RCW 41.37.010 (19)(d), (e) or (f); and~~

~~(c) You submit a properly completed election form to your employer between January 1, 2019, and March 1, 2019.~~

~~(3) Your change in membership is prospective only.~~

~~((a) You become a member of PSERS on the election date shown on your election form.~~

~~(b))~~ (4) You will become a dual member of PSERS and PERS. All service credit and compensation previously reported in PERS will remain in PERS. Your retirement benefits will be governed by the dual member "portability" provisions in chapters 41.54 RCW and 415-113 WAC.

~~((4))~~ (5) If you meet the conditions in subsection (1) or (2) of this section and do not ~~((change membership to))~~ elect PSERS ((on or before September 30, 2006, you may not)) membership during the election window, you cannot become a member of PSERS while you continue employment with the same employer((-); however, if you terminate your employment with ((the)) that employer ((with whom you were employed on July 1, 2006, and)) after the election window begins, and subsequently become employed in a PSERS eligible position ((with another employer after July 1, 2006)), you will be mandated into PSERS membership.

## WSR 19-07-085

### PROPOSED RULES

### LIQUOR AND CANNABIS

### BOARD

[Filed March 20, 2019, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-168.

Title of Rule and Other Identifying Information: WAC 314-11-025 What are the forms of acceptable identification?

Hearing Location(s): On May 1, 2019, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: On or after May 15, 2019.

Submit Written Comments to: Janette Benham, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by May 1, 2019.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, Americans With Disabilities Act coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by April 12, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The revised rule will allow consideration of tribal enrollment cards from federally recognized Indian tribes located outside of Washington as acceptable forms of identification to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol. Revisions to the rule add the process for consideration of tribal enrollment cards and make other clarifying and technical changes.

Reasons Supporting Proposal: The proposed rule changes clarify the acceptable forms of identification, what is required on the identification, update language, and provide clear guidance on requirements and processes.

Statutory Authority for Adoption: RCW 66.08.030 and chapter 66.44 RCW.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Janette Benham, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1760; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no costs or reporting requirements associated with this rule. The proposed rule allows consideration of tribal enrollment cards from federally recognized tribes located outside of Washington as acceptable forms of identification. The proposed rule also provides clarifying and technical updates. The proposed rule does not impose any additional requirements or costs on licensees or other businesses.

March 20, 2019  
Jane Rushford  
Chair

AMENDATORY SECTION (Amending WSR 18-08-094, filed 4/4/18, effective 5/5/18)

**WAC 314-11-025 What are the ~~((forms of))~~ acceptable forms of identification?** (1) ~~((Following are))~~ The acceptable forms of identification ~~((that are acceptable))~~ to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol are:

(a) A driver's license, instruction permit, or identification card of any state, ~~((or))~~ province of Canada, ~~((from a))~~ U.S. territory, or the District of Columbia, or an "identocard" issued by the Washington state department of licensing per RCW 46.20.117;

(b) A United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents ~~((, which may include an embedded, digital signature in lieu of a visible signature));~~

(c) A passport, passport card, or NEXUS card;

(d) A Merchant Marine identification card issued by the United States Coast Guard; ~~((and))~~ or

(e) An enrollment card issued by the governing authority of a federally recognized Indian tribe ~~((located in Washington))~~, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.

(i) An enrollment card must be approved by the board's enforcement division prior to use as an acceptable form of identification. The tribe may request approval by submitting the following for review and inspection:

(A) A letter requesting approval and describing the security features of the enrollment card;

(B) A physical sample of an enrollment card; and

(C) A contact phone number where enforcement officers may call at any time to verify the validity of the enrollment card.

(ii) After review and inspection, the board's designee will send a letter approving or denying the enrollment card as an acceptable form of identification.

(iii) The board may rescind approval if the enrollment card no longer meets the requirements of this section.

(2) All acceptable forms of identification must include:

(a) The identification holder's photo;

(b) The identification holder's date of birth; and

(c) The identification holder's signature, except on federally issued identification where a visible signature is not required.

(3) If the identification ~~((document))~~ has an expiration date, ~~((a person may not use the document))~~ it cannot be used to verify age after the expiration date ~~((to verify his or her age)).~~