

WSR 11-13-010
PROPOSED RULES
YAKIMA VALLEY
COMMUNITY COLLEGE

[Filed June 3, 2011, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-23-069.

Title of Rule and Other Identifying Information: College housing, chapter 132P-156 WAC.

Hearing Location(s): Hopf Union Building, M. L. King Room, Yakima Valley Community College (YVCC), Yakima Campus, South 16th Avenue and Nob Hill Boulevard, Yakima, Washington 98902, on July 27, 2011, at 1:30 p.m.

Date of Intended Adoption: October 13, 2011.

Submit Written Comments to: Brady Mogleston, YVCC, P.O. Box 22520, Yakima, WA 98908-2520, e-mail bmogleston@yvcc.edu, fax (509) 574-4747, by July 25, 2011.

Assistance for Persons with Disabilities: Contact disabilities support services, YVCC by July 25, 2011, TTY (509) 574-4677 or (509) 574-4961.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this chapter is to establish procedures and reasonable rules to operate the college's student residence center. The current rule was promulgated in 1972 and has never been amended. Changes in the college's organizational structure, technical capability, equipment and staffing, and student discipline procedures necessitate updating the policy.

Statutory Authority for Adoption: RCW 28B.50.140(7).

Statute Being Implemented: RCW 28B.50.140(7).

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

Name of Proponent: YVCC, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Brady Mogleston, Student Residence Center, YVCC, 1113 South 14th Avenue, Yakima, WA, (509) 574-4880.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. We anticipate no costs generated by this rule.

June 3, 2011

Suzanne West

Rules Coordinator

AMENDATORY SECTION (Amending Order 72-2, filed 12/4/72)

WAC 132P-156-010 Purpose. It is the purpose of this regulation to establish policies and procedures for application, fees, and discipline within the student residence center. In addition to the rules, regulations, and responsibilities as defined in the "Student Rights and Responsibilities" handbook, residence hall students are also subject to the rules and regulations as printed in the student residence center housing manual, contract, and application forms, which are available

for review and inspection upon request from the student residence center manager.

NEW SECTION

WAC 132P-156-015 Eligibility. Eligibility to reside in the student residence center is generally limited to individuals enrolled in a minimum of five credits per academic term. Residency between terms is contingent upon documented intent to attend the subsequent term. After processing all student applicants, the student residence center manager may accept applications from college employees or other individuals on a space-available basis and are subject to the approval of the dean of student services. After meeting the needs of students and employees, applications from other individuals may be considered for short-term residence provided that the application submitted establishes a purpose aligned with the college mission.

AMENDATORY SECTION (Amending Order 72-2, filed 12/4/72)

WAC 132P-156-020 Application and agreements. (1) ~~((Application to the student residence center shall be by application Form #9810.2 which can be obtained from the manager by phone call (CH 8-2369) or by mail (Student Residence Center, 1113 South 14th Avenue, Yakima, Washington 98902) or in person at the student residence center.~~

~~(2) Application shall be completed and signed by the student with parents' signature)) A complete application includes the indicated housing deposit and all required signatures. A parent must sign where indicated if the student is a minor.~~

~~((3) Application shall be sent to the student residence center with the indicated deposit.~~

~~(4)) (2) All terms and conditions of residency are ((mailed to applicant with date of occupancy on Form #9810.3)) included in the application and agreement packet available in the student residence center office.~~

~~((5)) (3) Agreement with these terms of residency is indicated by signature of the student, and if a minor, by ((his)) parent((s)) or legal guardian.~~

~~((6)) (4) Signed agreement as to terms must be returned to the student residence center manager prior to occupancy.~~

AMENDATORY SECTION (Amending Order 72-2, filed 12/4/72)

WAC 132P-156-030 Fees. (1) Fees are set before ~~((June))~~ July 1st of each year by the student residence center manager and approved by the board of trustees.

(2) Fees must be paid ~~((or arranged for on or))~~ before the first day of occupancy.

(3) Current fee schedules are ~~((to be found))~~ available in the student residence center office.

AMENDATORY SECTION (Amending Order 72-2, filed 12/4/72)

WAC 132P-156-040 Discipline. (1) ~~((Guides for))~~ Resident conduct ~~((are found in Form #9810.4,))~~ requirements

are listed in the student residence center housing manual and the code of student rights and responsibilities, chapter 132P-33 WAC. The housing manual includes a disciplinary guide listing infractions of conduct, which is given to the student on occupancy.

(2) ~~((All violations of this guide are referred to the student residence center manager.~~

(3)) The student residence center manager or designee may ~~((counsel with))~~ direct the student as to proper conduct and/or refer the breach of conduct ~~((to the dormitory judicial council))~~ in accordance with procedures available in the housing manual.

(3) Alleged housing conduct violations are referred to the student residence center manager.

(4) ~~((The dormitory judicial council, operating under the current regulations of that council,))~~ The student residence center manager or designee will determine appropriate ~~((actions))~~ procedures or sanctions.

(5) Students receiving discipline ~~((by this group))~~ as a result of a housing conduct violation have ~~((and))~~ the right ~~((s))~~ of appeal through the dean of student ~~((affairs to the president of the college))~~ services.

(6) Disciplinary sanctions assessed by the housing manager do not preclude additional procedures and sanctions in accordance with the code of student rights and responsibilities.

WSR 11-13-018
PROPOSED RULES
GAMBLING COMMISSION

[Filed June 6, 2011, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-09-032.

Title of Rule and Other Identifying Information: WAC 230-16-015 Punch board and pull-tab sales restrictions, 230-16-035 Pull-tab construction, and 230-16-195 Additional requirements for sales invoices.

Hearing Location(s): Vancouver Heathman Lodge, 7801 Greenwood Drive, Vancouver, WA 98662, on August 11 or 12, 2011, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: August 11 or 12, 2011. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by August 1, 2011.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by August 1, 2011, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Richard Norris, Bonanza Press a licensed manufacturer, is requesting the

ability to purchase jar tickets from other manufacturers. The restrictions on manufacturers not selling to each other has been in the rules for many years. How this change may impact the rest of the pull-tab industry is unclear. As of this filing, we have received input from one pull-tab distributor supporting the proposed change and input from two manufacturers and a manufacturer industry group opposing the proposal. This petition was filed for further discussion at the May 2011, commission meeting.

Reasons Supporting Proposal: The petitioner verbally stated to staff he does not have the capability to manufacture jar tickets and wants to get into that niche of the business. He would like to purchase jar tickets from other manufacturers, add a flare, package the tickets as a completed pull-tab series, and sell them to distributors. He states he can package the games at a much lower cost than to buy a complete jar ticket pull-tab series from another manufacturer.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Richard Norris, Bonanza Press, licensed manufacturer, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the proposed rule change does not impose more than minor costs, as defined in chapter 19.85 RCW, to licensees.

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

June 1, 2011

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 623, filed 1/14/08, effective 2/14/08)

WAC 230-16-015 Punch board and pull-tab sales restrictions. (1) Manufacturers, distributors, and manufacturer and distributor representatives must sell or distribute punch boards, pull-tabs, pull-tab dispensers, or related equipment only to other distributor, distributor representative, or punch board and pull-tab licensees.

(2) Distributors and distributor representatives must buy punch boards, pull-tabs, pull-tab dispensers, or related equipment only from other licensed manufacturers, distributors, or distributor representatives.

(3) Manufacturers may sell jar tickets to other manufacturers without a distributor license.

(4) Manufacturers must not sell any punch board or pull-tab series unless the winning punches or pull-tabs are randomly distributed and mixed among all other punches or pull-tabs in that board or series.

~~((4))~~ (5) Manufacturers, distributors, and manufacturer and distributor representatives must not make sales promotion statements, demonstrations, or implications that imply:

(a) One portion of a pull-tab series contains more winners than other portions; or

(b) Operators can sell pull-tabs in some manner that would give the operator an advantage in selling more pull-tabs before having to pay out winners.

AMENDATORY SECTION (Amending Order 615, filed 9/17/07, effective 1/1/08)

WAC 230-16-035 Pull-tab construction. Manufacturer must:

(1) File their label or trademark with us before printing pull-tabs; and

(2) Construct, glue, seal, or band pull-tabs to prevent the discovery of the winning numbers, symbols, or set of symbols, or game protection before the pull-tab is dispensed or opened by use of:

- (a) Markings; or
- (b) Difference in size; or
- (c) Paper fiber; or
- (d) Color; or
- (e) Printing; or
- (f) Any other method; and

(3) Construct all pull-tabs so that, when offered for sale to the public, they are virtually opaque and free of security defects detectable by:

- (a) High intensity lights; or
- (b) Peeking; or
- (c) Any other method; and

(4) Construct all pull-tabs, except banded and latex covered pull-tabs, using a two or three ply paper stock construction; and

(5) Make winning and losing sheets for each game using the same paper stock; and

(6) For all progressive pull-tab series, make winning and losing sheets for each game using the same paper stock at the same time as the series; and

(7) Conspicuously print the series number and their name, label, or trademark on the pull-tab so both are readily visible before opening the pull-tab. Manufacturers that sell jar tickets to other manufacturers must include their name and the name of the manufacturer they are selling the tickets to. For example, Manufacturer A for Manufacturer B; and

(8) Perforate or clean-cut the openings centered over the symbols or numbers to allow players to easily open pull-tabs while preventing pull-tabs from opening prematurely in normal handling. Perforate on both horizontal lines of the opening and either perforate or clean-cut the vertical or elliptical line where players grasp the tab for opening after bending the edge of a ticket down. Manufacturers may include information to show players how to open the pull-tab or remove the latex to determine the symbols or numbers; and

(9) Not repeat series numbers used on that same manufacturer's form number within a three-year period.

AMENDATORY SECTION (Amending Order 635, filed 11/4/08, effective 1/1/09)

WAC 230-16-195 Additional requirements for sales invoices. (1) In addition to the requirements of WAC 230-16-190, manufacturers and distributors must complete sales invoices that include:

(a) ~~(For distributors,)~~ A separate line for each I.D. stamp number; and

(b) Space for the operator to either attach a records entry label or enter the I.D. stamp number and the date they placed the equipment out for play, adjacent to the written entry the distributor makes; and

(c) For each punch board or pull-tab, at least:

- (i) Trade name of the game; and
- (ii) Type of gambling equipment; and
- (iii) Form number or other manufacturer-assigned method to specifically identify a board or series, including the size or number of chances; and

(iv) I.D. stamp number; and

(d) For each pull-tab dispenser, at least:

- (i) Trade name of the dispenser; and
- (ii) Type of dispenser; and
- (iii) I.D. stamp number; and

(e) For each set of cards or collation of packets of disposable bingo cards, at least:

(i) Type of product, including product line; and

(ii) Description of product, including the number of cartons, "series," "on," "cut," and "up"; and

(iii) I.D. stamp number; and

(iv) Serial number or, if packets, serial number of the top page; and

(v) Color and border pattern or, if packets, color and border pattern of the top page; and

(vi) The unit or package number when a series or collation has been divided; and

(vii) For disposable bingo cards to be sold for linked bingo prize games the beginning and ending sheet numbers sold to or returned from the operator; and

(f) For merchandise prizes, at least:

(i) The date of purchase; and

(ii) The company's name and complete business address; and

(iii) A full description of each item purchased; and

(iv) The quantity of items purchased; and

(v) The cost per individual items purchased; and

(g) For sequentially prenumbered card game recordkeeping forms, at least:

(i) Type of form; and

(ii) Beginning and ending serial numbers; and

(iii) Quantity of forms; and

(h) For all other gambling equipment, at least:

(i) Trade name of device; and

(ii) Type of device; and

(iii) Serial number or other identification numbers or characteristics; and

(2) Manufacturers and distributors must record and maintain information documenting the sales of progressive jackpot pull-tabs in a separate filing system. They may use a computerized system to separately track this information and provide immediate reports.

WSR 11-13-022
PROPOSED RULES
HORSE RACING COMMISSION

[Filed June 6, 2011, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-09-014.

Title of Rule and Other Identifying Information: WAC 260-49-070 Distribution of source market fees.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on August 12, 2011, at 9:30 a.m.

Date of Intended Adoption: August 12, 2011.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by August 8, 2011.

Assistance for Persons with Disabilities: Contact Patty Sorby by August 8, 2011, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Alters the percentage of source market fees retained by the Washington horse racing commission (WHRC).

Reasons Supporting Proposal: ESSB 5747 amended the WHRC's contributions to the Class C meets allowing the WHRC to retain the one-half of one percent withheld for purse monies for use in the operating account.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [WHRC], governmental.

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

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

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

June 6, 2011
 Douglas L. Moore
 Deputy Secretary

AMENDATORY SECTION (Amending WSR 09-21-015, filed 10/9/09, effective 11/9/09)

WAC 260-49-070 Distribution of source market fee.

(1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) Ninety percent of the total source market fee directly to the class 1 racing association and the remaining ten percent directly to the commission.

(b) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the Washington bred owners' bonus fund and breeder award account as provided in RCW 67.16.175.

(c) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(d) The commission shall distribute two and one-half percent of the total source market fee to the Washington bred owners' bonus fund and breeder award account and ~~((one-half of one percent of the total source market fee to the class C purse fund account and))~~ seven and one-half percent of the total source market fee to the commission's operating account.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

WSR 11-13-023
PROPOSED RULES
HORSE RACING COMMISSION

[Filed June 6, 2011, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-09-086.

Title of Rule and Other Identifying Information: WAC 260-36-220 Industrial insurance premiums—Additional premiums for exercise riders and 260-36-230 Short duration industrial insurance coverage.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on August 12, 2011, at 9:30 a.m.

Date of Intended Adoption: August 12, 2011.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by August 8, 2011.

Assistance for Persons with Disabilities: Contact Patty Sorby by August 8, 2011, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To allow trainers wishing to race for a short time in Washington to purchase thirty-day increments of industrial insurance.

Reasons Supporting Proposal: By allowing trainers to purchase short duration industrial insurance, trainers not stabled at a Class A or B track, may increase the horse population during the peak racing season. The coverage would only be obtained in thirty-day increments.

Statutory Authority for Adoption: RCW 67.16.020.

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

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

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

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

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

June 6, 2011
Douglas L. Moore
Deputy Secretary

AMENDATORY SECTION (Amending WSR 09-23-063, filed 11/13/09, effective 12/14/09)

WAC 260-36-220 Industrial insurance premiums—Additional premiums for exercise riders. (1) At the time of licensing, and as provided in this section and WAC 260-36-230, a trainer must pay the annual industrial insurance premiums for exercise riders established by labor and industries, unless exempted under WAC 260-36-240. Coverage will only apply to licensed exercise riders exercising horses for a licensed trainer and for trainers, also licensed as exercise riders, exercising any of the horses in their care. It is the trainer's responsibility to ensure all exercise riders in their employ are properly licensed by the commission.

(2)(a) A trainer at a Class A or B track must pay all required annual industrial insurance premiums for exercise riders equal to the maximum number of horses in training on any given day during the calendar year that the trainer has both on and off the grounds of a racing association.

(b) For horses on the grounds of a Class A or B track, a trainer must count stalls that are occupied by horses (including horses that are sick or injured) under the trainer's care. Premiums will be calculated on the total number of stalls allotted by the racing association, even if the horse is stalled on the grounds for a day or less. (For example, if a trainer comes to Washington to enter or nominate his/her horse in one race and the horse is only on the grounds for one day, the trainer is required to pay the full industrial insurance premium for that one horse, except as provided in WAC 260-36-230.) Stalls assigned to and occupied by pony horses will not be counted.

(c) For horses off the grounds, a trainer must count all horses in training that are subject to being ridden by licensed exercise riders, if the exercise riders are to be covered by the Washington labor and industries insurance under the horse industry account.

(d) If any trainer increases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is responsible to pay the additional premiums as provided in this section.

(e) If any trainer decreases the number of horses in training or racing, either on or off the grounds during the calendar year, the trainer is not entitled to any refund as premiums are annual fees that are not prorated and are assessed on the maximum number of horses in training on any day during the calendar year.

(f) It is the trainer's responsibility to maintain records and accurately report the number of horses in training (both on and off the grounds) for purposes of paying industrial insurance premiums required by this section. Any time during the calendar year if a trainer increases the number of horses in training or racing beyond the premium previously assessed the trainer is responsible for immediately reporting and paying the additional premium owed.

(3)(a) A trainer at a Class C track must pay industrial insurance premiums for exercise riders equal to the maximum number of different horses the trainer starts at the Class C tracks during the calendar year, or the maximum number of horses the trainer has in training, whichever is greater. All trainers at a Class C track are required to pay industrial insurance for at least one horse.

(b) If during the calendar year a horse is started by more than one trainer that horse, for the purpose of calculating the annual industrial insurance premium a trainer is required to pay, will count as a different horse for each trainer.

(c) It is the trainer's responsibility to maintain records and accurately report the number of different horses started or in training for the purpose of paying industrial insurance premiums required in this section. Any time during the calendar year if a trainer increases the number of different horses started or the total number of horses in training beyond the premium previously assessed the trainer is responsible for immediately reporting and paying the additional premium owed.

AMENDATORY SECTION (Amending WSR 09-23-063, filed 11/13/09, effective 12/14/09)

WAC 260-36-230 Short duration industrial insurance coverage. (1) ~~(Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage that will reduce the trainer's base premium and the groom and/or assistant trainer slot(s). The reduced premiums for short duration coverage will not apply to the additional premiums required to cover exercise riders as provided in WAC 260-36-220. The following conditions will apply for short duration coverage:~~

~~(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. The trainer must pay twenty percent of the trainer base premium, and twenty percent for each groom slot or assistant trainer slot obtained (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums established for Class A or B race meets. A trainer may only purchase Class A or B race meet short duration coverage for three seven-day periods per calendar year.)~~ Trainers entering horses to run in Washington races will be allowed to obtain short duration industrial insurance coverage that will reduce the amount of industrial insurance premium a trainer has to pay to provide employees financial relief from injury. Short duration coverage may be purchased no sooner than seven days prior to the start of the live race meet where the trainer plans to run. The following conditions will apply for short duration coverage:

(a) Trainers who ship in to Class A or B race meets may purchase short duration industrial insurance coverage for thirty consecutive calendar days. Trainers who have purchased any annual coverage at Class A or B race meets including paying premiums quarterly are not eligible for short duration coverage. Thirty-day short duration coverage can be purchased for each trainer's base coverage. Separate thirty-day short duration coverage can be purchased for each groom, and/or assistant trainer and separate coverage can be purchased for each exercise rider (WAC 260-36-220). The premium for thirty-day coverage will be set by the department of labor and industries (rounded to the next whole dollar). A trainer may only purchase Class A or B race meet short duration coverage for three thirty-day periods per calendar year. If a trainer extends coverage for more than three thirty-day periods the trainer will owe the annual premium for each groom and assistant trainer, and the annual premium for exercise rides (based on all horses on the grounds during the previous ninety-day coverage period). The premium owed for coverage extending past ninety days will be the annual premium, less what the trainer may have already purchased for each risk class.

(b) Trainers who ship in to Class C race meets may purchase short duration industrial insurance coverage for seven consecutive calendar days. ((The trainer must pay twenty percent of the trainer base premium, and twenty percent of each groom slot or assistant trainer slot obtained (all rounded to the next whole dollar). The base premium used for this calculation will be the industrial insurance premiums established for Class C race meets-)) Seven-day short duration coverage can be purchased for each trainer's base premium. Separate seven-day short duration coverage can be purchased for each groom and assistant trainer. The premium for seven-day short duration coverage will be set by the department of labor and industries (rounded to the next whole dollar). A trainer may only purchase Class C race meet short duration coverage for three seven-day periods per calendar year. Class C race meet short duration industrial insurance coverage is not transferable to a Class A or B race meet.

(2) Before short duration coverage will be allowed, a trainer must obtain a license and pay all applicable license and fingerprint fees required in WAC 260-36-085. The trainer is also required to ensure that each groom, assistant trainer, pony rider, and exercise rider hired by the trainer has a proper license. A trainer may only employ persons on the grounds of the racing association who are properly licensed by the commission. Prior to the end of each short duration coverage period a trainer must pay the short duration premium for any additional grooms, or assistant trainers (groom slots) and any additional horses brought on the grounds of a Class A or B race meet, or any additional horses started in a race at Class C race meets.

Preproposal statement of inquiry was filed as WSR 10-12-128.

Title of Rule and Other Identifying Information: WAC 458-20-19401 Minimum nexus thresholds for apportionable activities, Washington's business and occupation (B&O) taxes may be imposed only if a business has substantial nexus with this state. This rule explains the minimum nexus thresholds for the B&O taxation of businesses engaged in apportionable activities.

WAC 458-20-19404 Financial institutions—Income apportionment, this rule addresses how gross income from engaging in business as a financial institution is apportioned when the financial institution engages in business both within and outside the state.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on July 27, 2011, at 9:30 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: August 5, 2011.

Submit Written Comments to: Chris Coffman, P.O. Box 47453, Olympia, WA 98504-7453, e-mail ChriC@dor.wa.gov, by July 27, 2011.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing two new rules. Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. These rules are necessary to explain how this new law applies.

Reasons Supporting Proposal: New rules are needed to recognize law changes.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Statute Being Implemented: Provisions of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) Part I.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Coffman, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1590; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1595.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

June 10, 2011

Alan R. Lynn

Rules Coordinator

WSR 11-13-051
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed June 10, 2011, 10:40 a.m.]

Original Notice.

NEW SECTION**WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. (1) Introduction.**

(a) This rule only applies to periods after May 31, 2010.

(b) The state of Washington imposes business and occupation (B&O) tax on apportionable activities measured by the gross income of the business. B&O tax may only be imposed if a person has a "substantial nexus" with this state. For the purposes of apportionable activities, substantial nexus does not require a person to have physical presence in this state.

(c) The following rules may also be helpful:

(i) WAC 458-20-19402, Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(ii) WAC 458-20-19403, Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iii) WAC 458-20-19404, Financial institutions—Income apportionment. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(v) WAC 458-20-194, Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and applies only to tax liability incurred from January 1, 2006 through May 31, 2010.

(d) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances. For the examples in this rule, gross income received by the taxpayer is from engaging in apportionable activities. Also, unless otherwise stated, the examples do not apply to tax liability prior to June 1, 2010.

(2) **Definitions.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) **"Apportionable activities"** includes only those activities subject to B&O tax under the following classifications:

- (i) Service and other activities;
- (ii) Royalties;
- (iii) Travel agents and tour operators;
- (iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent;
- (v) Stevedoring and associated activities;
- (vi) Disposing of low-level waste;
- (vii) Title insurance producers, title insurance agents, or surplus line brokers;
- (viii) Public or nonprofit hospitals;
- (ix) Real estate brokers;
- (x) Research and development performed by nonprofit corporations or associations;

(xi) Inspecting, testing, labeling, and storing canned salmon owned by another person;

(xii) Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW;

(xiii) Contests of chance;

(xiv) Horse races;

(xv) International investment management services;

(xvi) Room and domiciliary care to residents of a boarding home;

(xvii) Aerospace product development;

(xviii) Printing or publishing a newspaper (but only with respect to advertising income);

(xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income); and

(xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (a)(i) through (xix) of this subsection if this special tax classification did not exist.

(b) **"Credit card"** means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(c) **"Gross income of the business"** means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. The term gross receipts means gross income from apportionable activities.

(d) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC) or other mortgage-backed or asset-backed security; and other similar items.

(e) **"Net annual rental rate"** means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(f) The terms **"nexus"** and **"substantial nexus"** are used interchangeably in this rule.

(g) **"Property"** means tangible, intangible, and real property owned or rented and used in this state during the cal-

endar year, except property does not include ownership of or rights in computer software, including computer software used in providing a digital automated service; master copies of software; and digital goods or digital codes residing on servers located in this state. Refer to RCW 82.04.192 and 82.04.215 for definitions of the terms computer software, digital automated services, digital goods, digital codes, and master copies.

(h) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(i) **"Securities"** includes any intangible property defined as a security under section 2 (a)(1) of the Securities Act of 1933 including, but not limited to, negotiable certificates of deposit and municipal bonds.

(3) Substantial nexus.

(a) Substantial nexus exists where a person is:

(i) An individual and is a resident or domiciliary of this state during the calendar year;

(ii) A business entity and is organized or commercially domiciled in this state during the calendar year; or

(iii) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and in any calendar year the person has:

(A) More than fifty thousand dollars of property in this state;

(B) More than fifty thousand dollars of payroll in this state;

(C) More than two hundred fifty thousand dollars of receipts from this state; or

(D) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

Example 1. Company commercially domiciled in Washington. Company C is commercially domiciled in Washington and has one employee in Washington who earns \$30,000 per year. Company C has substantial nexus with Washington because it is commercially domiciled in Washington. The minimum nexus thresholds for property, payroll, and receipts do not apply to a business entity commercially domiciled in this state.

(b) The department will adjust the amounts listed in (a) of this subsection based on changes in the consumer price index as required by RCW 82.04.067.

(c) The minimum nexus thresholds are determined on a tax year basis. Generally, a tax year is the same as a calendar year. See RCW 82.32.270. For the purposes of this rule, tax years will be referred to as calendar years. This means that if a person meets the minimum nexus thresholds in a calendar year, that person is subject to B&O taxes for the entire calendar year.

Example 2. Company Q is organized and domiciled outside of Washington. Company Q maintains an office in Washington which houses a single employee. Company Q has \$40,000 in property located in Washington, the employee receives \$45,000 in compensation, and has \$200,000 in apportionable receipts attributed to Washington. Company Q's total property is valued at \$200,000, total payroll compensation is \$400,000, and total apportionable receipts is \$5,000,000. Although Company Q has physical presence in

Washington, it does not have substantial nexus with Washington because: (a) It is not organized or domiciled in Washington; and (b) does not have sufficient property, payroll, or receipts to meet the minimum nexus thresholds identified in subsection (2)(a) of this rule.

(4) Property threshold.

(a) Location of property.

(i) Real property - Real property owned or rented is in this state if the real property is located in this state.

(ii) Tangible personal property - Tangible personal property is in this state if it is physically located in this state.

(iii) Intangible property - Intangible property is in this state based on the following:

A loan is located in this state if:

(A) More than fifty percent of the fair market value of the real and/or personal property securing the loan is in this state. An automobile loan is in this state if the vehicle is properly registered in this state. Other than for property that is subject to registered ownership, the determination of whether the real or personal property securing a loan is in this state must be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded; or

(B) If (a)(iii)(A) of this subsection does not apply and the borrower is located in this state.

(iv) A borrower located in this state if:

(A) The borrower is engaged in business and the borrower's commercial domicile is located in this state; or

(B) The borrower is not engaged in business and the borrower's billing address is located in this state.

(v) A credit card receivable is in this state if the billing address of the card holder is located in this state.

(vi) A nonnegotiable certificate of deposit is property in this state if the issuing bank is in this state.

(vii) Securities:

(A) A negotiable certificate of deposit is property in this state if the owner is located in this state.

(B) A municipal bond is property in this state if the owner is located in this state.

(b) Value of property.

(i) Property the taxpayer owns and uses in this state, other than loans and credit card receivables, is valued at its original cost basis.

Example 3. In January 2008, ABC Corp. bought Machinery for \$65,000 for use in State X. On January 1, 2011, ABC Corp. brought that Machinery into Washington for the remainder of the year. ABC Corp. has nexus with Washington based on Machinery's original cost basis value of \$65,000. The value is \$65,000 even though the property has depreciated prior to entering the state.

(ii) Property the taxpayer rents and uses in this state is valued at eight times the net annual rental rate.

Example 4. Out-of-state Business X rents office space in Washington for \$6,000 per year and has \$5,000 of office furniture and equipment in Washington. Business X has nexus with Washington because the value of the rented office space (\$6,000 multiplied by eight, which is \$48,000) plus the value of office furniture and equipment exceeds the \$50,000 property threshold.

(iii) Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is actually charged off as a bad debt in whole or in part for federal income tax purposes (see 26 U.S.C. 166), the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(c) **Calculating property value.** To determine whether the \$50,000 property threshold has been met, average the value of property in this state on the first and last day of the calendar year. The department may require the averaging of monthly values during the calendar year if reasonably required to properly reflect the average value of the taxpayer's property in this state throughout the taxable period.

Example 5. Company Y has property in Washington valued at \$90,000 on January 1st and \$20,000 on December 31st of the same year. The value of property in Washington is \$55,000 $((90,000 + 20,000)/2)$. Company Y has substantial nexus with Washington.

Example 6. Company A has no property located in Washington on January 1st and on December 31st of a calendar year. However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on November 15th of that calendar year. The department may compute the value of Company A's property on a monthly basis in this situation because it is required to properly reflect the average value of Company A's property in Washington (\$100,000 multiplied by ten (months) divided by 12 (months), which is \$83,333). Company A has nexus with Washington based on the value of the property averaged over the calendar year.

Example 7. Company B has no property located in Washington on January 1st and on December 31st of a calendar year. However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on February 15th of that calendar year. The department may compute the value of Company A's property on a monthly basis in this situation because it is required to properly reflect the average value of Company B's property in Washington (\$100,000 multiplied by one (month) divided by 12 (months), which is \$8,333.) Company B does not have nexus with Washington based on the value of the property averaged over the calendar year, unless this amount exceeds 25% of Company B's total property value.

Example 8. IT Co. is domiciled in State X with Employee located in Washington who works from a home office. IT Co. provided to Employee \$5,000 of office supplies and \$15,000 of equipment owned by IT Co. IT Co. does not have nexus with Washington based on the value of the property in this State (\$20,000) because it does not exceed \$50,000, unless this amount exceeds 25% of IT Co.'s total property value. This example does not address the payroll threshold.

(5) **Payroll threshold.** "Payroll" is the total compensation defined as gross income under 26 U.S.C. Sec. 61 (section 61 of the Internal Revenue Code of 1986), as of June 1, 2010, paid during the calendar year to employees and to third-party representatives who represent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(a) Payroll compensation is received in this state if it is properly reportable in this state for unemployment compensation tax purposes, regardless of whether it was actually reported to this state.

Example 9. Company D is commercially domiciled in State X and has a single Employee whose payroll of \$80,000 is properly reportable in Washington for unemployment compensation purposes. Company D has substantial nexus with Washington during the calendar year based on compensation paid Employee.

Example 10. Assume the same facts as Example 9 except only 50% of Employee's payroll is properly reportable in Washington for unemployment compensation purposes for the calendar year. Employee's Washington compensation of \$40,000 does not meet the payroll threshold to establish substantial nexus with Washington, unless this amount exceeds 25% of total payroll compensation.

(b) Third-party representatives receive payroll compensation in this state if the service(s) performed occurs entirely or primarily within this state.

(6) **Receipts threshold.** The receipts threshold is met if a taxpayer receives more than \$250,000 from apportionable activities that is attributed to Washington.

(a) All receipts from all apportionable activities are accumulated to determine if the receipts threshold is satisfied. Receipts from activities that are not subject to apportionment (e.g., retailing, wholesaling, and extracting) are not used to determine if the receipts threshold has been satisfied.

(b) Receipts are attributed to Washington per WAC 458-20-19402 (general attribution), 458-20-19403 (royalties), and 458-20-19404 (financial institutions).

Example 11. Company E is commercially domiciled in State X. In a calendar year it has \$150,000 in royalty receipts attributed to Washington per WAC 458-20-19403 and \$150,000 in gross receipts from other apportionable activities attributed to Washington per WAC 458-20-19402. Company E has substantial nexus with Washington because it has a total of \$300,000 in receipts from apportionable activities attributed to Washington in a calendar year. It does not matter that the receipts were from apportionable activities that are subject to tax under different B&O tax classifications. The receipts threshold is determined by the totality of the taxpayer's apportionable activities in Washington.

Example 12. Calculation of minimum nexus thresholds during the 2010 transition year. Company F receives \$200,000 in gross receipts attributed to Washington on March 15, 2010; \$100,000 on July 12, 2010; and \$100,000 on November 1, 2010. Company F has substantial nexus with Washington for the period June 1, 2010, through December 31, 2010, because it received \$400,000 in gross receipts during 2010.

(7) **Application of 25% threshold.** If at least twenty-five percent of an out-of-state taxpayer's property, payroll, or receipts from apportionable activities is in Washington, then the taxpayer has substantial nexus with Washington. The twenty-five percent threshold is determined by dividing:

(a) The value of property located in Washington by the total value of taxpayer's property;

(b) Payroll located in Washington by taxpayer's total payroll; or

(c) Receipts attributed to Washington by total receipts.

Example 13. Company G is organized and commercially domiciled in State X. In a calendar year it has \$45,000 in property, \$45,000 in payroll, and \$240,000 in gross receipts attributed to Washington. Its total property is valued at \$200,000; its world-wide payroll is \$150,000; and its total gross receipts are \$2,000,000. Company G has twenty-two and a half percent of its property, thirty percent of its payroll, and twelve percent of its receipts attributed to Washington. Company G has substantial nexus with Washington because more than twenty-five percent of its payroll is located in Washington.

(8) **Application to local gross receipts business and occupations taxes.** This rule does not apply to the nexus requirements for local gross receipts business and occupation taxes.

(9) **Continuing substantial nexus.** Pursuant to RCW 82.04.220, if a person meets any of the minimum nexus thresholds in subsection (2) of this section in a calendar year, the person has nexus for the following calendar year and will owe B&O tax on its gross receipts attributable to Washington for that additional year.

Example 14. Assume Corporation J earns receipts attributable to Washington that do not exceed the minimum threshold from apportionable activities in any year, and whose physical presence in Washington ends on July 20, 2008. Corporation J's B&O tax reporting obligation for any gross receipts earned in Washington ends on December 31, 2010.

Example 15. Assume Corporation K earns receipts attributable to Washington from July 1, 2008 through March 1, 2010 and exceeds the minimum threshold from apportionable activities in 2010. Assuming Corporation K does not exceed any of the minimum nexus thresholds in 2011, the taxpayer's B&O tax reporting obligation for any gross receipts attributable to Washington ends on December 31, 2011.

Example 16. Assume Corporation L exceeded Washington's minimum nexus thresholds for apportionable income from 2010 through 2012, but does not meet them in 2013. Corporation L's B&O tax reporting obligation for any gross receipts earned in Washington ends on December 31, 2013.

NEW SECTION

WAC 458-20-19404 Financial institutions—Income apportionment. (1) Introduction.

(a) Effective June 1, 2010, section 108, chapter 23, Laws of 2010 1st sp. sess. changed Washington's method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401, Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus standards that are effective June 1, 2010.

(ii) WAC 458-20-19402, Single factor receipts apportionment—Generally. This rule describes the general appli-

cation of single factor receipts apportionment that is effective June 1, 2010.

(iii) WAC 458-20-19403, Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194, Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the periods January 1, 2006, through May 31, 2010.

(v) WAC 458-20-14601, Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(c) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(2) Apportionment and allocation.

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must allocate and apportion its service and other activities income as provided in this rule. Any other apportionable income must be apportioned pursuant to WAC 458-20-19402, Single factor receipts apportionment—Generally or WAC 458-20-19403, Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW. All gross income that is not includable in service and other activities income or gross income must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197, When tax liability arises and WAC 458-20-199, Accounting methods for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is

available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. See WAC 458-20-19402 for an example of how to use the most recent calendar year for which information is available. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the factors to reflect its changed operations.

(d) Interest and penalties on reconciliations under (c) of this subsection apply as follows:

(i) Interest must be assessed on any additional tax due at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the original return was due, and will accrue until the additional taxes are paid.

(ii) Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current year data to calculate the receipts factor.

(iii) Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

(e) See WAC 458-20-19402 for an example of the reconciliation process.

(f) If the allocation and apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(b) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(c) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule

to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(d) **"Credit card"** means credit, travel or entertainment card.

(e) **"Credit card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(f) **"Department"** means the department of revenue.

(g) **"Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) **"Financial institution"** means:

(i) Any corporation or other business entity chartered under Title 30, 31, 32, or 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

(i) **"Gross income of the business," "gross income," or "income":**

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose of (3)(i) of this subsection, affiliated means the affiliated person and the financial institution are under common control. Common control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

(j) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

(k) **"Loan secured by real property"** means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(l) **"Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) **"Participation"** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) **"Person"** has the meaning given in RCW 82.04.030.

(o) **"Regular place of business"** means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(p) **"Service and other activities income"** means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(q) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(r) **"Syndication"** means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(s) **"Taxable in another state"** means either:

(i) The taxpayer is subject to business activities tax by another state on its service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, but that state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401. For purposes of (s) of this subsection, "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. Business activities tax does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(t) **"Taxable period"** means the calendar year during which tax liability is incurred.

(4) Receipts factor.

(a) General. The receipts factor is a fraction, the numerator of which is the gross income of the taxpayer in this state during the taxable period and the denominator of which is the gross income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state. Interest and fees on loans secured by commercial aircraft that qualifies for the exemption from business and occupation tax under RCW 82.04.43391 are not included in either numerator or the denominator of the receipts factor.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded

under the coupon stripping rules of Section 1286 of the federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection (4) and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(e) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(g) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(h) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(i) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection and the denominator of which is the

total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

(j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(k) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include, but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets and activities described in (k)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of

this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(i)(A) and (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of (k)(ii) of this subsection, the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the tax-

payer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after June 1, 2010.

WSR 11-13-052

PROPOSED RULES

SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed June 10, 2011, 10:50 a.m.]

Continuance of WSR 11-11-077.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Adoption of SRCAA Regulation I, Section 6.18 - Indirect Source Rule.

Hearing Location(s): Spokane Regional Clean Air Agency, 3104 East Augusta Avenue, Spokane, WA 99207, on August 4, 2011, at 9:30 a.m.

Date of Intended Adoption: August 4, 2011.

Submit Written Comments to: April Westby, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail awestby@spokanecleanair.org, fax (509) 477-4727, by July 21, 2011.

Assistance for Persons with Disabilities: Contact Barbara Nelson by August 3, 2011, (509) 477-4727 ext. 116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a continuance of an original notice. The public hearing for this proposal has been rescheduled to occur on August 4, 2011. In addition, the public comment period has been extended until July 21, 2011.

Purpose: Adopt new rule to regulate indirect sources in Spokane County with PM_{2.5} emissions above 0.5 tons/year and/or NO_x emissions above twenty-five tons/year that cause or contribute to: A violation of one or more federal, state, and/or local ambient air quality standards; or an adverse human health effect.

Indirect sources are defined as: Any facility, building, structure, or installation, or combination thereof, which generates or attracts mobile sources that results in emissions of any air contaminant or toxic air contaminant. The definition of indirect source does not include construction sites that generate mobile source emissions for less than one year or facilities that are solely comprised of public roadways (e.g., freeways are not considered indirect sources under this rule). Indirect sources could potentially include warehouses, industrial parks, rail yards, transportation centers, airports, truck stops, etc.

Anticipated Effects: The new rule will establish requirements for indirect sources that meet the applicability criteria in the rule. These indirect sources have been unregulated by Spokane Regional Clean Air Agency (SRCAA) in the past.

Reasons Supporting Proposal: EPA recently adopted a one hour NO₂ ambient standard and has proposed a more stringent ozone ambient standard (NO_x is a precursor to ozone). In addition, diesel particulate matter has been identified by Washington and other states as a toxic air pollutant and is a component of PM_{2.5}. Indirect sources can be a significant source of NO_x, diesel particulate matter and PM_{2.5} emissions. The indirect source rule will establish requirements for affected indirect sources which may lower ambient levels of NO_x, particulate matter, and PM_{2.5}.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW; 42 U.S.C. 7401 et. seq. and 42 U.S.C. 7412.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The new indirect source rule will affect indirect sources in Spokane County with PM_{2.5} emissions above 0.5 tons/year and/or NO_x emissions above twenty-five tons/year that cause or contribute to: A violation of one or more federal, state, and/or local ambient air quality standards; or an adverse human health effect. The rule requires affected indirect sources to submit an emission reduction plan (ERP) to SRCAA for approval which outlines measures to be taken to reduce emissions to the greatest degree practicable in the shortest time practicable. Once the ERP is approved by SRCAA, the indirect source must implement the ERP.

Name of Proponent: SRCAA, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution agency rule. Chapter 19.85 RCW does not apply to local air pollution agency rule development.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW

70.94.141(1), RCW 34.05.328 does not apply to this rule development.

June 10, 2011

April L. Westby

Environmental Engineer

NEW SECTION

SECTION 6.18 INDIRECT SOURCE RULE

A. Applicability.

1. The provisions of this rule apply to indirect sources located in Spokane County with actual or projected (for new indirect sources) calendar year PM_{2.5} emissions above 0.5 tons/year and/or actual or projected (for new indirect sources) calendar year NO_x emissions above 25 tons/year that cause or contribute to:

- a. a violation of one or more federal, state, and/or local ambient air quality standards; or
- b. an adverse human health effect.

2. When making a determination as to whether an indirect source is subject to Section 6.18, the Agency shall:

- a. provide the owner or operator of the indirect source with written notice that the Agency intends to make an applicability determination and a reasonable opportunity to submit relevant data to the Agency before an applicability decision is made by the Agency;

- b. use scientific and engineering principles to determine the emissions from mobile source activity at the indirect source as accurately as possible, given the Agency's resources;

- c. assess the ambient impact of the mobile source emissions within the boundaries of the indirect source as accurately as possible, using computer air quality modeling, given the Agency's resources;

- d. utilize any health information prepared by a federal, state, or local government agency; and

- e. provide the owner or operator of the indirect source with a written applicability determination.

3. The owner or operator of an affected indirect source has the opportunity to challenge the Agency's applicability determination by providing additional information for the agency to consider, provided the requirements in Section 6.18.A.3.a & b are met:

- a. The owner or operator of the indirect source must submit a written request challenging the applicability determination to the Agency no later than 30 calendar days after receipt of the Agency's applicability determination.

- b. No later than 60 calendar days after submitting a timely written request challenging the Agency's applicability determination, the owner or operator of the indirect source must submit a plan to the Agency with a detailed description of all data being challenged and a description of all additional data and/or information that the owner or operator intends to submit to the Agency for its consideration. All additional data and/or information identified in the plan must be submitted to the Agency no later than 180 calendar days after the plan is submitted to the Agency, unless an extension is approved by the Agency in writing.

- c. After reviewing all additional data and information submitted by the owner or operator of the indirect source, the Agency will decide whether to modify or confirm its original

applicability determination. The Agency will notify the owner or operator of the indirect source of whether the original applicability determination has been modified or confirmed no later than 90 days after all additional data and information has been submitted to the Agency.

B. Definitions

1. Adverse human health effect means harmful and undesired changes to body function or cell structure that might lead to disease or health problems as indicated by, but not limited to:

a. higher than average or expected occurrences of cancer; and/or

b. measured or modeled levels of toxic air pollutant(s) which exceed 1 in 100,000 cancer risk based on a 70 year exposure.

2. Indirect Source means any facility, building, structure, or installation, or combination thereof, which generates or attracts mobile sources that results in emissions of any air contaminant or toxic air contaminant. The definition of indirect source does not include construction sites that generate mobile source emissions for less than one year or facilities that are solely comprised of public roadways (e.g., freeways are not considered indirect sources under this rule).

3. Mobile source means any non-stationary source of air pollution, including but not limited to cars, trucks, motorcycles, buses, airplanes, and locomotives.

4. New Indirect Source means the construction or modification of an indirect source that increases the amount of any air contaminant or toxic air contaminant emitted by mobile sources within the boundary of the indirect source.

C. Emission Reduction Plan.

1. An owner or operator of an indirect source who has been notified in writing by the Agency that it is subject to the provisions of this rule shall submit an emission reduction plan to the Agency for review and approval, according to all of the following requirements:

a. The emission reduction plan shall describe the emission reduction measures which will be implemented by the affected indirect source owner or operator to reduce emissions within the boundaries of the indirect source in Spokane County, along with a timetable for implementation of each emission reduction measure. The emission reduction plan shall be designed to reduce PM_{2.5} and/or NO_x emissions within the boundaries of the indirect source in Spokane County to the greatest degree practicable in the shortest time practicable. For new sources, the emissions reduction measures contained in the emission reduction plan must reduce PM_{2.5} and/or NO_x emissions within the boundaries of the indirect source in Spokane County to levels which will not cause a violation of any ambient air quality standards or an adverse human health effect.

b. For existing indirect sources, the emission reduction measures contained in the emission reduction plan must be completed within 5 years after the Agency approves the plan, unless an extension is granted by the Agency in writing.

c. For new indirect sources, the emission reduction measures contained in the emission reduction plan must be completed prior to commencing construction of the project, unless otherwise approved by the Agency in writing.

d. The emission reduction plan shall be submitted to the Agency no later than 30 calendar days after notification in writing that an affected indirect source is subject to the indirect source rule, unless an extension is granted by the Agency in writing.

e. The Agency will review the proposed emission reduction plan submitted by an affected indirect source owner or operator and inform the owner or operator within 30 calendar days if the plan is accepted or needs modification. If the plan needs modification, the Agency will provide the affected indirect source owner or operator with a description of the modifications that are required and a deadline for submittal of a revised proposed emission reduction plan to SRCAA for review.

f. After the proposed emission reduction plan is deemed acceptable by the Agency, the Agency will issue a preliminary approval of the emission reduction plan to the indirect source owner or operator. A 30-day public comment period is required to be held on the preliminary approval of the emission reduction plan, according to the requirements given in SRCAA Regulation I, Section 5.05.C. All comments received during the public comment period shall be considered by the Agency prior to the issuance of a final decision on the emission reduction plan.

g. Once an emission reduction plan is approved by the Agency, it is considered final and shall be implemented. It shall be unlawful for an indirect source to fail to comply with an emission reduction plan approved by the Agency.

2. It shall be unlawful for the owner or operator of an indirect source who has been notified in writing by the Agency that it is subject to the provisions of this rule to fail to comply with the requirements given in Section 6.18.C.1.

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

WSR 11-13-055
PROPOSED RULES
YAKIMA VALLEY
COMMUNITY COLLEGE

[Filed June 13, 2011, 1:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-24-019.

Title of Rule and Other Identifying Information: Chapter 132P-172 WAC, Yakima Valley Community College student records.

Hearing Location(s): M. L. King, Jr. Room, Hopf Union Building, Yakima Campus, South 16th Avenue and Nob Hill Boulevard, Yakima, Washington, on July 27, 2011, at 1:30 p.m.

Date of Intended Adoption: October 13, 2011.

Submit Written Comments to: Ms. Denise Anderson, Yakima Valley Community College, P.O. Box 22520, Yakima, WA 98908-2520, e-mail danderson@yvcc.edu, fax (509) 574-4702, by July 25, 2011.

Assistance for Persons with Disabilities: Contact disabilities support services, YVCC by July 25, 2011, TTY (relay service) (509) 574-4677 or (509) 574-4961.

Reasons Supporting Proposal: The proposal is to repeal chapter 132P-172 WAC. The information in chapter 132P-172 WAC is covered in WAC 132P-33-100 Disclosure of student records.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: Yakima Valley Community College, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Denise Anderson, Deccio Higher Education Center, 1000 South 12th Avenue, Yakima, WA, (509) 574-4702.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Repealer - no impact.

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

February 9, 2011
Suzanne West
Rules Coordinator

REPEALER

The following chapter of the Washington Administrative Code is repealed:

Chapter 132P-172

WSR 11-13-071
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 15, 2011, 2:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-11-100.

Title of Rule and Other Identifying Information: New chapter 392-700 WAC, enacting provisions of E2SHB 1418 (establishing a statewide dropout reengagement system), which was adopted by the legislature in 2010.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Wanamaker Conference Room, 600 Washington Street S.E., Olympia, WA 98504, on July 27, 2011, at 10:00 a.m.

Date of Intended Adoption: July 27, 2011.

Submit Written Comments to: Dan Newell, Assistant Superintendent, Secondary Education/School Improvement, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail dan.newell@k12.wa.us, fax (360) 586-9321, by July 26, 2011.

Assistance for Persons with Disabilities: Contact Wanda Griffin, hearings officer, by July 21, 2011, TTY (360) 664-3631 or (360) 725-6133.

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

requires development of reengagement programs to target students who have dropped out of school and help them achieve a high school diploma or the training needed to complete career training in college.

The proposed rules provide guidance for school districts in developing the programs either in district or through contracting with an educational service district, community or technical college, community-based organization or other public entity.

Reasons Supporting Proposal: The proposed rules provide broad guidance to districts in implementing the requirements of E2SHB 1418 and provide help to those students who have dropped out and given up on school. The development of the program will provide help to these students and "reengage" them in learning for their futures.

Statutory Authority for Adoption: RCW 28A.175.100.

Statute Being Implemented: E2SHB 1418, chapter 20, Laws of 2010.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: OSPI recommends adoption of the rules to implement ESSB [E2SHB] 1418. The agency will help with development of a guide and model contracts for implementation of the adopted rules. Implementation will be the responsibility of the various school districts around the state.

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dan Newell, Assistant Superintendent, OSPI, Olympia, Washington, (360) 725-4954.

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

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

June 15, 2011
Randy Dorn
Superintendent of
Public Instruction

Chapter 392-700 WAC

DROPOUT REENGAGEMENT

NEW SECTION

WAC 392-700-001 Purpose and authority. (1) The purpose of this chapter is to provide a statutory framework for a statewide dropout reengagement system and to provide appropriate educational opportunities and access to services for students age sixteen to twenty-one who have dropped out of high school or are not accumulating sufficient credits to reasonably complete a high school diploma in a public school before the age of twenty-one.

(2) Authority for this chapter is RCW 28A.175.100, which authorizes the superintendent of public instruction to adopt rules and procedures for statewide dropout reengagement programs.

NEW SECTION

WAC 392-700-015 Definitions. The following definitions in this section apply throughout this chapter:

"Agency" means an educational service district, community-based organization, or other public entity.

"Billable month" occurs when a student is reported for a total of 1.0 FTE. If a program is a full-time program, 1.0 FTE will be reported each month and each month will be a billable month. If a program is a part-time program reporting 0.5 FTE each month, a billable month will occur every two months.

"CEDARS" refers to comprehensive educational data and resource system, the statewide longitudinal data system of educational data for K-12 student information.

"College" means community college or technical college.

"ERDC" refers to education research and data research and data center, which conduct analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

"Full-time equivalent (FTE) eligible student" means an eligible student whose enrollment and attendance meets criteria adopted by the office of superintendent of public instruction (OSPI) specifically for dropout reengagement programs. The criteria shall be based on the community or technical college credits generated by the student if the program provider is a community or technical college or based on a minimum amount of planned programming or instruction and minimum attendance by the student rather than hours of seat time if the program provider is a community based organization.

"Nonstandard school year" means the months considered in a summer session, not in the standard school year.

"OSPI" means the office of superintendent of public instruction.

NEW SECTION

WAC 392-700-025 Interlocal agreements. (1) School districts may directly operate or enter into the model interlocal agreement or contract developed under RCW 28A.175.-110 with an educational service district, community or technical college, community-based organization, or other public entity to provide a dropout reengagement program for eligible students of the district.

(2) If a school district does not operate a dropout reengagement program directly or enter an interlocal agreement or contract with an educational service district, community or technical college, other public entity, or community-based organization to provide a dropout reengagement program for eligible students residing in the district, the educational service district, community or technical college, other public entity, or community-based organization may petition a school district other than the resident school district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 and enter the interlocal agreement or contract with the petitioning entity to provide a dropout reengagement program for eligible students. In this case the lead would:

(a) Help organize a school district, college and/or community agency consortium to provide regional reengagement.

(b) Contract for the identified reengagement programs and provide oversight and technical assistance to programs.

(c) Contract with school districts so that eligible students have the opportunity to attend the consortium's reengagement program(s).

(d) Assist programs with the necessary reports, enrollment data and course records needed by the school district to enroll students, award credit, report FTE to office of superintendent of public instruction, and facilitate data entry into each school district's statewide student information system linked to CEDARS.

(e) Work with school districts to facilitate provisions for special education students and students with a Section 504 Accommodation Plan (Section 504 of the Rehabilitation Act of 1973).

NEW SECTION

WAC 392-700-035 Eligibility. (1) Youth are eligible for reengagement programming when they meet the following criteria:

(a) Under twenty-one years of age, but at least sixteen years of age, as of September 1st;

(b) Have not yet met high school graduation requirements;

(c) Are significantly behind in credit as outlined below:

(i) Students who, based on their expected graduation date, participated or could have participated in up to two full years of high school must have an earned to attempted credit ratio that is sixty-five percent or less.

(ii) Students who, based on their expected graduation date, participated or could have participated in more than two full years of high school must have an earned to attempted ratio that is seventy-five percent or less.

(2) If not credit deficient as outlined in subsection (1) of this section, have been:

(a) Recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, district approved school personnel, or staff from community agencies which provide educational advocacy services;

(b) Are not currently enrolled in any high school or other educational program receiving state basic education funding;

(c) Released from their district of residence, if the reengagement program is operated by a different district.

NEW SECTION

WAC 392-700-045 Enrollment. Students will be considered enrolled when they have:

(1) Met all eligibility criteria;

(2) Been accepted for enrollment by the school district;

(3) Been enrolled by the program;

(4) Participated in one day of instruction.

NEW SECTION

WAC 392-700-055 Student documentation. (1) The agency or college shall maintain student documentation veri-

ying eligibility, enrollment, request for student records, minimum attendance, case management, award of credit, and performance.

(2) The agency or college shall comply with all state and federal laws related to the privacy, sharing, and retention of student records.

(3) Access to all student records will be provided in accordance with the Family Educational Rights and Privacy Act (FERPA).

NEW SECTION

WAC 392-700-065 Instruction. (1) Instruction for reengagement students enrolled in programs operated by an agency will meet the following criteria:

(a) Instruction must include:

(i) Academic skills instruction and GED preparation course work with curriculum and instruction appropriate to each student's skills levels and academic goals; and

(ii) College readiness and work readiness preparation course work.

(b) Instruction may include:

(i) Competency based vocational training;

(ii) College preparation math or writing instruction;

(iii) Subject specific high school credit recovery instruction;

(iv) English as a second language instruction; and

(v) Other course work approved by the school district.

(c) Instruction will be scheduled so that all enrolled students have the opportunity to attend and work with instructional staff during all the hours of the program's standard instructional day.

(2) Instruction for reengagement students enrolled in programs operated by a college will meet the following criteria:

(a) Instruction will be provided through courses approved by the college, identifiable by course title, course number, quarter, number of credits, and classification of instructional; and

(b) The following instruction will be offered to and all students, as appropriate with their skills levels and goals, will have the opportunity to enroll in each:

(i) Basic skills remediation courses and GED preparation courses;

(ii) Courses that lead to a postsecondary degree or certificate;

(iii) Course work that will lead to a high school diploma; and

(iv) College and work readiness preparation course work.

(3) The instruction in which each student is enrolled will not be limited to only those courses or subject areas in which they are deficient in high school credits.

(4) All reengagement instruction will be designed to help students acquire high school credits, acquire at least high school level skills, and be academically prepared for success in college and/or work. All instruction will be provided in accordance with the skills level and learning needs of individual students and not the student's chronological age or associated grade level. Therefore:

(a) All instruction that is at the ninth grade level or higher shall generate credits that can be applied to a high school diploma; and

(b) All instruction that is below the ninth grade level shall not generate high school credits but will be counted as part of the program's instructional programming for the purposes of calculating student FTE (see also WAC 392-700-155) and will be designed to prepare students for course work that is at the ninth grade level or higher.

(5) The program will administer standardized tests within one month of enrollment or secure test results from no more than six months prior to enrollment in order to determine a student's initial math and reading level upon entering the program.

(6) The agency or college will provide all instruction, core instructional materials, and required academic skills assessments at no cost to the students.

NEW SECTION

WAC 392-700-075 Instructional staff to student ratio. (1) For reentry programs operated by agencies the following must be adhered to:

(a) The scheduled teaching hours of an instructional staff FTE will equal or exceed the hours of the program's standard instructional day plus one additional hour per every five teaching hours for planning, curriculum development, recordkeeping, and required coordination of services with case management staff.

(b) The agency will employ or assign instructional staff as needed to maintain an instructional staff FTE to student ratio that does not exceed 1:25.

(c) Instructional staff are defined as certificated instructors or instructor-supervised noncertificated staff. However, if noncertificated instructional staff are part of the calculated instructional staff FTE to student ratio, the following conditions must be met:

(i) Noncertificated staff may not be a replacement for the certificated teacher and must always be working under the guidance and direct supervision of the certificated teacher;

(ii) A certificated instructor must always be employed or assigned by the agency to provide instruction as part of the 1:25 instructional staff FTE to student ratio; and

(iii) The ratio of certificated instructional staff FTEs to students may not exceed 1:50.

(2) For reentry programs operated by colleges the following must be adhered to:

(a) The college will ensure that all instruction will be provided by instructors who are employed or appointed by the college whose required credentials are established by the college;

(b) Instructor to student ratio for any course open to both reengagement students and nonreengagement students will be determined by the college; and

(c) Instructor to student ratio for classes designed exclusively for reengagement students will not be less than 1:35.

NEW SECTION

WAC 392-700-085 Case management and student support. (1) Case management staff will be employed or

assigned to the reengagement program to provide accessible, consistent support to students as well as academic advising, career guidance information, employment assistance or referrals, and referrals to social and health services.

(2) The program will maintain a case management staff to student ratio not to exceed 1:75 (one case manager FTE to seventy-five enrolled students) on a full-time continuous basis throughout the program year.

(3) Only the percent of each staff member's time that is allocated to fulfilling case management responsibilities for reengagement students will be included in the calculation of a program's case management staff FTE to student ratio.

(4) Even though the provision of case management services will require case management staff to work in the community to meet client needs, case management staff will be primarily based at the reengagement program's instructional site(s).

(5) The agency or college will ensure that case management services and instruction are integrated and coordinated and that procedures are in place that facilitate timely relevant communication about student progress.

(6) Case management staff will be employed or assigned to provide services to reengagement students on a continuous basis throughout the program year.

(7) All case management staff will be employed or assigned by the agency or college and will have at least a bachelor's degree in social work, counseling, education, or a related field OR at least two years experience providing case management, counseling or related direct services to at-risk individuals or sixteen to twenty-one year old youth.

NEW SECTION

WAC 392-700-095 District administrative responsibilities. (1) Upon the office of superintendent of public instruction's determination that this agreement contains approved standard language that delineates responsibility for all the required elements of a reengagement program as outlined in RCW 28A.175.100 and WAC 392-700-001, the school district will assign a school code to be used for the reengagement program. This code will also be used in CEDARS to identify all the students enrolled in the program to assist with program outcomes and longitudinal follow-up.

(2) The school district will work cooperatively with the agency or college to implement an agreement and ensure that quality reengagement services are provided.

NEW SECTION

WAC 392-700-105 Reporting of student data. (1) The school district will ensure that there is accurate and timely data entry of all reengagement program student information into its student data system.

(2) The district will transmit student data to CEDARS in accordance with OSPI standards and procedures for reengagement programs.

NEW SECTION

WAC 392-700-120 Statewide student assessment. (1) The school district will work with the agency or college to

ensure that all reengagement students have the opportunity to participate in the statewide assessment and understand that this assessment, or an approved alternative, is a high school graduation requirement.

(2) The school district must include reengagement students when calculating district-wide statistics in relation to the statewide assessments.

(3) The agency or college program staff will not be required to be direct test administrators but may act in this capacity provided all appropriate training of agency or college staff be certified instructors and be handled and approved by the school district. School districts must submit the proposed test site to OSPI if in adult jail, adult institution, hospital care, home care, library, group home, or church.

NEW SECTION

WAC 392-700-135 Provision of special education and Section 504 of the Rehabilitation Act of 1973 accommodations. (1) The school district will be responsible for the provision of special education services to any enrolled reengagement students who qualify for special education in accordance with all state and federal law.

(2) Section 504 of the Rehabilitation Act of 1973 accommodations will be provided to all eligible students served by the agency or college in accordance with all applicable state and federal law.

NEW SECTION

WAC 392-700-145 Award of credit. (1) For reengagement programs operated by agencies, high school credit will be awarded for all agency course work in which reengagement students are enrolled, including GED preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

- (i) September through November;
- (ii) December through February;
- (iii) March through May; and
- (iv) June through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month out of the quarter:

(i) A maximum of 0.5 high school elective credits will be awarded when a student passes one or more standardized GED pretests during the quarter and the certificated instructor has assessed student learning and determined that a course of study has been successfully completed.

(ii) A 0.5 high school elective credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The certificated instructor has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) High school elective credit ranging from at least 0.1 credits to no more than 0.25 credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies. The district and the agency will determine the amount of credit to be awarded for each course of study based on the competencies to be attained. A maximum of 0.5 credits may be awarded if both courses of study are successfully completed.

(iv) For reengagement students taking part in school district approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the school district.

(v) The school district may elect to award credit for other course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's certificated instructor's recommendation and on a review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The certificated instructor has assessed student learning and determined that the course of study has been successfully completed.

(2) For reengagement programs operated by colleges, high school credit will be awarded for course work in which reengagement students are enrolled, in accordance with the following:

(a) The school district and the college will determine whether the high school diploma will be awarded by the school district or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of community/technical college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of community/technical college course work that is below the one hundred level but has been determined by the college to be at the ninth grade level or higher. The college will determine the type of credit. College GED and adult basic education (ABE) classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of GED course work; and

(iv) Adult basic education (ABE) courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE. (Also see WAC 392-700-165.)

(c) If the school district is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of community/technical college course work at or above the one hundred level. The school district will determine the type of credit;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of community/technical college course work that is below the one hundred level but has been determined by the district to be at the ninth grade level or higher. The school district will determine the type and amount of credit for each class. College GED and adult basic education (ABE) classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of GED course work; and

(iv) Adult basic education (ABE) courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE. (Also see WAC 392-700-165.)

(3) The school district is responsible for reporting all high school credits earned by reengagement students in accordance with OSPI regulations. College transcripts and other student records requested by the school district will be provided by the college or agency as needed to facilitate this process.

(4) The school district will ensure that the process for awarding high school credits under this contract is implemented as part of the school district's policy regarding award of credits per WAC 180-51-050 (5) and (6).

NEW SECTION

WAC 392-700-155 Annual reporting calendar. (1)

For reengagement programs operated by agencies, the following requirements will be met in relation to the school calendar:

(a) The school year calendar shall be as follows:

(i) The standard school year will have nine instructional months and will begin in September and end in May; and

(ii) The agency may, but is not required to, offer instruction during one or more months of the nonstandard school year which will begin in June and end in August;

(b) The agency will provide the district a calendar of instruction for the standard school year prior to the first day of instruction in September.

(c) If the agency is going to provide summer reengagement instruction during one or more months of the nonstandard school year, the agency will provide the district with a calendar for the nonstandard school year prior to April 1st.

(d) Both the standard year and nonstandard year calendars must meet the following criteria:

(i) Each of the instructional months will have at least ten instructional days;

(ii) The specific planned days of instruction will be identified;

(iii) The number of hours of instruction that will be provided in a standard instructional day will be defined. For the purposes of calculation:

(A) The calculation for standard instructional day may not exceed six hours per day even if instruction is provided for more than six hours per day; and

(B) The standard instructional day may not be less than two hours per day; and

(iv) The calculated number of hours of instruction that will be provided in a standard instructional day during the standard school year may be different than the calculated number of hours of instruction that will be provided in a standard instructional day in the nonstandard school year.

(e) The agency's total planned hours of instruction will be calculated and reported as part of each calendar.

(i) The total planned hours of instruction for the standard school year will be calculated by multiplying the total number of instructional days scheduled during the standard school year by the hours of instruction that will be provided on a standard instructional day during the standard school year; and

(ii) The total planned hours of instruction for the nonstandard school year will be calculated by multiplying the total number of instructional days scheduled during the nonstandard school year by the hours of instruction that will be provided on a standard instructional day during the nonstandard school year.

(f) If the agency is going to offer instruction for the nonstandard school year, the average hours of instruction per instructional month must be calculated and reported as part of the nonstandard year calendar. The average hours of instruction per month will be calculated by dividing the total planned hours of instruction for the nonstandard school year by the number of instructional months that will be provided during the nonstandard school year.

(2) For reengagement programs operated by colleges, the following requirements will be met in relation to the school calendar:

(a) The standard school year will be nine months in length.

(b) Annually, the college and the school district will determine whether the standard school year runs from September through May or from October through June.

(c) The count day for each of the nine months of the standard school year will be the first college instructional day of each of the months.

(d) Regardless of the program's annual reporting calendar, instruction will be offered in accordance with the college's academic calendar.

(e) Instruction provided during a college's summer quarter or summer session will not be included in the standard school year. The three months that include the summer quarter of summer sessions will be considered the nonstandard school year.

(f) The count day for each of the three months of the nonstandard school year will be the first college instructional day of each of the months.

(g) Colleges will not be required to offer instruction to reengagement students during the nonstandard school year.

NEW SECTION

WAC 392-700-160 Reporting of student FTE. (1) For reengagement programs operated by agencies, student FTE will be reported as follows:

(a) Student FTE for the standard school year for reengagement programs operated by agencies will be reported in accordance with the following:

(i) If the program's total planned hours of instruction for the standard school year equal or exceed nine hundred hours:

(A) The program will be considered a full-time program; and

(B) Each enrolled student will be reported for a standard full-time student FTE of 1.0 on each monthly count day of the regular school year as long as they meet the minimum attendance standard. (Also see WAC 392-700-165.)

(ii) If the program's total planned hours of instruction for the regular school year totals less than nine hundred hours, then:

(A) The program will be considered a part-time program and a standard part-time FTE figure will be used;

(B) The standard part-time FTE figure will be calculated by dividing the total planned hours of instruction by nine hundred; and

(C) The standard part-time FTE figure will be reported for each enrolled student on each monthly count day of the standard school year as long as they meet the minimum attendance standard. (Also see WAC 392-700-165.)

(b) Student FTE for the nonstandard school year for reengagement programs operated by agencies will be reported in accordance with the following:

(i) No student may be reported as an FTE on count days during the nonstandard year months of instruction after the point they have been reported by any district for 1.0 annual FTE for the school year beginning in September;

(ii) If the program's average hours of instruction per instructional month for the nonstandard school year equals or exceeds one hundred hours:

(A) The program will be considered a full-time program; and

(B) Each enrolled student will be reported as a 1.0 FTE for each instructional month as long as they meet the minimum attendance standard (also see WAC 392-700-165); and

(iii) If the program's average hours of instruction per instructional month for the nonstandard school year is less than an average of one hundred hours per month of instruction:

(A) The program will be considered a part-time program and a standard part-time FTE figure will be used;

(B) The standard part-time FTE figure will be calculated by dividing the average hours of instruction per instructional month by one hundred; and

(C) The standard part-time FTE figure will be reported for each enrolled student on each monthly count day of the nonstandard school year as long as they meet the minimum attendance standard. (Also see WAC 392-700-065 (2) through (4).)

(2) For reengagement programs operated by colleges, student FTE will be reported in accordance with the following:

(a) The number of credits of college course work as stated in WAC 392-700-065, in which a student is enrolled on the monthly count day will determine the student FTE reported each month.

(b) A student enrolled in fifteen quarterly credits on the count day of any month will be reported as 1.0 FTE for that month.

(c) If a student is enrolled in more than fifteen quarterly credits on the count day of any month, only fifteen of these can be reported as reengagement enrollment credits and the student will be reported as 1.0 FTE for that month.

(d) If a student is enrolled in less than fifteen quarterly credits, the FTE reported for that month will be calculated by dividing the number of credits of enrollment by fifteen.

(e) If a student withdraws or is dropped prior to a monthly count day, the student will not be counted as enrolled for that month and no student FTE will be reported.

(3) For all reengagement programs, agencies, colleges, and school districts will adhere to the following when reporting student FTEs:

(a) No student may be counted for more than 1.0 FTE in any month (including nonvocational and vocational FTE).

(b) If nonstandard school year instruction is provided, FTE may not be reported for any student after a total of 1.0 annual FTE has been reported for that student by any school district during the standard school year.

(c) The agency or college may not report student FTEs to the school district and the school district may not report student FTEs to OSPI for reengagement students who are concurrently enrolled in any other program for which basic education allocation funding is received, i.e., common high school, running start, alternative learning education, college in the high school, education clinic, or on-line learning.

(d) The agency or college may not report student FTEs to the school district and the school district may not report student FTEs to OSPI for reengagement students who are enrolled in course work that has been reported by a college for postsecondary student FTE.

NEW SECTION

WAC 392-700-165 Funding and reimbursement. (1)

For reengagement programs operated by agency or college, the school district and the agency will receive state basic education apportionment funding, as authorized in RCW 28A.175.100 and WAC 392-700-001 relating to the creation of a statewide dropout reengagement system, in accordance with the procedures set forth below:

(a) Each student will be reported as a full- or part-time student FTE on each monthly count day in accordance with the procedures outlined in WAC 392-700-160, only if all of the following conditions are met:

(i) Enrollment on or before count day;

(ii) Have met the minimum attendance standard by attending at least one instructional day on count day or during the month prior to count day; and

(iii) Has not withdrawn prior to the monthly count day.

(b) For students enrolled in reengagement programs operated by an agency reporting of FTE for students will be dependent upon satisfactory progress as outlined below:

(i) Satisfactory progress will be defined as the documented attainment of at least one credential and/or one measure of academic progress during any period that a student is

reported for a total of 3.0 monthly student FTE (also see WAC 392-700-175);

(ii) If a student has not attained a credential or at least one of the approved measures of academic progress no student FTE will be reported until the student does make one of the specified gains or earns a credential;

(iii) During the reporting exclusion period, the student will be allowed to continue to attend the reengagement program, if the program has the resources and capacity to support that student;

(iv) When and if the student achieves one of the specified gains or earns one of the credentials, FTE may again be reported for that student and the student will again be required to make an educational gain or earn a credential during the next period for which 3.0 monthly student FTE is reported; and

(v) Rules governing the calculation of the 3.0 monthly student FTEs as it relates to satisfactory progress:

(A) The period during which the 3.0 monthly student FTE is calculated and academic progress or a credential must be attained, may occur in two different school years, if the student is enrolled in successive school years;

(B) 3.0 monthly student FTEs may be reported over the course of three successive months or over the course of multiple months;

(C) For students enrolled in full-time reengagement programs operated by an agency, 1.0 FTE will be reported each month for students who meet the conditions of WAC 392-700-160. The standard student FTE for all students enrolled in a full-time program is 1.0;

(D) For students enrolled in part-time reengagement program operated by an agency, it will take more than three months to report 3.0 monthly student FTEs because standard student FTE for all students who meet the conditions of WAC 392-700-160 is less than 1.0; and

(E) The period that is used to calculate the 3.0 monthly student FTE is not limited to successive months. (For example, if a student was claimed as 1.0 FTE monthly for January, February and April, but not in March, the student will not have to make a gain or earn a credential until the end of April.)

(c) In relation to school closures, during the standard school year:

(i) If planned days of instruction, as scheduled on the standard year calendar, are not provided, the agency may make up the scheduled days, as long as the replacement days occur during the nine months that comprise the standard school year;

(ii) At the end of the standard school year, prior to the final invoice, the agency will report to the district the actual total hours of instruction provided. The agency may not include more than six hours per instructional day in this calculation;

(iii) If the program was a full-time program and total hours of instruction provided is less than nine hundred hours of instruction and less than the total planned hours of instruction, the amount of basic education apportionment funding received by the school district and agency will be adjusted retroactively on a proportional status and will be reflected on the final invoice;

(iv) If the program was a part-time program and total hours of instruction provided is less than the total planned hours of instruction, the amount of basic education apportionment funding received by the school district and agency will be adjusted retroactively on a proportional status and will be reflected on the final invoice; and

(v) These calculations take into account any reductions to the total planned hours of instruction that may have been made during the standard or nonstandard school year in the event of program closures consistent with the provisions of chapter 392-129 WAC.

(2) For reengagement programs operated by colleges, the school district and college will receive state basic education apportionment funding in accordance with the following:

(a) Reimbursement will be based on the student FTE reported each month;

(b) Student FTE will be reported as outlined in WAC 392-700-160; and

(c) If a student withdraws or is dropped prior to a monthly count day, the student will not be counted as enrolled for that month and no student FTE will be reported for that month.

(3) For all reengagement programs, the following rules apply:

(a) School district will work with the agency or college to ensure that student FTE and related data is reported as required on the appropriate P223x form;

(b) The school district, agency, and college will ensure that no student FTE is reported nor reimbursement requested from OSPI for any student after the point they have been reported by any district for 1.0 annual FTE for the school year beginning in September;

(c) The agency or college may not report student FTEs for reengagement students who are concurrently enrolled in any other program for which basic education allocation funding is received, i.e., common high school, running start, alternative learning education, college in the high school, education clinic, or on-line learning; and

(d) The agency or college may not report student FTEs to the school district for reengagement students enrolled in course work that has been reported by a college for postsecondary student FTE.

(4) For all reengagement programs the monthly reimbursement rate per student FTE for reengagement programs will be determined as follows:

(a) The annual standard nonvocational and vocational reimbursement rates for all reengagement program FTEs will equal the statewide average annual nonvocational and vocational FTE rates as determined by OSPI; and

(b) The amount of reimbursement received per month will equal the annual standard nonvocational and vocational reimbursement rate divided by nine.

(5) For reengagement programs operated by a college or agency under contract interlocal agreement with a school district and a college or agency:

(a) The school district will retain seven percent of the basic education FTE allocation received from OSPI for reported student FTEs; and

(b) The agency or college will receive ninety-three percent of the basic education FTE allocation received by the school district from OSPI for reported student FTEs.

(6) For reengagement programs operated as part of a consortium with a consortium lead agency:

(a) The school district will retain five percent of the basic education FTE allocation received from OSPI for reported student FTEs;

(b) The consortium lead will receive five percent of the basic education FTE allocation received from OSPI for reported student FTEs; and

(c) The agency or college will receive ninety percent of the basic education FTE allocation received by the district from OSPI for reported student FTEs.

NEW SECTION

WAC 392-700-175 Required reports and record-keeping. (1) The agency or college will submit a report of the actual and planned total hours of instruction for the regular school year with the last P223 report of the regular school year.

(2) The agency or college will submit a report of the actual and planned total hours of instruction for the nonstandard school year with the last P223 report of the nonstandard school year.

(3) On a monthly basis, the agency or college will report the type of credentials earned by each enrolled student and by monthly and year-to-date total each month for the following:

(a) GED;

(b) High school diploma;

(c) College certificate received after completion of a program requiring at least forty hours of instruction;

(d) College degree; and

(e) Industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction.

(4) Each month the following measures of academic progress for each student will be reported on a monthly and year-to-date basis each month:

(a) Passes one or more GED tests (may only be claimed once in a year);

(b) Makes a significant gain in math and/or reading skills level as measured by a post-test using a commonly accepted standardized assessment (may be claimed multiple times in a year);

(c) Completes approved college readiness course work with documentation of competency attainment;

(d) Completes job search and job retention course work with documentation of competency attainment;

(e) Successfully completes a paid or unpaid work based learning experience of at least forty-five hours. This experience must meet all the requirements of WAC 392-410-315(2);

(f) Enrolls in postsecondary classes other than ABE/GED/ESL or continuing education courses;

(g) Transitions from postsecondary ESL to ABE/GED classes;

(h) Transitions from postsecondary ABE/GED classes to college developmental math and English classes (math or English classes at less than the 101 level);

(i) Transitions from college developmental math or English classes to college level math and English classes (classes above at 101 or above); and

(j) Transitions from ABE/GED to college level classes at 101 or above (other than English or math).

(5) The agency or college will prepare and submit an annual performance report with, at a minimum, statistics related to the following standard reengagement system performance goals.

(a) Total enrolled students;

(b) Total annual student FTEs;

(c) Average annual student FTE as determined by dividing the total annual student FTEs by the total enrolled students;

(d) Total basic skills gains made and basic skills gains made per average annual student FTE;

(e) Total high school credits earned and high school credits per average annual student FTE;

(f) Total credentials earned and credentials earned per average student FTE; and

(g) Total college credits earned and college credits earned per average annual student FTE.

(6) The program's annual performance report for the standard school year will be provided by the agency or college to the school district by no later than July 1st.

(7) The program's annual performance report, which will include outcomes from both the standard school year and the nonstandard school year and total annual school year will be provided by the agency or college to the school district by no later than September 1st.

(8) The school district will provide the program's annual performance report to the OSPI administrator responsible for implementation of the reengagement system by no later than September 30th.

NEW SECTION

WAC 392-700-195 Longitudinal performance goals.

(1) Longitudinal performance data for the reengagement program and the statewide reengagement system as a whole will be reported through the Washington's P-20 (preschool to postsecondary and workforce) longitudinal data system maintained by the ERDC.

(2) The school district will work with the agency or college to collect and report student data requested by the ERDC in order to accomplish the longitudinal follow-up of reengagement students. Specifically, the following unique identifier data points will be collected, to the extent possible, by the program, reported by the agency, and verified by the school district, for each enrolled reengagement student:

(a) Full legal name;

(b) Birth date;

(c) State student identifier (SSID);

(d) Social Security number; and

(e) College student identification number (SID), if applicable.

(3) While reengagement students will be encouraged to provide the data needed for longitudinal follow-up, the program will ensure that a student's unwillingness or inability to provide the requested data will not be a barrier to enrollment.

(4) Appropriate school district and/or agency, college, or consortium lead staff will participate in ERDC or OSPI training related longitudinal follow-up and a specific school district staff or school district designated program staff will be responsible for ensuring that accurate and complete student identifier data points are entered into the school district's student information system in accordance with this training.

(5) At the end of each program year, the ERDC will identify the cohort of students for each reengagement program for whom longitudinal tracking will be done. A standard criteria to determine when students will be included in a longitudinal study cohort will be developed by the ERDC, with input from OSPI, district and program representatives and will apply to all reengagement programs.

(6) The ERDC will collect longitudinal data for each specific program cohort on an annual basis for five years. The ERDC will work with the OSPI administrator responsible for reengagement programs to prepare annual program specific reports for each cohort and an annual system-wide report for the entire reengagement system including data for the cohorts of all programs.

(7) The ERDC and OSPI will work with the school district so that the school district and the agency or college will have the opportunity to review data about the program prior to the release of the annual reports in December of each year. The ERDC and OSPI will develop procedures by which the school district or agency can provide supplemental information and backup documentation for review and inclusion as it relates to postsecondary or workforce engagement of specific students in the cohort.

(8) In relation to postsecondary engagement, the ERDC will collect the following longitudinal data for students included in each program's follow-up cohort:

(a) Total number of annual FTEs originally reported by the program during targeted school year for which follow-up data is being collected;

(b) Quarters of enrollment in postsecondary programming or other advanced training during the follow-up year and since the targeted school year ended;

(c) Enrolled credits per quarter during the follow-up year and total enrolled credits since the targeted school year ended;

(d) Earned credits per quarter during the follow-up year and total earned credits since the targeted school year ended; and

(e) Credentials earned during the follow-up year and total credentials earned since the targeted school year.

(9) In relation to labor market engagement, the ERDC will collect the following longitudinal data for students included in each program's follow-up cohort:

(a) Total number of annual FTEs originally reported by the program during targeted school year for which follow-up data is being collected;

(b) Number of quarters with employment of one week or more during the follow-up year and since the targeted school year ended;

(c) Hours worked per week for any employment was reported during the follow-up year and since the targeted school year ended;

(d) Average pay per hour for any employment reported during the follow-up year and since the targeted school year ended; and

(e) Total earnings during the follow-up year and since the targeted school year ended.

NEW SECTION

WAC 392-700-200 Other agreements. Students enrolled in the program shall bear responsibility for their own transportation to and from the agency or college.

NEW SECTION

WAC 392-700-225 Operating agreements and OSPI approval. (1) All reengagement programs must be approved by OSPI and assigned a reengagement program code to be used in each district's statewide information system and CEDARS to identify all students enrolled in the program.

(2) Approval for each program will be determined as follows:

(a) If the school district is entering a contractual arrangement with an agency or college to operate the program, OSPI will review the contract or interlocal agreement that the school district has developed with an agency or college.

(b) If a school district is directly operating a program and not entering into a contract or interlocal agreement with another entity, OSPI will review a letter of intent signed by the school district superintendent that outlines the required specific elements that will be included in the program.

(c) If a technical college receiving direct funding under WAC 392-121-187 is directly operating a program, OSPI will review a letter of intent signed by the technical college president that outlines the required specific elements that will be included in the program.

(d) If a reengagement program is being provided through a consortium, OSPI will review the consortium agreement signed by the consortium lead and the participating school districts and each contract or interlocal agreement developed with an agency or college.

(3) OSPI will provide a model interlocal agreement, a model contract, a model school district letter of intent, and a model consortium agreement and will indicate which elements of these standard documents must be included in any document being submitted to OSPI for review and approval.

(4) Because school districts, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve youth, many models of operation are authorized as part of the statewide dropout reengagement system:

(a) A school district may enter into an interlocal agreement with a college to provide a dropout reengagement program for eligible students. The agreement will define whether the program will only serve students who are residents of the school district or whether the program will also serve students who are not residents of the school district but who petition for release from their resident district, under

RCW 28A.225.220 through 28A.225.230, in order to attend the program.

(b) A school district may enter into a contract or an interlocal agreement with an agency to provide a dropout reengagement program for eligible students. The agreement will define whether the program will only serve students who are residents of the school district or whether the program will also serve students who are not residents of the school district but who petition for release from their resident district, under RCW 28A.225.220 through 28A.225.230, in order to attend the program.

(c) A school district may submit a letter of intent to OSPI in order to directly operate a dropout reengagement program for eligible students. The letter of intent will define whether the program will only serve students who are residents of the school district or whether the program will also serve students who are not residents of the school district but who petition for release from their resident district, under RCW 28A.225.220 through 28A.225.230, in order to attend the program.

(d) A district or technical college receiving direct funding under WAC 392-121-187 may directly operate a reengagement program and serve students enrolled in multiple districts. In this case, the school district or technical college will develop a consortium agreement with school districts who choose to refer eligible students for enrollment in the program. In this case the district or technical college will:

(i) Develop a consortium agreement that is signed by all referring school districts;

(ii) Submit a letter of intent and the consortium agreement to OSPI for approval;

(iii) Prepare the required reports, enrollment data, and course records needed by each referring school district to enroll students, award credit and report FTE and performance to OSPI; and

(iv) Work with each referring school district to ensure the data entry of all required student data into each school district's statewide student information system related to enrollment.

(e) A school district may work with other school districts, with regional partner agencies, with colleges in or near the district to form a consortium. The purpose of the consortium will be to create and operate a reengagement program or reengagement programs that will serve students from multiple school districts and reduce the administrative burden on school districts. If such a regional reengagement consortium is implemented, a consortium lead agency will be identified and assume the following responsibilities:

(i) Take the lead in organizing and managing the regional consortium;

(ii) Provide information and technical assistance to districts interested in participating in the consortium and providing the opportunity for students from their district to enroll;

(iii) Develop a consortium agreement that is signed by all member school districts;

(iv) Develop interlocal agreements and contracts with agencies and colleges to operate reengagement programs;

(v) Submit the consortium agreement and interlocal agreement(s) and contract(s) to OSPI for approval;

(vi) Provide oversight and technical assistance to programs to ensure compliance with all requirements of this chapter and the delivery of quality programming;

(vii) Assist programs with the preparation of required reports, enrollment data, and course records needed by each school district to enroll students, award credit and report FTE and performance to OSPI;

(viii) Facilitate data entry of all required student data into each district's statewide student information system related to enrollment; and

(ix) Work with the school districts to facilitate the provision of special education and accommodations under Section 504 of the Rehabilitation Act of 1973.

(5) If an agency or college operates a program that meets all the requirements of a reengagement program but the resident school district does not choose to enter into a contract or interlocal agreement with the agency or college to operate the program and does not offer sufficient other reengagement programming for eligible students in the school district, the agency or college may petition a school district other than the resident school district to enter into an interlocal agreement or contract or to participate in a consortium in order to ensure that all eligible students have the opportunity to enroll in reengagement programming.

(6) Chapter 392-700 WAC does not affect the authority of school districts to contract for other educational services under RCW 28A.150.305 and 28A.320.035.

WSR 11-13-089
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 17, 2011, 5:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-06-058 and 11-10-083.

Title of Rule and Other Identifying Information: WAC 232-12-243 Public safety cougar removals, 232-28-272 2009 Black bear and 2009-2010, 2010-2011, and 2011-2012 cougar hunting seasons and regulations, 232-28-287 2009-2010, 2010-2011, and 2011-2012 Cougar permit seasons and regulations, and 232-28-435 2011-12 Migratory waterfowl seasons and regulations.

Hearing Location(s): Natural Resources Building, Conference Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on August 5-6, 2011, at 8:30 a.m.

Date of Intended Adoption: August 5-6, 2011.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by Wednesday, July 13, 2011.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 29, 2011, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 232-12-243 Public safety cougar removals, the purpose of the WAC is to

identify when cougar management removals are warranted for the protection of public safety and private property. The proposed WAC amendments change the threshold for conducting a cougar management removal from "eleven confirmed human-cougar interactions per year, of which at least four must be confirmed human-cougar safety incidents or livestock/pet depredations," to "an annual or seasonal increase in confirmed human-cougar interactions above the 2008-2010 level." The proposed WAC amendments also extend the removal season from March 15 to March 31, authorize removals on an as-needed basis, and rename the program from "Public safety cougar removals" to "Cougar management removals."

WAC 232-28-272 2009 Black bear and 2009-2010, 2010-2011, and 2011-2012 cougar hunting seasons and regulations, the purpose of the proposed WAC amendments is to establish the 2011-2012 cougar hunting seasons for hunting without the aid of dogs. The department is recommending changing the Oct. 29-Nov. 30 any-weapon general season to Oct. 15-Dec. 31. Data on cumulative harvest through the season suggests that the female harvest will likely be near the female harvest guideline for each zone by Dec. 31.

WAC 232-28-287 2009-2010, 2010-2011, and 2011-2012 Cougar permit seasons and regulations, the purpose of the proposed WAC amendments is to establish the 2011-2012 cougar permit hunting seasons for hunting without the aid of dogs. The department is recommending adding a Jan. 1-Mar. 31 permit season in each of the five zones, with between twenty-four permits issued per zone, depending on the size of the zone. The purpose of the permit season is to provide late-season opportunity when snow conditions are conducive for tracking and calling. Because the harvest success is less than one percent, the expected harvest is low.

WAC 232-28-435 2011-12 Migratory waterfowl seasons and regulations, the new WAC specifies legal season dates, bag limits, and open areas to hunt waterfowl, coot, and snipe for the 2011-12 hunting season.

Reasons Supporting Proposal: WAC 232-12-243 Public safety cougar removals, the reason for the proposed changes is to make the removal threshold more responsive to any increases in confirmed human-cougar interactions and to perceptions of new threats posed by cougar.

WAC 232-28-272 2009 Black bear and 2009-2010, 2010-2011, and 2011-2012 cougar hunting seasons and regulations, the reason for the proposed changes is to achieve the female harvest guideline established in the game management plan.

WAC 232-28-287 2009-2010, 2010-2011, and 2011-2012 Cougar permit seasons and regulations, the reason for the proposed changes is to manage the female harvest guideline established in the game management plan.

WAC 232-28-435 2011-12 Migratory waterfowl seasons and regulations, waterfowl seasons and regulations are developed based on cooperative management programs among states of the Pacific Flyway and the United States Fish and Wildlife Service, considering population status and other biological parameters. The rule establishes waterfowl seasons and regulations to provide recreational opportunity, control waterfowl damage, and conserve the waterfowl resources of Washington.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.32.070, 77.15.245.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, 77.32.070, 77.15.245.

Rule is necessary because of federal law, C.F.R. Title 50, Part 20; Migratory Bird Treaty Act.

Name of Proponent: Washington fish and wildlife commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, Natural Resources Building, Olympia, (360) 902-2693; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not directly regulate small business.

A cost-benefit analysis is not required under RCW 34.05.328. These are not hydraulics rules.

June 17, 2011

Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 08-197, filed 8/13/08, effective 9/13/08)

WAC 232-12-243 ((Public safety)) Cougar management removals. (1) Definitions:

As used in this section and in the context of ((public safety)) cougar management removals, the following definitions apply:

(a) "Confirmed" means qualified department staff is led to believe a cougar(s) was at the scene of the incident by interview of the complainant or observation of evidence at the scene.

(b) "Human-cougar safety incident" means aggressive or unusual behavior by a cougar which presents an actual or perceived threat to an individual.

(c) "Livestock or pet depredation" means incidents where livestock and/or pets are killed and/or injured by cougar.

(d) "Marginal cougar habitat" means those areas usually dominated by urban/suburban, developed lands with relatively high human densities.

(e) "Nuisance activity" means incidents associated with property disturbance, property damage, or livestock/pet harassment.

(f) "Preferred cougar habitat" means those areas usually dominated by rural, undeveloped lands with relatively low human densities.

(g) "Public safety need" means there exists a reasonable threat to human safety or property by one or more cougar, as indicated by the level of confirmed human-cougar safety incidents or livestock/pet depredations, and confirmed cougar sightings or nuisance activities.

(h) "Removal" means the act of killing one or more cougar with the aid of dogs.

(i) "Sighting" means a direct observation of one or more cougar, in urban or rural settings, near individuals or residences; typically more than chance observations.

(j) "Human-cougar interaction" means a human-cougar safety incident, livestock or pet depredation, cougar nuisance activity, or cougar sighting event.

(k) "Dog hunter" means a person that owns and hunts with dogs that are capable of detecting, tracking and treeing a cougar.

(2) ((Public safety)) Cougar management removal authorization: The commission authorizes the director to issue ((public safety)) cougar management removal permits consistent with this rule. Prior to issuing ((public safety)) cougar management removal permits, the department shall use other practical alternatives to address a public safety need, including livestock or pet depredations. Other practical alternatives may include, but are not limited to, general cougar hunting seasons, general public information, educational programs, information to recreational hunters, cougar depredation/kill permits, and department capture and relocation/euthanasia of specific cougars.

(3) ((Public safety)) Cougar management removal criteria:

(a) The commission determines that when the above practical alternatives have been utilized within a game management unit, ((eleven confirmed human-cougar interactions per year, of which at least four must be confirmed human-cougar safety incidents or livestock/pet depredations)) an annual or seasonal increase in confirmed human-cougar interactions above the 2008-2010 level, therein ((demonstrating)) demonstrates that the practical alternatives have been inadequate to address the public safety need. The director then is authorized by the commission to remove one or more cougar, with the aid of dogs, in a selected area of that game management unit or nearby geographic area suitable for the use of dogs. The commission authorizes the director to remove one cougar per one hundred twenty square kilometers of complaint area in preferred cougar habitat, and one cougar per four hundred thirty square kilometers of complaint area in marginal cougar habitat.

(b) If warranted by conditions of this rule, ((public safety)) cougar management removal(s) will be conducted annually between December 1st and March ((15th)) 31st in selected areas of game management units designated by the director to address a public safety need presented by one or more cougar((, except in game management units in counties where cougars will be removed to address public safety and protection of property with pilot cougar hunting seasons with the aid of dogs authorized under WAC 232-28-285)).

(c) The department shall not target more than one hundred nine cougar during a public safety cougar removal period unless otherwise authorized by the commission.

(4) ((Public safety)) Cougar management removal permit issuance procedure.

(a) To participate in a ((public safety)) cougar management removal, individuals must request that his/her name be placed on a list of available participants (participant list) by mailing their request to Washington Department of Fish and Wildlife, Enforcement Program - ((Public Safety)) Cougar Management Removal, 600 Capitol Way North, Olympia, WA 98501-1091. The request must include the individual's name, address, phone number, and game management units being applied for. Individuals may apply for no more than

four game management units. An individual's request to be placed on a participant list for a removal period must be post-marked no later than October 1, or be received at the department's Olympia office no later than 5:00 p.m. on October 1, during the year the removal period begins.

(b) To be eligible for a ~~((public safety))~~ cougar management removal permit (permit), the participant must be a Washington resident dog hunter who, at the time of application for a permit, possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a ~~((public safety))~~ cougar management removal.

(c) Individuals eligible for participation in a ~~((public safety))~~ cougar management removal will be randomly selected from the participant list. The department will issue a permit to the person whose name is selected from the participant list. Individuals selected will be notified by telephone or mail. Individuals selected must contact the department's enforcement program in Olympia and accept the ~~((public safety))~~ cougar management removal permit within fifteen days of being notified. Failure to contact the department will result in forfeit of the permit and the individual will be placed on the participant list for later selections. Permits may not be sold or reassigned.

(d) Permit holders and all individuals who will accompany the permit holder must complete the department's ~~((public safety))~~ cougar management removal education course prior to participating in a ~~((public safety))~~ cougar management removal.

(5) ~~((Public safety))~~ Cougar management removals: Quota system and participation in cougar removal.

(a) ~~((Public safety cougar))~~ This is a management removal administrated by a WDFW designated coordinator. Permit holders will be contacted on an as-needed basis to conducted removals in portions of GMUs. Not all permit hunters will be contacted in a given year.

(b) Cougar removals will be based on a quota system, where permit holders may hunt cougar until the allotted numbers of cougar have been killed from each game management unit or March ~~((15))~~ 31, whichever is first.

~~((b))~~ (c) Permit holders who harvest a cougar before January 15 may continue hunting for a second cougar with dogs. The permit holder must purchase an additional cougar transport tag to hunt and harvest one additional cougar and the permit holder will be issued a second permit. Permit holders who harvest a cougar after January 15 are not eligible to harvest a second cougar with dogs.

~~((e))~~ (d) To verify if the cougar removal season is open or closed in each game management unit, the permit holders shall notify the department's enforcement program in Olympia within twenty-four hours prior to exercising a public safety cougar removal permit.

~~((d))~~ (e) No more than four total individuals may participate per ~~((public safety))~~ cougar management removal, including the permit holder(s). Only the permit holder, whose name appears on the permit, may take a cougar.

~~((e))~~ (f) Hunters killing a cougar during a ~~((public safety))~~ cougar management removal must notify the department's enforcement program in Olympia within twenty-four hours after harvesting the cougar.

~~((f))~~ (g) The department reserves the right to accompany permit holders while participating in a ~~((public safety))~~ cougar management removal.

(6) ~~((Public safety))~~ Cougar management removal general requirements.

(a) A valid big game hunting license which includes cougar as a species option is required to hunt cougar. One cougar transport tag is included with a big game license that has cougar as a species option. A second cougar transport tag must be purchased to take a second cougar. Individuals may participate in multiple ~~((public safety))~~ cougar management removals, but must purchase a cougar transport tag for each cougar removed. Purchases in excess of two cougar transport tags must be made at department offices.

(b) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens. Individuals selected for a ~~((public safety))~~ cougar management removal permit may take one cougar per permit.

(c) Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting cougar. The use of dogs to hunt cougar is prohibited except during a ~~((public safety))~~ cougar management removal.

(d) Any person who takes a cougar must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar must be sealed by an authorized department employee within seventy-two hours of the notification of kill. Any person who takes a cougar must present the cougar skull, in such a manner that teeth and biological samples can be extracted, to an authorized department employee at the time of sealing.

(e) The ~~((public safety))~~ cougar management removal permit (permit) belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

AMENDATORY SECTION (Amending Order 09-53, filed 4/15/09, effective 5/16/09)

WAC 232-28-272 2009 Black bear and 2009-2010, 2010-2011, and 2011-2012 cougar hunting seasons and regulations.

2009 Fall Black Bear Seasons:

Black Bear Management Unit	Season	Hunt Area
Coastal	Aug. 1 - Nov. 15	GMUs 501, 504, 506, 530, 601, 602, 603, 607-621, 636-651, 658-663, 672-684
Puget Sound	Aug. 1 - Nov. 15	GMUs 407, 410, 454, 624, 627, 633, 652, 666, 667
North Cascades	Aug. 1 - Nov. 15	GMUs 418-450, 460
South Cascades	Aug. 1 - Nov. 15	GMUs 466, 485, 503, 505, 510-520, 524, 550-574, 653, 654
Okanogan	Aug. 1 - Nov. 15	GMUs 203, 209-243
East Cascades	Aug. 1 - Nov. 15	GMUs 244-247, 249-251, 328, 329-368, 382, 388, 578
Northeastern A	Sept. 1 - Nov. 15	GMUs 101-121, 204
Northeastern B	Aug. 1 - Nov. 15	GMUs 124-130
Blue Mountains	Sept. 1 - Nov. 15	GMUs 145-154, 162-186

Black Bear Management Unit	Season	Hunt Area
Columbia Basin	Aug. 1 - Nov. 15	GMUs 133, 136, 139, 142, 248, 254, 260-290, 371-381
Long Island	Sept. 1 - Nov. 15	GMU 699

Bag Limit: Two (2) black bear per annual hunting season only one of which may be taken in Eastern Washington.

Area Restriction: Special deer permit required to hunt black bear in GMU 485.

License Required: A valid big game hunting license, which includes black bear as a species option, is required to hunt black bear. One black bear transport tag is included with a big game hunting license that has black bear as a species option. A second black bear transport tag must be purchased to take a second bear.

Hunting Method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting black bear. The use of hounds and bait to hunt black bear is prohibited statewide.

Submitting Bear Teeth: Successful bear hunters must submit the black bear premolar tooth located behind the canine tooth of the upper jaw.

2009-2010 Cougar Seasons:

Hunt Name	Hunt Area	Season	Special Restrictions
Coastal Puget Sound North Cascades Columbia Basin	GMUs 136-142, 248, 254-290, 371-381, 418, 426, 437, 448, 450, 460, 466, 485, 501, 504, 506, 530, 601-621, 636-651, 658-663, 672-684, 699, 407, 410, 454, 624-633, 652, 666	Sept. 1-25	Archery only
		Sept. 26 - Oct. 16	Muzzleloader only
		Oct. 17 - Mar. 31	Any weapon
South Cascades Blue Mountains Kittitas-Yakima Spokane	GMUs 124-133, 145-154, 162-186, 328-368, 503, 505, 510-520, 524, 550-574, 653, 654, 667	Sept. 1-25	Archery only
		Sept. 26 - Oct. 16	Muzzleloader only
		Oct. 17 - Dec. 31	Any weapon
Chelan Okanogan Okanogan-Ferry Stevens-Pend Oreille Klickitat	GMUs 101, 105, 108-121, 203, 204, 209-242, 243-247, 249-251, 382, 388, 578 within Chelan, Ferry, Klickitat, Okanogan, Stevens, or Pend Oreille counties	Sept. 1-25	Archery only
		Sept. 26 - Oct. 16	Muzzleloader only
		Oct. 31 - Nov. 30	Any weapon

2010-2011 Cougar Seasons:

Hunt Name	Hunt Area	Season	Special Restrictions
Coastal Puget Sound North Cascades Columbia Basin	GMUs 136-142, 248, 254-290, 371-381, 418, 426, 437, 448, 450, 460, 466, 485, 501, 504, 506, 530, 601-621, 636-651, 658-663, 672-684, 699, 407, 410, 454, 624-633, 652, 666	Sept. 1-24	Archery only
		Sept. 25 - Oct. 15	Muzzleloader only
		Oct. 16 - Mar. 31	Any weapon

Hunt Name	Hunt Area	Season	Special Restrictions
South Cascades Blue Mountains Kittitas-Yakima Spokane	GMUs 124-133, 145-154, 162-186, 328-368, 503, 505, 510-520, 524, 550-574, 653, 654, 667	Sept. 1-24	Archery only
		Sept. 25 - Oct. 15	Muzzleloader only
		Oct. 16 - Dec. 31	Any weapon
Chelan Okanogan Okanogan-Ferry Stevens-Pend Oreille Klickitat	GMUs 101, 105, 108-121, 203, 204, 209-242, 243-247, 249-251, 382, 388, 578 within Chelan, Ferry, Klickitat, Okanogan, Stevens, or Pend Oreille counties	Sept. 1-24	Archery only
		Sept. 25 - Oct. 15	Muzzleloader only
		Oct. 31 - Nov. 30	Any weapon

2011-2012 Cougar Seasons:

Hunt Name	Hunt Area	Season	Special Restrictions
Coastal Puget Sound North Cascades Columbia Basin	GMUs 136-142, 248, 254-290, 371-381, 418, 426, 437, 448, 450, 460, 466, 485, 501, 504, 506, 530, 601-621, 636-651, 658-663, 672-684, 699, 407, 410, 454, 624-633, 652, 666	Sept. 1-23	Archery only
		Sept. 24 - Oct. 14	Muzzleloader only
		Oct. 15 - Mar. 31	Any weapon
South Cascades Blue Mountains Kittitas-Yakima Spokane	GMUs 124-133, 145-154, 162-186, 328-368, 503, 505, 510-520, 524, 550-574, 653, 654, 667	Sept. 1-23	Archery only
		Sept. 24 - Oct. 14	Muzzleloader only
		Oct. 15 - Dec. 31	Any weapon
Chelan Okanogan Okanogan-Ferry Stevens-Pend Oreille Klickitat	GMUs 101, 105, 108-121, 203, 204, 209-242, 243-247, 249-251, 382, 388, 578 within Chelan, Ferry, Klickitat, Okanogan, Stevens, or Pend Oreille counties	Sept. 1-23	Archery only
		Sept. 24 - Oct. 14	Muzzleloader only
		Oct. (29 Nov. 30) <u>15</u> - <u>Dec. 31</u>	Any weapon

Requirements for Cougar Seasons:

License Required: A valid big game hunting license which includes cougar as a species option is required to hunt cougar.

Bag Limit: One (1) cougar per license year excluding public safety cougar removals. It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

Area Restriction: Special deer permit required to hunt cougar in GMU 485.

Tag Information: One cougar transport tag is included with a big game license that has cougar as a species option.

Hunting Method: The use of dogs to hunt cougar is prohibited except by a (~~public safety cougar removal permit~~) (WAC

~~232-12-243~~ or)) commission authorized ((~~hound~~)) permit (WAC (~~232-28-285~~) 232-12-243).

Cougar Pelt Sealing: Any person who takes a cougar must comply with the sealing requirements in WAC 232-12-024.

AMENDATORY SECTION (Amending Orders 10-94 and 10-94A, filed 4/30/10 and 12/30/10, effective 5/31/10 and 1/30/11)

WAC 232-28-287 2009-2010, 2010-2011, and 2011-2012 Cougar permit seasons and regulations. It is unlawful to fail to comply with the provisions below. Violators may be punished under RCW 77.15.410, 77.15.245, and 77.15.280 (1)(c).

Who may apply: Anyone with a valid Washington big game license, which includes cougar as a species option.

Hunt areas, permit levels, and season dates for each license year:

Hunt Name	Hunt Area	Permits	Season Dates ^a
South Cascades	GMUs 503, 505, 510-520, 524, 550-574, 653, 654, 667	40	Jan. 1 - Mar. 31
Blue Mountains	GMUs 145-154, 162-186	100	Jan. 1 - Mar. 31
Kittitas-Yakima	GMUs 328-368	30	Jan. 1 - Mar. 31
Spokane	GMUs 124-133	30	Jan. 1 - Mar. 31
<u>Chelan</u>	<u>GMUs 243-247, 249-251</u>	<u>40</u>	<u>Jan. 1 - Mar. 31</u>
<u>Okanogan</u>	<u>GMUs 203, 209-242</u>	<u>40</u>	<u>Jan. 1 - Mar. 31</u>

Hunt Name	Hunt Area	Permits	Season Dates ^a
<u>Okanogan-Ferry</u>	<u>GMUs 101, 105, 204</u>	<u>20</u>	<u>Jan. 1 - Mar. 31</u>
<u>Stevens-Pend Oreille</u>	<u>GMUs 108-121</u>	<u>30</u>	<u>Jan. 1 - Mar. 31</u>
<u>Klickitat</u>	<u>GMUs 382, 388, 578</u>	<u>20</u>	<u>Jan. 1 - Mar. 31</u>

^aPermits are valid for the license year they are issued.

Requirements for Cougar Seasons:

Bag limit: One (1) cougar per license year, excluding public safety cougar removals. It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

License required: A valid big game hunting license, which includes cougar as a species option, is required to hunt cougar.

Tag information: One cougar transport tag is included with a big game license that has cougar as a species option.

Hunting method: The use of dogs to hunt cougar is prohibited except by a ((public safety cougar removal permit (WAC 232-12-243) or)) commission authorized ((hound)) permit (WAC ((232-28-285)) 232-12-243).

Cougar pelt sealing: Any person who takes a cougar must comply with the sealing requirements in WAC 232-12-024.

NEW SECTION

WAC 232-28-435 2011-12 Migratory waterfowl seasons and regulations.

DUCKS

Statewide

Oct. 15-19, 2011 and Oct. 22, 2011 - Jan. 29, 2012; except scaup season closed Oct. 15 - Nov. 4.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 24-25, 2011.

Daily bag limit: 7 ducks, to include not more than 2 hen mallard, 2 pintail, 3 scaup, 1 canvasback, and 2 redhead statewide; and to include not more than 1 harlequin, 2 scoter, 2 long-tailed duck, and 2 goldeneye in Western Washington.

Possession limit: 14 ducks, to include not more than 4 hen mallard, 4 pintail, 6 scaup, 2 canvasback, and 4 redhead statewide; and to include not more than 1 harlequin, 4 scoter, 4 long-tailed duck, and 4 goldeneye in Western Washington.

Season limit: 1 harlequin in Western Washington.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SEA DUCKS

Hunters must possess a special 2011-2012 hunting authorization and harvest record card for sea ducks when hunting harlequin, scoter, long-tailed duck, and goldeneye in Western Washington. Hunters who did not possess a 2010-11 sea duck harvest record card must submit an application form to WDFW. Immediately after taking a sea duck into possession,

hunters must record in ink the information required on the harvest record card.

COOT (Mudhen)

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 25 coots.

Possession limit: 25 coots.

SNIPE

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 8 snipe.

Possession limit: 16 snipe.

GEESE (except Brant)

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 24-25, 2011, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily bag limit: 4 Canada geese.

Possession limit: 8 Canada geese.

Western Washington Goose Seasons

Goose Management Area 1

Island, Skagit, Snohomish counties.

Oct. 15, 2011 - Jan. 29, 2012 for snow, Ross', and blue geese. Oct. 15-27, 2011 and Nov. 5, 2011 - Jan. 29, 2012 for other geese (except Brant).

Daily bag limit: 4 geese.

Possession limit: 8 geese.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SNOW GEESE

Hunters must purchase a special 2011-12 migratory bird hunting authorization and harvest record card for snow geese when hunting snow, Ross', and blue geese in Goose Management Area 1. Hunters who did not possess a 2010-11 snow goose harvest record card must submit an application form to WDFW. Immediately after taking a snow, Ross', or blue goose into possession, hunters must record in ink the information required on the harvest record card.

SNOW GOOSE QUALITY HUNTING PROGRAM IN GOOSE MANAGEMENT AREA 1

All hunters must obey posted signs regarding access restrictions. Quality hunt units are not available for commercial uses.

SKAGIT COUNTY SPECIAL RESTRICTIONS

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or to discharge a firearm for the purpose of hunting snow geese within 100 feet of any paved public road in other areas of Skagit County.

It is unlawful to hunt snow geese on Fir Island, Skagit County, inland of the surrounding dikes, unless each hunter sets up a minimum of 24 snow goose decoys. Additionally, it is unlawful to hunt snow geese over decoys unless the decoys are set up in a realistic pattern, are under the immediate control of the hunter, and are not left unattended. For the purposes of this section, a "decoy" is defined as any structure the size of or larger than a mallard duck decoy. A violation of this section is punishable under RCW 77.15.400.

While hunting snow geese, if a hunter is convicted of (a) trespass; (b) shooting from, across, or along the maintained part of any public highway; (c) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or discharging a firearm within 100 feet of any paved public road for the purpose of hunting snow geese in other areas of Skagit County; (d) exceeding the daily bag limit for geese; or (e) violating decoy requirements, authorization will be invalidated for the remainder of the current snow goose season and an authorization will not be issued for the subsequent snow goose season.

Goose Management Area 2A

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River.

Open in all areas except Ridgefield NWR from 8 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. 12-27, 2011 and Dec. 7, 2011 - Jan. 29, 2012, except closed Dec. 25, 2011 and Jan. 1, 2012. Ridgefield NWR open from 8 a.m. to 4:00 p.m. Tuesdays, Thursdays, and Saturdays only, Nov. 12-26, 2011 and Dec. 8, 2011 - Jan. 28, 2012, except closed Nov. 24, 2011 and Dec. 25, 2011 and Jan. 1, 2012.

Bag limits for Goose Management Area 2A:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose.

Season limit: 1 dusky Canada goose.

Goose Management Area 2B

Pacific County.

Open from 8 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 15, 2011 - Jan. 14, 2012.

Bag limits for Goose Management Area 2B:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 1 Aleutian goose.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 2 Aleutian geese.

Season limit: 1 dusky Canada goose.

Special Provisions for Goose Management Areas 2A and 2B:

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm.

The goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 40 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 40 dusks, to be distributed 5 for Zone 1 (Ridgefield NWR); 5 for Zone 2 (Cowlitz County south of the Kalama River); 15 for Zone 3 (Clark County except Ridgefield NWR); 7 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and 8 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunters must possess a special 2011-12 migratory bird hunting authorization for Goose Management Area 2A/2B and daily goose harvest record card when hunting geese in Goose Management Areas 2A and 2B. New hunters and those who did not maintain a valid 2010-11 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

Immediately after taking any goose into possession, hunters must record in ink the information required on the harvest record card. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. All geese shall be presented intact and fully feathered at the check station. If a hunter takes the season bag limit of one dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest record card, authorization will be invalidated and the hunter will not be able to hunt geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

Special Late Goose Season for Goose Management Area 2A:

Open to Washington department of fish and wildlife master hunter program graduates and youth hunters (15 years of age or under, who are accompanied by a master hunter) possessing a valid 2011-12 southwest Washington goose hunting authorization and harvest record card, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.:

Saturdays and Wednesdays only, Feb. 4 - Mar. 7, 2012.

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose.

Possession limit: 8 geese, to include not more than 1 dusky Canada goose.

Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. Washington department of fish and wildlife will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 45 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

Goose Management Area 3

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B.

Oct. 15-27, 2011 and Nov. 5, 2011 - Jan. 29, 2012.

Daily bag limit: 4 geese.

Possession limit: 8 geese.

Eastern Washington Goose Seasons

Goose Management Area 4

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Saturdays, Sundays, and Wednesdays only during Oct. 15, 2011 - Jan. 22, 2012; Nov. 11, 24, and 25, 2011; Dec. 26, 27, 29, and 30, 2011; January 16, 2012; and every day Jan. 23-29, 2012.

Goose Management Area 5

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 15-19, 2011, every day from Oct. 22, 2011 - Jan. 29, 2012.

Bag limits for all Eastern Washington Goose Management Areas:

Daily bag limit: 4 geese.

Possession limit: 8 geese.

BRANT

Open in Skagit County only on the following dates:

Jan. 14, 15, 18, 21, 22, 25, 28, and 29, 2012.

If the 2011-12 preseason brant population in Skagit County is below 6,000 (as determined by the early January survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates:

Jan. 14, 15, 17, 19, 21, 22, 24, 26, 28, and 29, 2012.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT BRANT

Hunters must possess a special 2011-12 migratory bird hunting authorization and harvest record card for brant when hunting brant. Hunters who did not possess a 2010-11 brant harvest record card must submit an application form to WDFW. Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest record card.

Bag limits for Skagit and Pacific counties:

Daily bag limit: 2 brant.

Possession limit: 4 brant.

SWANS

Season closed statewide.

MANDATORY REPORTING FOR MIGRATORY BIRD HARVEST RECORD CARDS

Hunters must report 2011-12 harvest information from band-tailed pigeon harvest record cards to WDFW for receipt by September 30, 2011, and harvest information from brant, sea duck, and snow goose harvest record cards to WDFW for receipt by February 15, 2012. Every person issued a migratory bird hunting authorization and harvest record card must return the entire card to the Washington department of fish and wildlife or report the card information at the designated internet site listed on the harvest record card. Any hunter failing to report by the deadline will be in noncompliance of reporting requirements. Hunters who have not reported hunting activity by the reporting deadline for any harvest record card acquired in 2011-12 will be required to pay a \$10 administrative fee before any new 2012-13 migratory bird authorization and harvest record card will be issued. A hunter may only be penalized a maximum of \$10 during a license year.

FALCONRY SEASONS

DUCKS, COOTS, AND SNIPE (Falconry)

(Bag limits include geese and mourning doves.)

Oct. 15-19, 2011 and Oct. 22, 2011 - Jan. 29, 2012 statewide.

Daily bag limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 15, 2011 - Jan. 29, 2012 for snow, Ross', or blue geese. Oct. 15-27, 2011 and Nov. 5, 2011 - Jan. 29, 2012 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 12-27, 2011 and Dec. 7, 2011 - Jan. 29, 2012.

Goose Management Area 2B: Saturdays and Wednesdays only, Oct. 15, 2011 - Jan. 15, 2012.

Goose Management Areas 3, 4, and 5: Oct. 15-27, 2011 and Nov. 5, 2011 - Jan. 29, 2012.

Daily bag limit for all areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession limit for all areas: 6 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-28-433	2009-10 Migratory water-fowl seasons and regulations.
WAC 232-28-434	2010-11 Migratory water-fowl seasons and regulations.

WSR 11-13-090
PROPOSED RULES
YAKIMA VALLEY
COMMUNITY COLLEGE

[Filed June 20, 2011, 11:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-24-019.

Title of Rule and Other Identifying Information: Chapter 132P-160 WAC, Yakima Valley Community College admissions and registration rules.

Hearing Location(s): M. L. King Jr. Room, Hopf Union Building, Yakima Campus, South 16th Avenue and Nob Hill Boulevard, Yakima, Washington, on July 27, 2011, at 1:30 p.m.

Date of Intended Adoption: October 13, 2011.

Submit Written Comments to: Ms. Denise Anderson, Yakima Valley Community College (YVCC), P.O. Box 22520, Yakima, WA 98908-2520, e-mail danderson@yvcc.edu, fax (509) 574-4702, by July 25, 2011.

Assistance for Persons with Disabilities: Contact disabilities support services, YVCC, by July 25, 2011, TTY (relay service) (509) 574-4677 to (509) 574-4961.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed changes to the admissions and registration rules is to bring the college's Washington Administrative Code chapter up to date with current practices. The rule was last reviewed in 2003. Advances in technology and procedures have been incorporated into the draft regulations proposed.

Reasons Supporting Proposal: The proposal is to amend chapter 132P-160 WAC to current admissions and registration procedures.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: YVCC, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Denise Anderson, Deccio Higher Education Center, 1000 South 12th Avenue, Yakima, WA, (509) 574-4702.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no small business impact in updating the college's admissions and registration rules.

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

June 14, 2011

Suzanne West

Rules Coordinator

AMENDATORY SECTION (Amending Order 72-2, filed 12/4/72)

WAC 132P-160-020 Admission. Any applicant for admission to Yakima Valley Community College shall be admitted when, as determined by the chief administrative officer of the district or his authorized representative, such applicant:

(1) Is competent to profit from the curricular offerings of the college; and

(2) Would not, by his presence or conduct, create a disruptive atmosphere within the college inconsistent with the purposes of the institution; and

(3) Is eighteen years of age or older or who ~~((is a graduate of a high school or whose application, if under eighteen years of age and not a graduate of a high school, has been approved, insofar as acquisition of approval is feasible, by the principal of the high school he is attending or which he last attended: Provided, That an applicant transferring from another institution of higher education who meets the above criteria, but who is not in good standing at the time of his transfer may be conditionally admitted to the college on a probationary status as determined by the chief administrative officer of the college or his authorized representative.~~

~~Admission to specialized curricula is listed with the curricula and these requirements must be met before admission to such specialized curricula will be permitted)) has a high school diploma or GED; and~~

(4) Has submitted a complete Washington state community college admission application.

Yakima Valley Community College applicants are admitted on a first-come, first-served basis in accordance

with state law. Notwithstanding the foregoing, certain special procedures must be followed for students under the age of eighteen, selective admission programs, former students, veterans, and international students. These special procedures are published in the college catalog.

Placement testing or other professional assessments are generally required. Placement procedures and policies are published in the college catalog.

AMENDATORY SECTION (Amending Order 72-2, filed 12/4/72)

WAC 132P-160-026 Registration. ((Students are expected to apply for a registration appointment before the dates specified in the college calendar. The college will then notify the student of his appointment date. Students whose registration, including payment of all required fees, is not completed during the days specified as registration days will be charged a late registration fee. Registration is completed when all fees have been paid and when approval has been obtained of permanent registration form:)) Appointments to register are issued upon completion of designated preregistration procedures as described in the college catalog.

AMENDATORY SECTION (Amending Order 72-2, filed 12/4/72)

WAC 132P-160-027 Tuition and fees. ((All regular and special fees, including late registration fees, are established by the board of trustees. Fees are charged by Yakima Valley College on a quarterly basis for matriculation, tuition, for state resident students, nonresident students and audit students.

Special fees are charged for employment-related classes and specialized noncredit classes and fees are charged for certain laboratories. For those wishing to receive a diploma a graduation fee is charged. All fees are payable at the time of registration. No student is enrolled in classes until these fees have been paid. The college reserves the right to change any and all fees without notice if circumstances make it necessary to do so. The fee schedule may be found in the college catalog-)) (1) Tuition and fees are based on residency requirements detailed in chapter 28B.15 RCW, college and university fees. Tuition limits are set by the Washington state legislature and approved by the governor. Tuition rates and fees are set by the state board for community and technical colleges and are subject to change.

(2) Special quarterly fees and expenses:

(a) An explanation of fees may be obtained under the fees and expenses section of the college catalog.

(b) Fee schedules are not considered binding between Yakima Valley Community College (YVCC) and students. The college and its divisions reserve the right to make changes. Changes shall take effect whenever the proper authorities determine. Except as other conditions permit, the college will make every reasonable effort to ensure students currently enrolled receive advance notice of changes.

AMENDATORY SECTION (Amending Order 72-2, filed 12/4/72)

WAC 132P-160-029 Resident status. ((Students whose domicile has been in the state of Washington for one full year prior to registration may be classified as residents:)) In determining resident status, students are considered to be residents if they have lived in the state for one year prior to registration and also meet the requirements as outlined in chapter 28.15 RCW. Burden of proof of domicile rests with the student. The registrar will review the questionnaire and will notify the student in writing of the decision, which is subject to appeal. Students who are not residents of the state of Washington ((must pay the nonresident rate of)) are subject to the current nonresident rate for tuition and fees.

AMENDATORY SECTION (Amending Order 72-2, filed 12/4/72)

WAC 132P-160-030 ((Honorable dismissal)) Hold on records. No student will receive an honorable dismissal, or be entitled to a transfer of credits earned, who has not satisfactorily accounted for all college property issued to him and settled all outstanding financial obligations. A student who fails to obtain an honorable dismissal will not be recommended to another institution.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132P-160-021	Admission for regular registration.
WAC 132P-160-022	Admission for late registration.
WAC 132P-160-023	Application procedures.
WAC 132P-160-024	Prior to registration.
WAC 132P-160-025	Medical questionnaire.

WSR 11-13-104

PROPOSED RULES

TREE FRUIT RESEARCH COMMISSION

[Filed June 21, 2011, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-10-045.

Title of Rule and Other Identifying Information: WAC 16-560-06001 Assessment rates.

Hearing Location(s): W. L. Hansen Building, 105 South 18th Street, Yakima, WA, on Wednesday, July 27, at 1:00 p.m.; and at the Washington Apple Commission, 2900 Euclid Avenue, Wenatchee, WA, on Thursday, July 28, at 6:00 p.m.

Date of Intended Adoption: October 7, 2011.

Submit Written Comments to: Kathleen Schmidt, 1719 Springwater Avenue, Wenatchee, WA 98801, e-mail

Kathy@treefruitresearch.com, fax (509) 665-8271, by August 4, 2011.

Assistance for Persons with Disabilities: Contact receptionist by July 21, 2011, TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establishment of an additional assessment for special projects on all commercial tree fruit produced in this state, pursuant to RCW 15.26.150. Establishment of the assessment requires approval by a majority of the tree fruit producers voting and will be conducted by the Washington state department of agriculture (WSDA). The assessment will terminate after a total of \$32 million is collected, or eight crop years, whichever occurs first.

Reasons Supporting Proposal: The assessment for special projects would provide funding for the establishment of contractual endowments with Washington State University to permanently expand and enhance the institution's capability to conduct research of specific interest to tree fruit producers in Washington state.

Statutory Authority for Adoption: Chapters 15.26, 34.05 RCW.

Statute Being Implemented: RCW 15.26.150.

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

Name of Proponent: Washington tree fruit research commission (WTFRC), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: James McFerson, 1719 Springwater Avenue, Wenatchee, WA 98801, (509) 665-8271.

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

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULE: WSDA is proposing a special project assessment for WTFRC pursuant to RCW 15.26.150.

The proposed rule change will impose an assessment of \$4 per ton on cherries and \$1 per ton on all other tree fruit. Revenues from this assessment will be expended on a specific crop in proportion to the assessment collected for that specific crop. The assessment will affect four groups of tree fruit producers: Apple, cherry, pear, and soft fruit.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT: Chapter 19.85 RCW, the Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated small businesses. Preparation of a small business economic impact statement is required when proposed rules will impose more than minor costs for compliance or have the potential of placing an economic impact on small businesses that is disproportionate to the impact on large businesses. "Minor cost" means a cost that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. "Small business" means any business entity that is owned and operated independently from all other businesses and has fifty or fewer employees.

INDUSTRY ANALYSIS:

The WTFRC is empowered to:

- Promote and carry on research and administer specific industry service programs which will or may benefit the planting, production, harvesting, handling, processing or shipment of tree fruit of this state.
- Collect assessments on tree fruit in this state.
- Coordinate its research efforts with those of other state, federal, or private agencies doing similar research.

The WTFRC assesses approximately three thousand one hundred existing small businesses that fall under Sector 1113 (Agriculture, Forestry, Fishing and Hunting: Fruit and Tree Nut Farming) of the North American Industry Classification System. The WSDA has analyzed the proposed rule amendments and has determined that some costs are considered more than minor and will have an economic impact on regulated small businesses.

INVOLVEMENT OF SMALL BUSINESSES: The WTFRC has solicited input from small businesses over a six-month period to develop the proposed rule. This was accomplished via presentations and discussions with leadership of the two relevant Washington state commissions: The Washington apple commission (WAC) and the Washington state fruit commission (WSFC). We also engaged four dues-paying member organizations representing tree fruit growers and shippers (Grower's Clearinghouse, Washington State Horticultural Association, Wenatchee Valley Traffic Association, Yakima Valley Growers & Shippers Association). Approximately two hundred fifty visits have been conducted since January 2011, with individual business owners and industry organization leadership throughout the commercial production areas of the state. A work group of ten affected business owners representing both small and large businesses and different production regions provided specific guidance on the proposed rule as well as direction on the subsequent use of the additional assessment funds. Feedback obtained through this effort indicated nearly unanimous agreement that the proposed rule change was a fair and transparent approach and would not have a significant disproportionate impact on small businesses.

In order to provide a more quantitative assessment, the WTFRC developed and utilized a cover letter and survey instrument (see Appendices 1 and 2) to solicit further input and examine the impact of the proposed rule on small businesses. Four separate surveys were conducted for each of the four affected tree fruit producers: Apple, cherry, pear, soft fruit.

The survey was mailed to a random sample of affected producers, including five hundred apple producers, and a combined total of one thousand five hundred pear, cherry, and soft fruit producers. The sample was taken from assessment records provided by the WAC and the WSFC. A mail-in survey with prestamped return envelopes was conducted from April 1, 2011, to May 7, 2011. A complementary online survey was conducted on the WTFRC web site (www.treefruitresearch.com) during the same time period as above, and a survey was e-mailed to those on the WHICH commission committee lists. A total of one hundred sixty-one surveys were returned for a response rate of 8.4 percent. We

also received seven responses on-line or via e-mail. The total number of responses by group was: Apple (74); cherry (59); pear (29); soft fruit (5).

Results from the survey were similar to those obtained through direct interaction with business owners in the rule development process. We therefore conclude the proposed rule will not cause a significantly disproportionate impact on small businesses. More detailed analysis is provided in subsequent sections.

COST OF COMPLIANCE: The rule change will not require any additional costs for equipment, supplies, labor, professional services, and administration for either a small or large business. Assessments are currently being collected through the WAC and WSFC and the additional assessments will be remitted as part of an existing process. No new requirements or professional services relative to recordkeeping or filing will be incurred by a small or large business to comply with the proposed rule.

Analysis of Cost of Compliance: The surveys specifically requested feedback on potential loss of sales, loss of revenue, and additional costs. Across the four groups of affected business owners, results indicate most respondents do not feel the proposed rule will result in a significant loss of sales, loss of revenue, or additional costs per employee. The responses were similar for both large and small business (see Appendix 3). The cost per \$100 sales for the proposed rule is the same whether a business is large or small and since the rule will require no additional administrative, reporting, or record-keeping tasks, the cost of compliance will be identical for both large and small business. It should be noted that a sunset clause is built into the proposed rule change. The additional assessment will no longer be collected when the total assessment goal of \$32 million is met, or eight crop years have passed, whichever occurs first.

Analysis of Disproportionate Economic Impact: While costs associated with proposed rules are more than minor as defined by the WSDA, there is no indication costs to small businesses are any different than those to ten percent of the largest businesses in the regulated industry. Thus, there is no action suggested to mitigate disproportionate cost to address such issues as substantive regulatory requirements, excessive record-keeping or reporting, frequency of inspection, compliance timetables, or fines.

Mitigating Disproportionate Costs (include this section only if costs are disproportionate): None suggested.

JOBS CREATED OR LOST: We conclude the rule will have no impact on jobs created or lost.

CONCLUSION: To comply with chapter 19.85 RCW, the Regulatory Fairness Act, the WTFRC has analyzed the economic impact of the proposed rules on small businesses and has concluded there is no disproportionate impact. Thus, there is no need to mitigate costs of compliance with the proposed rule.

Please contact James R. McFerson if you have any questions at (509) 665-8271 x1 or mcferson@treefruitresearch.com.

Appendix 1: Cover Letter

Washington Tree Fruit Research Commission 2011 Special Project Assessment

Dear Apple Grower:

You have received this one-page survey as part of a request by the Washington Tree Fruit Research Commission (WTFRC) to conduct a referendum for a special project assessment. If you are NOT a Washington tree fruit producer, please ignore this survey.

The WTFRC is requesting a special project assessment pursuant to RCW 15.26.150 at the rate of \$4 per ton on cherries and \$1 per ton on all other tree fruit. This special project assessment will be expended on a specific crop in proportion to the assessment collected for that crop. That is, apple revenues will go to apple projects, and similarly for pear, cherry and soft fruit.

The assessment will begin in the 2011 crop year and be in effect until the total collection for all crops reaches \$32,000,000, but in no case will it be in effect for more than eight crop years. If \$32,000,000 is collected in less than eight crop years, this special project assessment will expire at the end of that crop year and no special project assessment will be collected subsequently.

This special project assessment would be collected in the same way as the current regular WTFRC assessment, at the point of first handling by the warehouse or processor. The current assessment is \$4 per ton on cherries and \$1 per ton on all other tree fruit, which is approximately equivalent to 6 cents/30 lb lug for cherry or 2 cents/40 lb box for apple, pear, and soft fruit.

All revenue generated in this assessment will be invested in endowments supporting tree fruit research as part of the Washington State University Tree Fruit Capital Campaign and be closely monitored by the WTFRC.

We are required by the state of Washington to conduct this survey to help determine how the special project assessment would have an economic impact on small businesses (defined by the state as less than 50 employees). Your responses are anonymous and confidential and will not be used for any purpose other than complying with this state requirement. Completing this survey does not indicate your support nor opposition to the upcoming referendum.

You may return the survey by surface mail in the enclosed envelope, or complete it online. Go to our home page at www.treefruitresearch.com and follow the instructions. Please complete the survey only once per crop, even if you receive multiple notifications, and return it by 30 April 2011.

Thank you for taking the time to help us conduct this survey. It is the shortest one you will ever get! If you have any questions or concerns, please contact me.

Jim McFerson, Manager
WTFRC
1719 Springwater St
Wenatchee, WA 98801

Ph: 509-662-7510
 Mob: 509-669-3900
mcferson@treefruitresearch.com

Appendix 2: Survey

**Small Business Economic Impact Survey: 2011
 Washington Tree Fruit Research Commission Special
 Project Assessment**

1. How many people does your operation employ on a full-time, year round basis?
 - 0 - 50
 - More than 50
2. Please check the selection that best describes the total acres of tree fruit production (owned and leased) in your operation.
 - 1 - 49 A
 - 50 - 199 A
 - 200 - 499 A
 - More than 500 A
3. Over the past three years, what do you consider your average annual yield for apples: _____ bins/A

4. If the special project assessment described above were implemented, what do you think would be the impact on your **per acre cost of production**?

- Examples:
 Apple @50 bin (900 lb bin)/A = 45,000lbs = 22.5T = \$22.50/A assessment
- Negligible
 - Increase by less than .5 percent
 - Increase by 1 - 2 percent
 - Increase by more than 2 percent
 - Decrease

5. If the assessment described above were implemented, what do you think would be the impact on your **net farm income** (gross revenues - total costs)?

- Negligible
- Decrease by less than .5 percent
- Decrease by 1 - 2 percent
- Decrease by more than 2 percent
- Increase

6. If the special project assessment described above were implemented, estimate the additional annual cost incurred by your business: \$ _____/employee

Appendix 3: Summary of Survey Responses

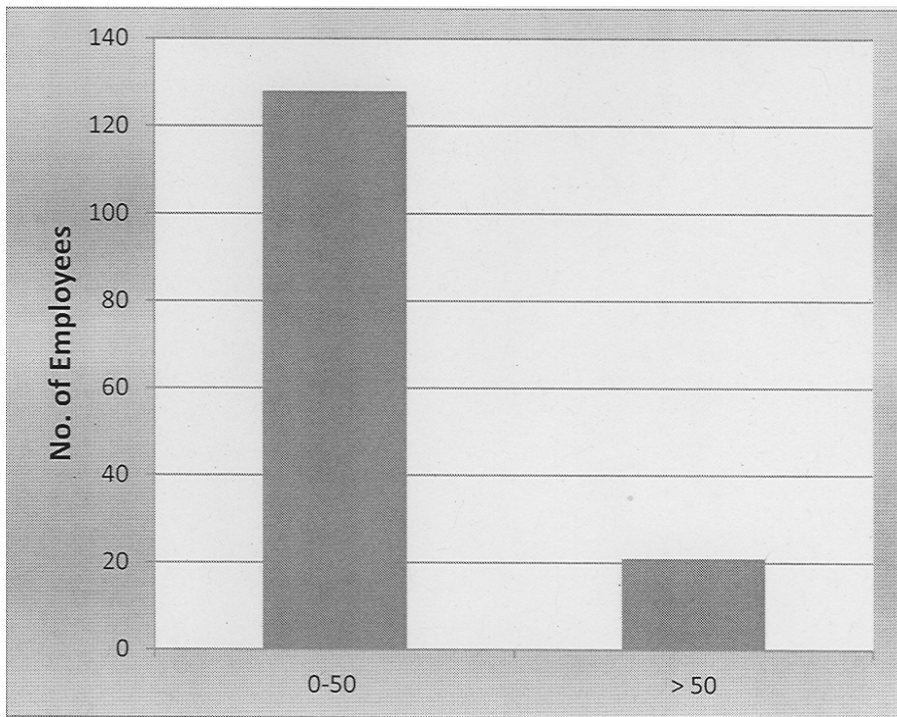


Fig 1. Relative number of respondents classified as a small (0-50 acres) or large (>50 acres) business.

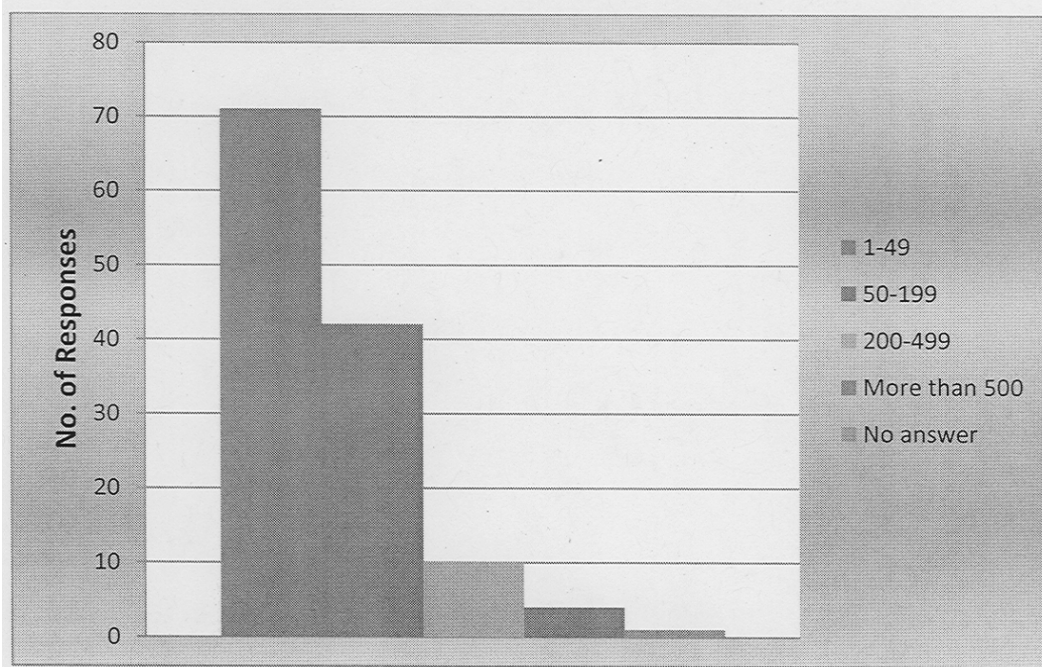


Fig 2. Number of respondents by size of operation across crops.

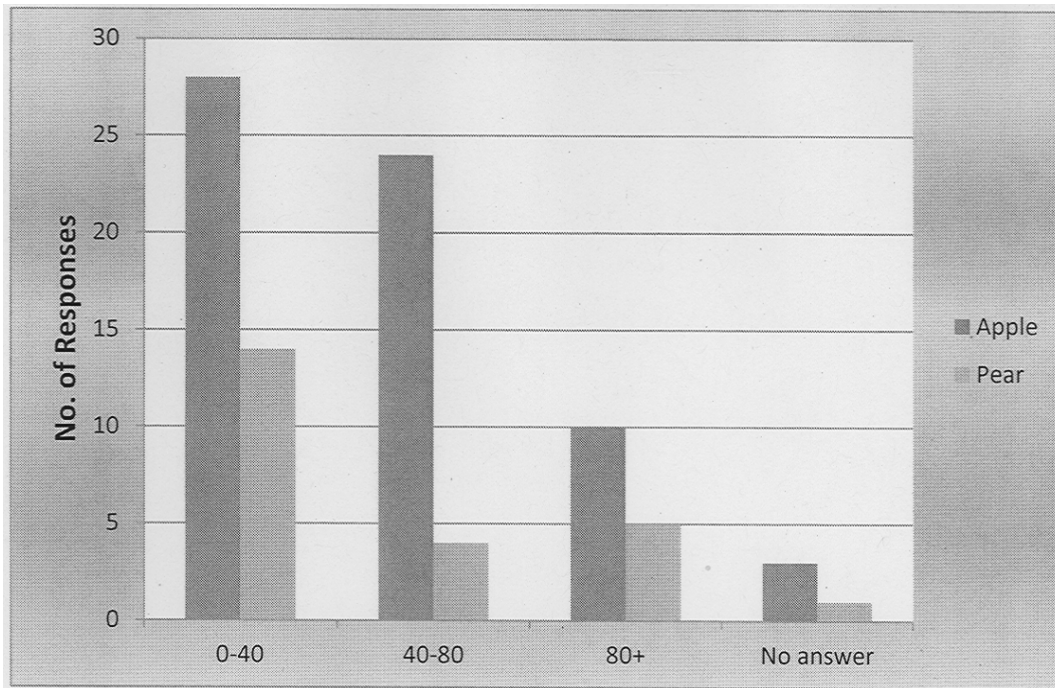


Fig 3. Number of small business respondents by average annual yield for apple and pear.

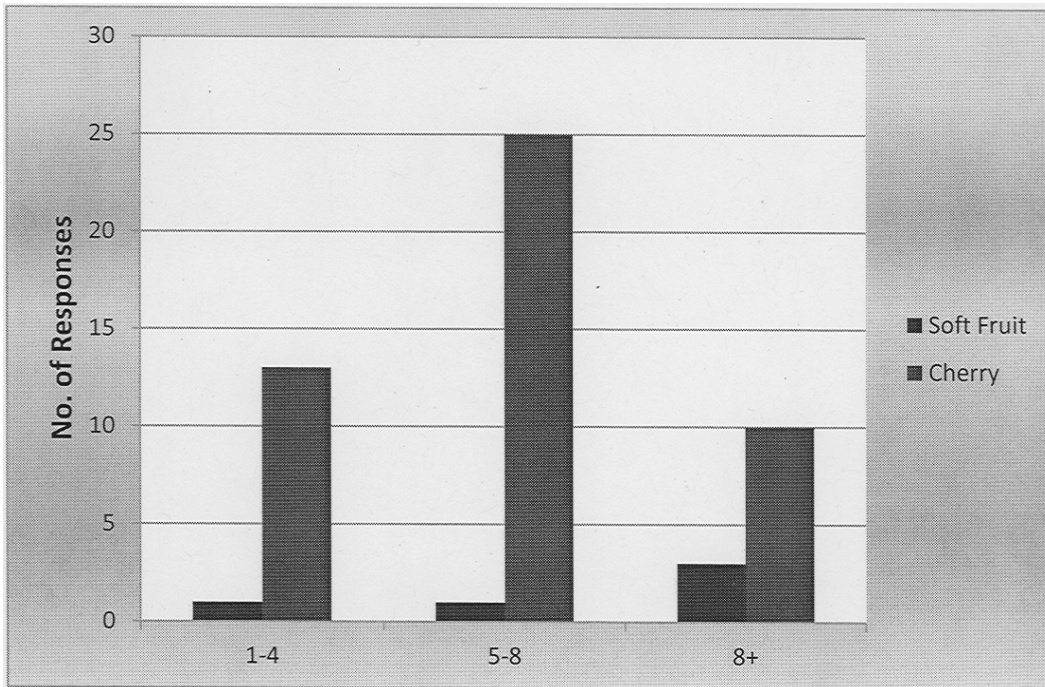


Fig 4. Number of small business respondents by average annual yield soft fruit and cherry.

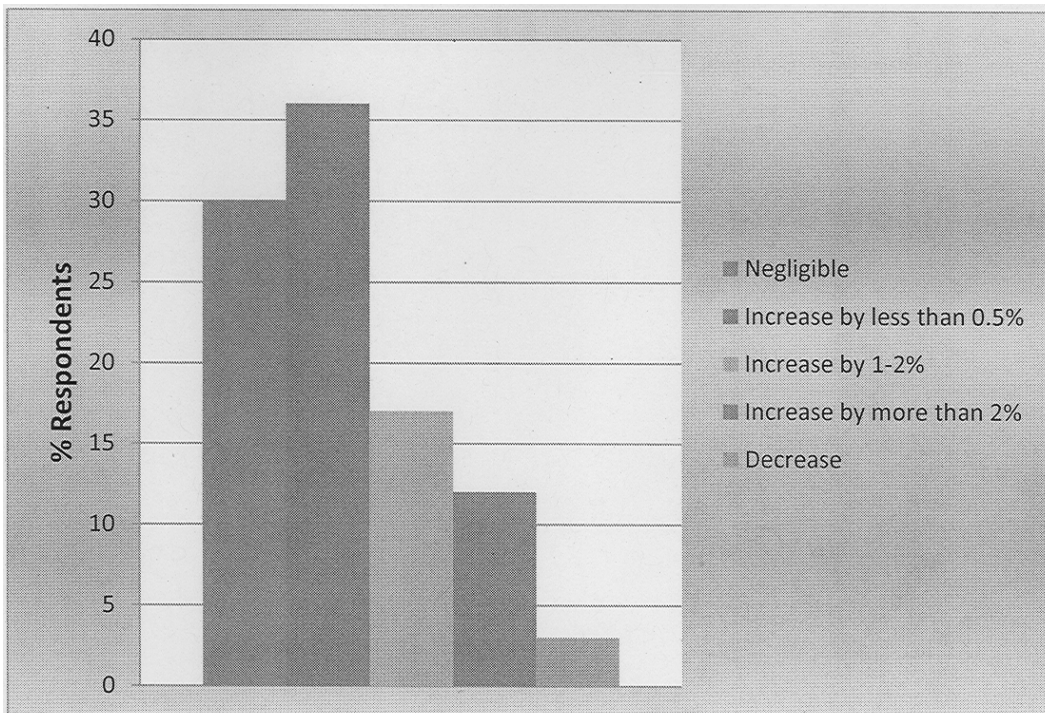


Fig 5. Percentage of small business respondents indicating the effect of the proposed assessment on per acre cost of production across crops.

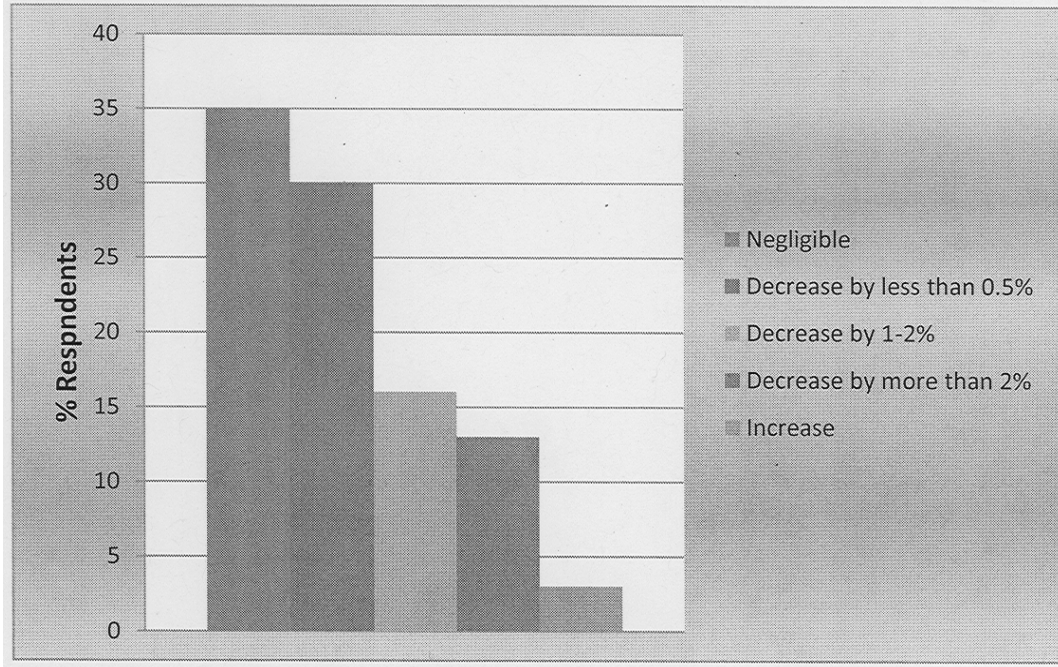


Fig 6. Percentage of small business respondents indicating the effect of the proposed assessment on net farm income across crops.

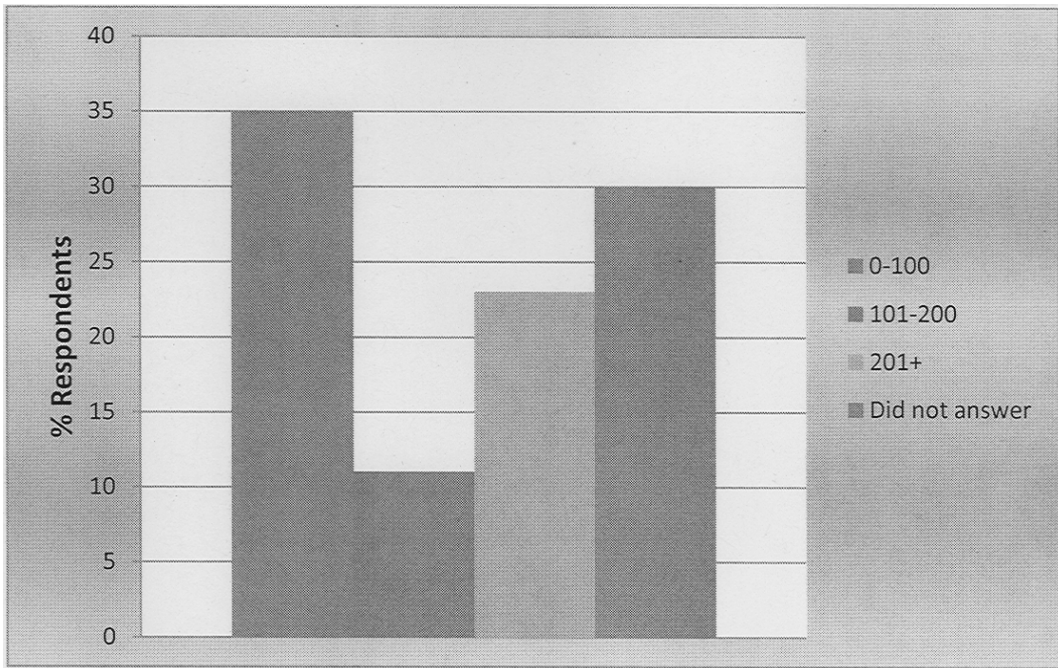


Fig 7. Percentage of small business respondents indicating the effect of the proposed assessment on additional annual cost (\$/employee) across crops.

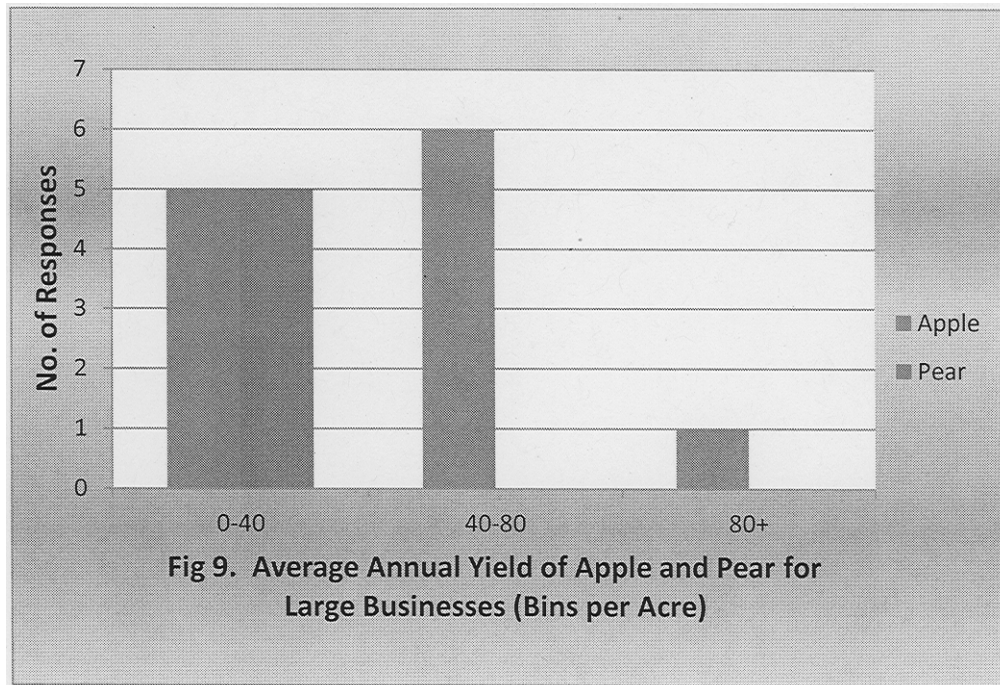


Fig 8. Number of large business respondents by average annual yield for apple and pear.

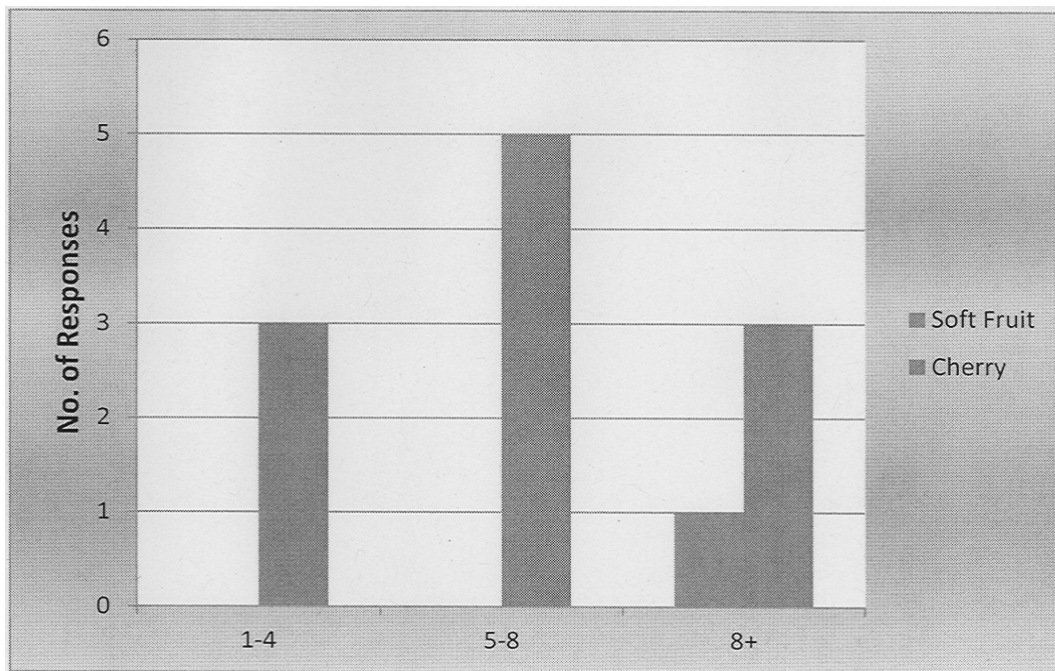


Fig 9. Number of large business respondents by average annual yield soft fruit and cherry.

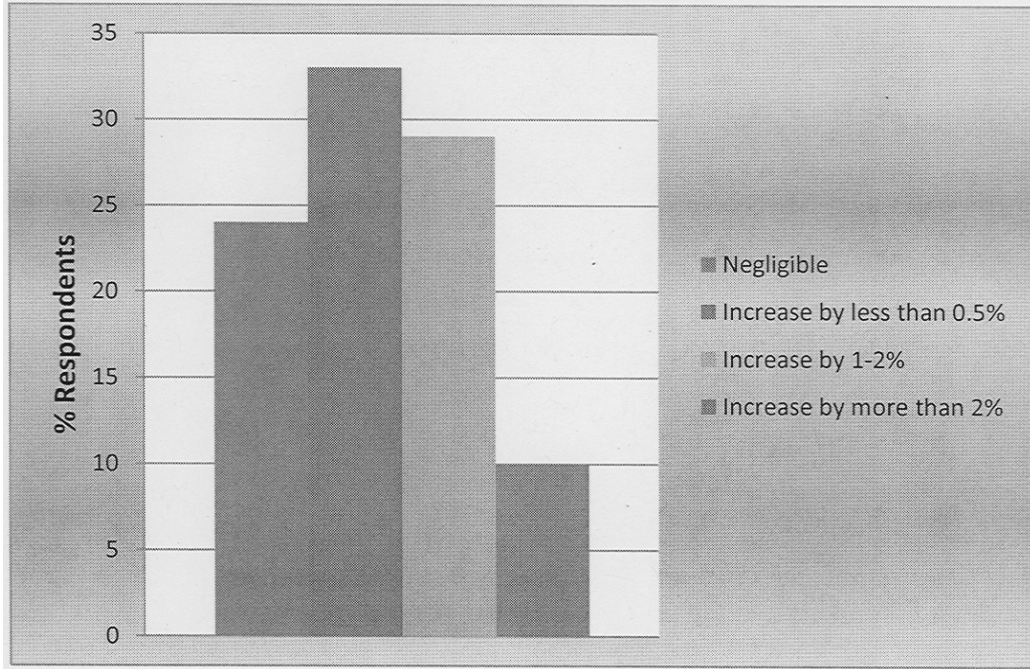


Fig 10. Percentage of large business respondents indicating the effect of the proposed assessment on per acre cost of production across crops.

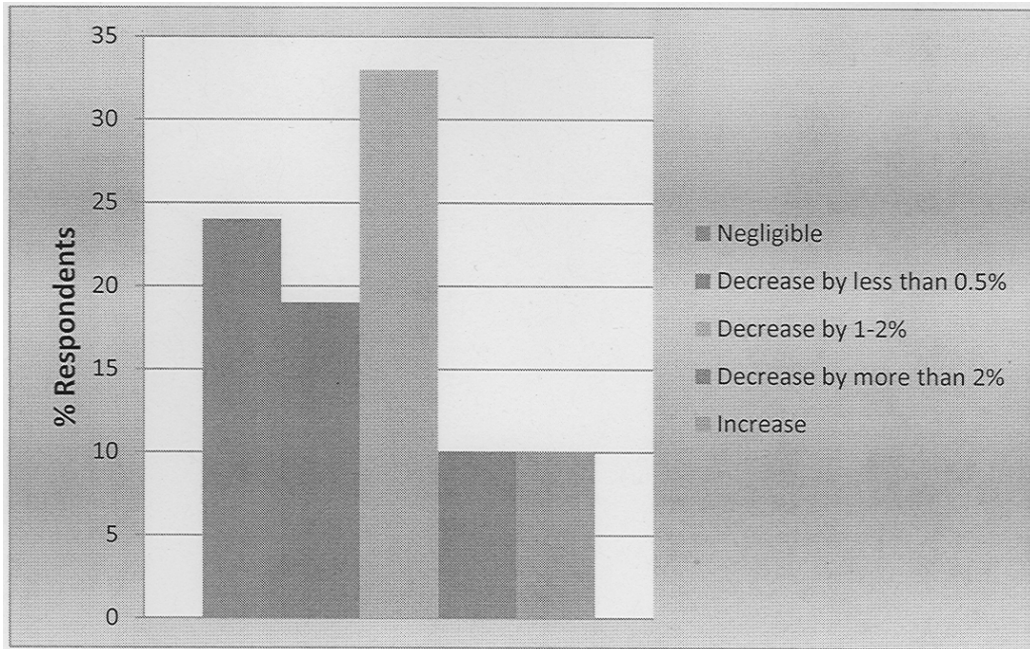


Fig 11. Percentage of large business respondents indicating the effect of the proposed assessment on net farm income across crops.

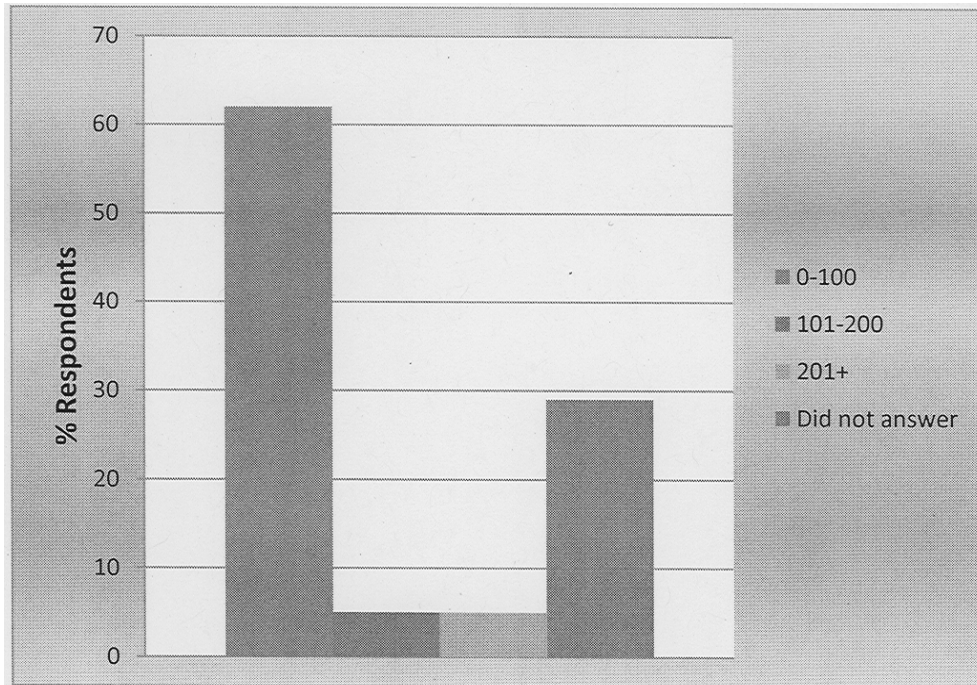


Fig 12. Percentage of large business respondents indicating the effect of the proposed assessment on additional annual cost (\$/employee) across crops.

A copy of the statement may be obtained by contacting Kathy Schmidt, 1719 Springwater Avenue, Wenatchee, WA 98801, phone (509) 665-8271, fax (509) 663-5827, e-mail kathy@treefruitresearch.com.

A cost-benefit analysis is not required under RCW 34.-05.328. WSDA and the WTFRC are not named agencies in RCW 34.05.328 (5)(a)(i).

June 21, 2011
James R. McFerson
Manager

AMENDATORY SECTION (Amending WSR 96-07-054, filed 3/19/96, effective 4/19/96)

WAC 16-560-06001 Assessment rates. (1) There is hereby levied on all commercial tree fruit produced in this state or held out as being produced in this state for fresh or processing use, an assessment of one dollar per ton on all such tree fruit: Provided, That such assessment for cherries shall be four dollars per ton (~~Provided, That such assessment for apples for fresh shipment shall be at the rate of two and one-half cents per hundred pounds gross billing weight for the 1992 crop year, three and three-quarters cents per hundred pounds gross billing weight for the 1993 crop year, and five cents per hundred pounds gross billing weight for the 1994 crop year and each year thereafter.~~ ~~Provided Further, That such assessment for processed apples shall be at the rate of fifty cents per ton for the 1992 crop year, seventy-five cents per ton for the 1993 crop year, and one dollar per ton for the 1994 crop year, and each year thereafter.~~)).

(2) There is hereby established pursuant to RCW 15.26.155 an additional assessment for an industry services

fund for programs related to sanitation, planting, production, harvesting, handling, processing and shipping. The assessment shall be set annually by the commission, upon approval of two-thirds of the voting members of the commission, to create and maintain this fund at or near one hundred thousand dollars. If this fund should inadvertently exceed one hundred thousand dollars due to larger crops than estimated or the addition of interest earned, the excess shall be credited to the following year's fund.

In consideration of maintaining this industry services fund, the commission shall annually consult with the affected industry and grower organizations.

(3) There is hereby established on all commercial tree fruit produced in this state or held out as being produced in the state for fresh or processing use, an additional assessment pursuant to RCW 15.26.150 of four dollars per ton on cherries and one dollar per ton on all other such tree fruit as approved by referendum vote of affected producers, the results of which shall be retained on file in the board's administrative office. This additional assessment shall be expended on a specific crop in proportion to the assessment collected for the specific crop. The additional assessment shall be imposed beginning in the 2012 crop year and be in effect until the total collection for all crops reaches thirty-two million dollars but in no case will be in effect for more than eight crop years. If thirty-two million dollars in additional assessment is collected in less than eight crop years, this additional assessment will expire at the end of the crop year and no further additional assessment will be collected in the subsequent crop years.

WSR 11-13-108
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 21, 2011, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-09-030.

Title of Rule and Other Identifying Information: The division of child support (DCS) proposes to adopt new sections and amend other sections in chapter 388-14A WAC to implement changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations.

New sections WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? and 388-14A-2083 Under what circumstances can DCS close an intergovernmental case, otherwise known as a case where the application for services was originally made to another state, tribe, territory or country?; amending WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed?, 388-14A-2085 Under what circumstances may DCS ~~((deny))~~ keep a support enforcement case open despite a request to close ((a support enforcement case)) it?, 388-14A-2090 Who ~~((is mailed))~~ receives notice ((of DCS' intent to close)) when DCS closes a case?, 388-14A-2097 What happens to payments that come in after a case is closed?, 388-14A-2160 ~~((If my information is confidential, can))~~ On what authority does DCS ((report me to)) share my confidential information with a credit bureau?, 388-14A-3130 What happens if a ~~((parent))~~ party makes a timely request for hearing on a support establishment notice?, 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment?, 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears?, 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children?, 388-14A-7100 The division of child support may register an order from another state for enforcement or modification, 388-14A-7305 How ~~((do I))~~ does a party, IV-D agency or jurisdiction ask ((DCS to do)) for a determination of controlling order?, 388-14A-7325 How does DCS notify the parties ~~((of its))~~ that a determination of the controlling order ((has been)) is going to be made?, and 388-14A-7335 What happens if someone objects to ~~((DCS' proposed))~~ a notice of support debt and registration which contains a determination of the presumed controlling order?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on August 9, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 10, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 9, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 26, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New sections and amended other sections in chapter 388-14A WAC to implement changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations.

Reasons Supporting Proposal: As part of its state plan under Title IV-D of the federal Social Security Act, DCS must adopt rules to implement changes in the Code [of] Federal Regulations regarding intergovernmental establishment and enforcement of child support obligations. Failure to adopt the rules could lead to a violation of the state plan requirements, which would jeopardize funding for the child support program and the temporary assistance for needy families block grant. The federal rules being implemented in this rule-making order are 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63 and 308.2.

Statutory Authority for Adoption: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310.

Statute Being Implemented: RCW 74.20A.310.

Rule is necessary because of federal law, 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63 and 308.2.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

June 7, 2011

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-14 issue of the Register.

WSR 11-13-112
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed June 21, 2011, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-09-065.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-827-0115 State supplementary program. These amendments will expand the number of clients eligible for SSP. By amending this rule, state money will be preserved that is currently used to fund the individual and family services program.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on July 26, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 27, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 26, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 5, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSP is a federally mandated program which requires the division to spend monies to meet a maintenance of effort in order to continue to receive SSP. Currently the division has a surplus in SSP dollars and by converting clients from the individual and family services program, more clients can be served that previously received services from the individual and family services program.

Reasons Supporting Proposal: Changes to this rule is [are] necessary to manage budget shortfalls.

Statutory Authority for Adoption: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Meredith Kelly, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3524; Implementation: Debbie Couch, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3415; and Enforcement: Don Clintsman, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement (SBEIS) was prepared as the proposed rule does not impact small businesses. Furthermore, the proposed rules are exempt from preparing an SBEIS under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis was prepared as the proposed rules are either procedural or interpretive under RCW 34.05.328 (5)(c).

June 21, 2011

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-107, filed 9/21/09, effective 10/1/09)

WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? Following are the programmatic eligibility requirements to receive DDD/SSP:

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,
- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,
- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

- (i) Adult family home,
- (ii) Adult residential care facility,
- (iii) Alternative living,
- (iv) Group home,
- (v) Supported living,
- (vi) Agency attendant care,
- (vii) Supported living or other residential service allow-

ance,

- (viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, ~~((2009))~~ 2013 and demonstrate an ongoing need for a residential allowance request on a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

(a) Alternative living;

(b) Supported living; or

(c) Companion homes.

(9) As of December 31, 2010, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service level of three or four, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to January 1, 2011, or you received Social Security Title II benefits as a disabled adult child prior to January 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

(10) As of March 31, 2011, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service

level of one or two, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to April 1, 2011, or you received social security title II benefits as a disabled adult child prior to April 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

NEW SECTION

WAC 388-827-0133 What is the impact on medicaid eligibility on the receipt of state supplemental payments (SSP)? The impact on medicaid eligibility on the receipt of state supplemental payments is that it does not in and of itself qualify an individual for medicaid.

WSR 11-13-113

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed June 21, 2011, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-09-066.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-832-0025 The individual and family services program. The proposed amendment does not allow clients to receive state funded emergency or one time awards for clients that receive funding through the state supplementary program. This amendment is currently in emergency status.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on July 26, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 27, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 26, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 7, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments do not allow clients on the individual and family services program to receive state funded emergency or one time awards if they also receive funding through SSP. This amendment is necessary to match the SSP WAC that DDD has already filed in emergency status.

Reasons Supporting Proposal: Changes to this rule is [are] necessary to manage budget shortfalls.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Meredith Kelly, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3524; Implementation: Debbie Couch, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3415; and Enforcement: Don Clintsman, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement (SBEIS) was prepared as the proposed rule does not impact small businesses. Furthermore, the proposed rules are exempt from preparing an SBEIS under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis was prepared as the proposed rules are either procedural or interpretive under RCW 34.05.328 (5)(c).

June 21, 2011
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0025 Am I eligible for the IFS program if I currently receive other DDD paid services? (1) If you receive other nonwaiver DDD funded services, you may be eligible for the IFS program.

(2) If you receive SSP in lieu of traditional family support ((or)), family support opportunity, or individual and family services, you are not eligible to receive IFS program funding including emergency and one time awards.

WSR 11-13-114
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed June 21, 2011, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-06-041.

Title of Rule and Other Identifying Information: WAC 363-116-200 Duties of pilots.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on July 28, 2011, at 9:30 a.m.

Date of Intended Adoption: July 28, 2011.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by July 21, 2011.

Assistance for Persons with Disabilities: Contact Shawna Erickson by July 25, 2011, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule is intended to expand the definition of an "incident" to include situations wherein a pilot or pilot trainee falls while embarking or disembarking a vessel or is physically endangered while performing his/her duties on a vessel, regardless of whether the incident results in physical injury to the pilot or pilot trainee.

The proposed modifications further expand the definition of a "marine safety occurrence" to specify that a pilot or pilot trainee can voluntarily report safety issues encountered or observed on the vessel, the dock or in the area around the vessel.

Reasons Supporting Proposal: It is intended that this rule be broadened to cover state licensed pilot trainees in addition to pilots.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The legislative/WAC committee of the board developed the proposed amendments at the direction of the board.

Name of Proponent: Board of pilotage commissioners, governmental.

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

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

June 21, 2011

Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 08-22-003, filed 10/23/08, effective 11/23/08)

WAC 363-116-200 Duties of pilots. (1) In any case where a vessel in the charge of a state licensed pilot or state licensed pilot trainee is involved in an incident or near-miss occurrence, said pilot or pilot trainee shall make a report to the board in the following required manner:

(a) ((Pilot's)) Report of Incident. A state licensed pilot or state licensed pilot trainee involved in an incident shall notify the board by telephoning or radioing the Marine Exchange of Puget Sound as soon as the situation is stabilized or within one hour of reaching shore. The pilot or pilot trainee shall also complete the board required Pilot's Report of Incident form and file it with the board as soon as possible after the incident, but in no event more than ten days afterwards. An

incident includes an actual or apparent collision, allision or grounding, as well as a navigational occurrence which results in actual or apparent personal injury or property damage or environmental damage. An incident also includes any occurrence where a pilot or pilot trainee falls while embarking or disembarking a vessel or otherwise is physically endangered while performing his/her duties on a vessel, regardless of whether the incident results in physical injury to the pilot or pilot trainee.

(b) ~~((Pilot's))~~ *Report of Marine Safety Occurrence.* A state licensed pilot or state licensed pilot trainee involved in a near-miss occurrence shall complete the board required *Pilot's Report of Marine Safety Occurrence* form and file it with the board as soon as possible after the near-miss occurrence, but in no event more than ten days afterwards. A near-miss occurrence is where a pilot or pilot trainee successfully takes action of a nonroutine nature to avoid a collision with another vessel, structure or aid to navigation, to avoid a grounding of the vessel or to avoid causing damages to the environment. Information relating to near-miss occurrences provided by a pilot or pilot trainee on this form shall not be used for imposing any sanctions or penalties against said pilot or pilot trainee. A state licensed pilot or pilot trainee may also use this form on a voluntary basis for reporting out of the ordinary occurrences or concerns for navigational safety encountered or observed during the course of piloting a vessel as well as safety issues encountered or observed on the vessel, the dock or in the area around the vessel.

(c) Completion of these forms does not replace or relieve a pilot or pilot trainee from any other reporting requirements under federal, state or local law. If circumstances permit, a pilot or pilot trainee will notify the vessel master of his/her intent to file a report of incident or marine safety occurrence with the board. The board shall forward a copy of any form received to the respective shipper or its board representative. The board of pilotage commissioners may, with or without a complaint being made against a pilot or pilot trainee, investigate the matter reported upon.

(2) Pilots or pilot trainees will report to the aids to navigation officer of the United States Coast Guard, all changes in lights, range lights, buoys, and any dangers to navigation that ~~((my))~~ may come to their knowledge.

(3) Any pilot or pilot trainee who shall fail, neglect or refuse to make a report to the board of pilotage commissioners as required by the pilotage laws of the state, or by these rules and regulations, for a period of ten days after the date when said report is required to be made, shall be subject to having his/her license suspended at the discretion of the board, and if he/she fails to report for a period of thirty days the board may, at its discretion, revoke his/her license.

(4) Pilots or pilot trainees when so notified in writing shall report in person to the board, at any meeting specified in such notice.

(5) Any pilot or pilot trainee summoned to testify before the pilotage board shall appear in accordance with such summons and shall make answer, under oath, to any question put to him/her which deals with any matter connected with the pilot service, or of the pilotage waters over which he/she is licensed to act. ~~((The pilot))~~ He/she shall be entitled to have

his/her attorney or advisor present during any such appearance and testimony.

(6) Any pilot who shall absent himself/herself from his/her pilotage duties or district for a period of sixty days without permission of the board of pilotage commissioners shall be liable to suspension or to the forfeiture of his/her license.

(7) A pilot or pilot trainee on boarding a ship, if required by the master thereof, shall exhibit his/her license, or photo static copy thereof.

(8) When a pilot licensed under this act is employed on an enrolled ship, the same rules and regulations shall apply as pertain to registered ships.

(9) Any state licensed pilot or pilot trainee assigned to pilot a vessel entering, leaving, or shifting berths under its own power in any of the waters subject to the provisions of chapter 88.16 RCW shall before assuming pilotage obligations for such vessel obtain assurance from the master that the vessel meets all requirements for safe navigation and maneuvering. In addition, the pilot or pilot trainee shall obtain assurance that the ship's officers will maintain navigation procedures by all navigational aids available to insure that the vessel's position is known at all times. If the pilot or pilot trainee in his/her professional judgment considers the vessel to be incapable of safe navigation and maneuvering due to performance limitations, he/she shall refuse to assume the obligations of pilotage for such vessel until such limitations have been corrected and shall promptly notify the pilot's or pilot trainee's control station and the chairman of the board of pilotage commissioners of such action.

(10) In providing pilotage services under chapter 88.16 RCW every pilot or pilot trainee shall perform those duties in a professional manner and without negligence so as to not endanger life, limb or property, not violate or not fail to comply with state laws or regulations intended to promote marine safety or to protect navigable waters.

(11) A pilot involved in a serious marine incident as that term is defined in 46 CFR 4.03-2 shall, in addition to meeting all requirements imposed by federal law:

(a) To the extent practicable and safe, stabilize the vessel and request relief by the dispatching of another pilot; and

(b) As soon as the relief pilot arrives, transfer the con of the vessel to the new pilot; such that the pilot involved in the incident may meet the requirements of 46 CFR Part 4.06.

WSR 11-13-115
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed June 21, 2011, 12:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-08-057.

Title of Rule and Other Identifying Information: WAC 363-116-086 Challenge to board action and appeal procedures.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on July 28, 2011, at 9:30 a.m.

Date of Intended Adoption: July 28, 2011.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsomp@wsdot.wa.gov, fax (206) 515-3906, by July 21, 2011.

Assistance for Persons with Disabilities: Contact Shawna Erickson by July 25, 2011, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed new rule is intended to enact procedures for challenging board determinations made pursuant to WAC 363-116-080 as to whether a trainee should be issued a pilot license. Currently, there is no such framework enacted to specifically address challenges to decisions made pursuant to WAC 363-116-080. Conversely, there are procedures for challenging determinations as to whether pilot applicants successfully passed the written tests and simulator tests, which are found in WAC 363-116-083 and 363-116-084.

Reasons Supporting Proposal: This new WAC, if adopted, would set forth the procedures for challenging the board's determinations made pursuant to WAC 363-116-080, which would include express notice requirements, procedures for any adjudicative proceeding and prehearing discovery, and the scope of any hearing and related procedures.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board's legal counsel recommends the proposed language for board adoption.

Name of Proponent: Board of pilotage commissioners, governmental.

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

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

June 21, 2011

Peggy Larson

Administrator

NEW SECTION

WAC 363-116-086 Challenge to board action and appeal procedures. This section shall apply to all proceedings involving a board determination made pursuant to WAC 363-116-080:

(1) Pilot trainees who enter the training program as provided in this chapter shall provide the board with an address to be used for notification purposes. Such address shall be a place at which mail is delivered. In addition, a pilot trainee may provide the board with other means of contact such as telephone numbers and/or e-mail addresses. It will be the responsibility of the pilot trainee to ensure that the board has a current mailing address at all times. The mailing address will be considered the primary means of notice by the board. Notice delivered to the address provided by the pilot trainee will be considered received by the pilot applicant for the purpose of receipt of notification of the board's decision to deny a pilot license or extend a training program as provided in subsection (2) of this section.

(2) A pilot trainee who is:

(a) Denied a license; or

(b) Continued in the training program, pursuant to a decision rendered under WAC 363-116-080(5), shall be notified of the board's determination, in writing, by the chair of the board as soon as practicable. The trainee shall have twenty days from which notice of the decision is served to file a notice of appeal of the board's decision with the board, pursuant to WAC 10-08-110 and 10-08-211. The board's decision will become a final order upon expiration of twenty days from the date notice is served, unless notice of appeal has been filed prior to that time. Upon the filing of the notice of appeal, the chair of the board shall appoint a presiding officer, who shall conduct the hearing and issue an initial order pursuant to chapter 34.05 RCW.

(3) Any hearing conducted pursuant to a request for review as indicated in subsection (2) of this section shall be conducted pursuant to the rules set forth in chapters 10-08 and 363-11 WAC and this section. In the event of a conflict, this section shall control.

(a) The board and TEC shall be required to produce no more than a total of two fact witnesses and no more than one expert witness in connection with any hearing pursuant to this section, unless the board's chair, in his or her sole discretion, believes additional witnesses are necessary to present its case. This limitation shall apply to the hearing and any prehearing discovery.

(b) The board has determined, in its discretion, that because:

(i) Each trainee brings different skill sets to his or her training program as a result of their prior experience; and

(ii) The TEC develops an individually tailored training program based upon that trainee's skill set and prior experience.

Comparisons between trainees' performances in their respective training program are not relevant when assessing the trainee's performance which is the subject of a notice of appeal and/or petition for review hereunder. Any documentation or testimony concerning the performance of other trainees in their training program shall not be considered during any proceeding involved in the review process and shall not be submitted or solicited as evidence in any hearing under this section, nor shall it be submitted or solicited as evidence in any discovery deposition, nor shall it be included in the board's record of proceedings or any petition for review.

(c) The scope of the hearing shall be limited to the validity of the training and evaluation process. The grounds for appeal shall be limited to the following issues:

(i) Does the training and evaluation process comport with accepted psychometric and industrial/organizational psychology principles and evaluation?

(ii) Is the board's training and evaluation process a valid and reliable measurement system meeting all criteria of formative and summative assessment?

(iii) Is the training program job related?

(iv) Was the board's decision made pursuant to WAC 363-116-080(5) arbitrary and capricious?

(d) The presiding officer shall issue an initial order at the conclusion of the hearing in conformance with the requirements of chapter 34.05 RCW and WAC 10-08-210.

(4) Any petition for review of the initial order shall be filed in conformance with WAC 10-08-211. The chair of the board shall then appoint a "reviewing officer" who shall issue a final order. The standard of review by the reviewing officer shall be the same as that set forth in subsection (3)(c) of this section.

**WSR 11-13-117
PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed June 21, 2011, 2:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-24-051.

Title of Rule and Other Identifying Information: WAC 308-96A-005 Definitions, 308-96A-350 Vehicle violations, and 308-96A-355 Satisfaction of vehicle violations.

Hearing Location(s): Department of Licensing, Conference Room 303, 1125 Washington Street S.E., Olympia, WA 98507, on July 28, 2011, at 10:00 a.m.

Date of Intended Adoption: August 22, 2011.

Submit Written Comments to: Debra Then, P.O. Box 9037, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98501-9037, e-mail dthen@dol.wa.gov, fax (360) 570-3706, by July 15, 2011.

Assistance for Persons with Disabilities: Contact Debra Then by July 15, 2011, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to the rule are required to comply with ESSB 6499 passed by the legislature during the 2010 regular session.

Reasons Supporting Proposal: To clarify the process for issuing and satisfying vehicle violations regarding toll violations.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Agency Personnel Responsible for Drafting: Debra Then, 1125 Washington Street S.E., Olympia, WA, (360) 902-4094; Implementation and Enforcement: Jennifer Dana, 1125 Washington Street S.E., Olympia, WA, (360) 902-3673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

June 21, 2011
Ben T. Shomshor
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-21-027, filed 10/9/06, effective 11/9/06)

WAC 308-96A-005 Terminology—Definitions.

Terms used in chapter ~~((46.16))~~ 46.16A RCW and this chapter will have the following meanings except where otherwise defined, and where the context clearly indicates the contrary:

~~(1) ("Affidavit of loss" is a written statement confirming the certificate of ownership, registration certificate, validation tab or decal has been lost, stolen, destroyed or mutilated. The affidavit of loss release of interest form may be used to release interest in the vehicle and transfer gross weight license of that vehicle to a new owner. The signature of the owner completing the affidavit of loss release of interest must be notarized or certified as described in WAC 308-56A-270.~~

~~(2) "Agent" means any county auditor, or other individual or business entity other than a subagent appointed to carry out vehicle licensing and titling functions for the department. (RCW 46.01.140.)~~

~~(3))~~ "Application" means a form provided or approved by the department to apply for different types of services and documents.

~~((4))~~ (2) "Cab and chassis" is an incomplete vehicle manufactured and sold with only a cab, frame and running gear. (WAC 308-96A-145.)

~~((5))~~ (3) "Certificate of license registration" means a document issued by the department and required by RCW ~~((46.16.260))~~ 46.16A.180 to be carried in the vehicle to operate legally on the roadways of Washington and described in RCW ~~((46.12.050))~~ 46.12.540.

~~((6))~~ (4) "Chattel lien" is a process by which a person may sell or take ownership of a vehicle when:

(a) They provide services or materials for a vehicle at the request of the registered owner; and

(b) The person who provided the services and/or materials has not been compensated.

~~((7))~~ "Collector vehicle license plate" is a special license plate that may be assigned to a vehicle that is more than thirty years old as authorized by RCW 46.16.305(1).

~~((8))~~ (5) "Confidential" and "undercover" license plates ~~((are standard issue license plates assigned to vehicles owned or operated by public agencies. These license plates are used as specifically authorized by RCW 46.08.066))~~ have the same meaning as provided in RCW 46.04.142.

~~((9))~~ (6) "Current year" means the current registration year unless otherwise stated. (WAC 308-96A-260.)

~~((10))~~ "Department" means the department of licensing. ~~(RCW 46.04.162.)~~

~~((11))~~ "Empty scale weight" means the same as "scale weight" in this section.

~~((12))~~ ~~(7)~~ "Exception reports" means the main source of communication between jurisdictions and the department of licensing as computer reports that must be used by the jurisdiction to correct errors they have submitted to the department. Reports are received by all participating jurisdictions, whether processing vehicle violations manually or electronically.

~~(8)~~ "Expiration day and month."

(a) "Date of expiration" or "expiration date" means the day of the month on which the vehicle registration, gross weight license, decal or tabs expire.

(b) "Month of expiration" or "expiration month" means the calendar month during which a registration period ends. (WAC 308-96A-260.)

~~((13))~~ ~~(9)~~ "Fleet" means a group of vehicles registered in the same owner name and which have been assigned the same fleet identifier code by the department.

~~((14))~~ "Fixed load vehicle" is a vehicle that is exempt from the one hundred fifty percent gross weight requirements as specified in RCW 46.16.079 and described in WAC 308-96A-099.

~~((15))~~ ~~(10)~~ "Gross weight," "declared gross weight," and "tonnage" mean gross weight defined in RCW ~~((46.16.070; 46.16.090, 46.16.111))~~ 46.16A.455, 46.16A.425, 46.04.140 and chapter 46.44 RCW.

~~((16))~~ "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as a maximum load weight of a single vehicle.

~~((17))~~ "Hybrid motor vehicle" means a vehicle that uses multiple power sources or fuel types for propulsion and meets the federal definition of a hybrid motor vehicle.

~~((18))~~ ~~(11)~~ "Identification card" means the identification card referred to in RCW ~~((46.16.381(3)))~~ 46.19.010 for disabled parking privileges and is used for identification of persons with disabilities.

~~((19))~~ ~~(12)~~ "Indian country" means all lands, notwithstanding the issuance of any patent, within the exterior boundaries set aside by the United States for the use and occupancy of Indian tribes by treaty, law or executive order and which are areas currently recognized as "Indian country" by the United States Department of the Interior as referenced in 18 U.S.C. 1151 and CFR 25.

~~((20))~~ ~~(13)~~ "Indian tribe" means a Washington Indian nation, tribe, band, or community recognized as an "Indian tribe" by the United States Department of the Interior.

~~((21))~~ ~~(14)~~ "Indian" means a person on the tribal rolls of the Washington Indian tribe occupying Indian country.

~~((22))~~ ~~(15)~~ "Individual with disabilities parking placard expiration date" means the last day of the month as specified on the department placard.

~~((23))~~ ~~(16)~~ "Jurisdiction" as used in the ~~((parking ticket))~~ vehicle violation system means any district, municipal, justice, superior court, Washington state department of transportation, or authorized representative of one of these entities.

~~((24))~~ ~~(17)~~ "Jurisdiction seal" means an embossed seal or stamp provided by the jurisdiction to authenticate ~~((court))~~ documents provided by jurisdictions.

~~((25))~~ ~~(18)~~ "Landlord's lien" for rent is a process by which a landlord may sell or take ownership of a tenant's vehicle as security for rent due.

~~((26))~~ ~~(19)~~ "License or licensing" and "register or registering" are synonymous and mean the act of registering a vehicle under chapter ~~((46.16))~~ 46.16A RCW.

~~((27))~~ ~~(20)~~ "License fee" means the fees required for the act of licensing a vehicle under chapter ~~((46.16))~~ 46.17 RCW. License fee does not include license plate fees identified as taxes, and fees collected by the department for other jurisdictions.

~~((28))~~ "License tab fees" means the same as described in RCW ~~46.16.0621~~.

~~((29))~~ ~~(21)~~ "Licensed physician" for the purpose of individual with disabilities parking privileges, means: Chiropractic physicians, naturopaths, medical doctors, osteopathic physicians, podiatric physicians, and advanced registered nurse practitioners. Licensed physician does not include persons licensed in the professions of dentistry and optometry. (RCW ~~((46.16.381(1)))~~ 46.19.010.)

~~((30))~~ "Motor home" means a vehicle designed or altered for human habitation as described in RCW 46.04.305.

~~(31))~~ ~~(22)~~ "Municipality" in reference to parking tickets, means every court having jurisdiction over offenses committed under RCW 46.20.270.

~~((32))~~ "Natural person" means a human being.

~~((33))~~ ~~(23)~~ "NCIC number" means the numeric code assigned by the National Crime Information Center to identify a jurisdiction.

~~((34))~~ ~~(24)~~ "One hundred twenty-day notice" in reference to ~~((parking))~~ vehicle violations means a notice of ~~((parking))~~ vehicle violations that must be satisfied prior to the registration renewal date. (RCW ~~((46.16.216))~~ 46.16A.120.)

~~((35))~~ "Parking ticket" ~~(25)~~ "Vehicle violation disposition" means the requested action as determined by the jurisdiction to add failure-to-pay ~~((parking))~~ vehicle violations, or to remove paid ~~((parking))~~ vehicle violations from a vehicle record. (RCW ~~((46.16.216))~~ 46.16A.120.)

~~((36))~~ "Parking" ~~(26)~~ "Vehicle violation" means any standing, stopping ~~((or parking))~~, toll nonpayment civil penalty, automated traffic safety camera infractions, or vehicle violation per RCW 46.20.270(3).

~~((37))~~ "Parking" ~~(27)~~ "Vehicle violation list" means a computerized list containing all outstanding ~~((parking))~~ vehicle violations, which have been processed by the department. (RCW ~~((46.16.216(1)))~~ 46.16A.120.)

~~((38))~~ ~~(28)~~ "Permanent" in reference to individual with disabilities parking privileges, means a licensed physician has certified that a qualifying condition is expected to last at least five years. (RCW ~~((46.16.384))~~ 46.19.010. WAC 308-96A-306.)

~~((39))~~ ~~(29)~~ "Permanent fleet" means a group of ~~((one hundred))~~ fifty or more vehicles registered in the same owner(s) name and which have been assigned the same fleet identifier code by the department and has an expiration date of December 31st of each year. (WAC 308-96A-161.)

~~((40))~~ ~~(30)~~ "Permit" in reference to individual with disabilities parking privileges means the proof provided by the department in the form of placard(s), special license plate(s)

and an identification card indicating eligibility for individual with disabilities parking privileges. (RCW ~~((46.16.381))~~ 46.19.010.)

~~((41))~~ (31) "Personalized license plates" are plates denoting the registered owner's chosen format or designation and are limited to those described in RCW ~~46.16.560, 46.16.570, and 46.16.580.~~ (WAC 308-96A-065.)

~~(42))~~ (31) "Personal use vehicle" in reference to disabled veteran's, prisoners of war and congressional medal of honor plates, means vehicles not used for commercial purpose including: Passenger vehicles, motor homes, motorcycles, and trucks with designated gross vehicle weight not exceeding twelve thousand pounds. Registration ownership must be in the name of the individual and not in the business name. (WAC 308-96A-046.)

~~((43))~~ (32) "Placard" is an item issued to individuals who qualify for special individual with disabilities parking privileges under RCW ~~((46.16.381))~~ 46.19.010 and are entitled to receive from the department of licensing in the form of a removable windshield placard bearing the international symbol of access and individual serial number.

~~((44))~~ (33) "Private carriers" means those entities contracting with public transportation authorities to transport persons with disabilities described in RCW ~~((46.16.381))~~ 46.19.010.

~~((45))~~ "Private use trailer" means one that is owned by a natural person, and used for the private noncommercial use of the owner.

~~(46))~~ (34) "Privilege" in reference to individual with disabilities parking privileges means permission to utilize the benefits associated with the permit. (RCW ~~((46.16.381))~~ 46.19.010, 46.61.582 and ~~((70.84.090))~~ chapter 70.84 RCW (July 1, 2011, version). WAC 308-96A-306.)

~~((47))~~ (35) "Public transportation authorities" means those entities operating motor vehicles owned or leased by Washington state, or a town, city, county, municipality, or metropolitan or municipal corporation within the state, or United States government agencies or Indian nations used for the primary purpose of transporting persons with disabilities described in RCW ~~((46.16.381))~~ 46.19.010.

~~((48))~~ (36) "Regular fleet" means a group of five or more vehicles registered in the same owner(s) name and which have been assigned the same fleet identifier code by the department and has an expiration date of December 31st of each year. (WAC 308-96A-161.)

~~((49))~~ "Rental car" means a car that is rented as defined in RCW 46.04.465.

~~(50))~~ "Renewal notice" means the notice to renew a vehicle license. Renewal notices are sent to the registered owner approximately sixty days prior to the current expiration date.

~~(51))~~ (37) "Salvage title" means a certificate of title issued by another jurisdiction designating a motor vehicle as a "salvage vehicle."

~~((52))~~ "Scale weight" means the weight of a vehicle as it stands without a load. (RCW 46.16.070, 46.16.111, and chapter 46.17 RCW.)

~~(53))~~ (38) "Self-storage facilities lien" is a process by which the owner of a self-storage facility may sell a vehicle stored at the facility as security for rent or other charges due.

~~((54))~~ (39) "Signature" means any memorandum, mark, sign or subscriptions made with intent to authenticate an application. (RCW 9A.04.110(23).)

~~((55))~~ "Special mailer" means the notice sent by the department in lieu of a renewal notice. The special mailer indicates additional or corrective information that must be provided at the time of registration renewal.

~~(56))~~ "Subagent" means individual(s) recommended by an agent and appointed by the director to provide vehicle and vessel licensing and titling services under contract with the agent as described in RCW 46.01.140.

~~(57))~~ "Tab(s)" means stickers, issued by the department, affixed to the rear license plate to identify the registration expiration month and year for a specific vehicle.

~~(58))~~ "Transit permit" means a document that authorizes an individual to operate a vehicle on a public highway of this state solely for the purpose of obtaining necessary documentation to complete and apply for a Washington certificate of ownership or registration, and does not allow unrestricted use of the vehicle. (WAC 308-96A-026.)

~~(59))~~ (40) "Unprocessed" as used in ~~((parking ticket))~~ vehicle violation system means ~~((no))~~ an update of the computer record has not ~~((been updated))~~ occurred.

~~((60))~~ (41) "Use classes" means those vehicles described in WAC 308-96A-099.

~~((61))~~ (42) "Vehicle data base record" means the electronic record stored on the department's motor vehicle data base reflecting vehicle and ownership information.

~~((62))~~ (43) "Vehicle/vessel ~~((seller's))~~ report of sale" means a document or electronic record transaction that when properly filed protects the seller of a vehicle/vessel from certain criminal and civil liabilities arising from use of the vehicle/vessel by another person after the vehicle/vessel has been sold or a change in ownership has occurred.

AMENDATORY SECTION (Amending WSR 01-17-091, filed 8/20/01, effective 9/20/01)

WAC 308-96A-350 Outstanding ~~((parking))~~ vehicle violations—Information to be supplied to the department by issuing jurisdictions. (1) **How is the department notified of outstanding (unpaid) ~~((parking))~~ vehicle violations?** The jurisdiction notifies the department of outstanding ~~((parking))~~ vehicle violations. The notice will include the following:

- (a) Jurisdiction name.
- (b) NCIC number/originating agency identifier (ORI)/jurisdiction ID.
- (c) ~~((Parking))~~ Vehicle violation number.
- (d) Date ~~((parking))~~ vehicle violation was issued.
- (e) Vehicle license plate number.
- (f) Fine and penalty amount.
- (g) Jurisdiction's seal, except if filed electronically.
- (h) Signature and date when required on form, except if filed electronically.

(2) **When will the department accept ~~((parking))~~ vehicle violations for a vehicle data base record by a jurisdiction?** An original report against a vehicle record must contain a minimum of two outstanding violations from one jurisdiction. Subsequent reports against that vehicle by that

same jurisdiction may be for a single violation unless the vehicle record indicates all existing violations have been paid and no further violations have been accrued in the thirteen months following the payment. If thirteen months have elapsed, the jurisdiction must submit an original report containing a minimum of two violations.

(3) **What methods do jurisdictions use to notify the department of ~~((parking))~~ vehicle violations?** Information must be provided in accordance with department instructions by:

- (a) A form ~~((issued))~~ created or approved by the department;
- (b) A computer listing sheet; or
- (c) Electronic format.

(4) **What methods do jurisdictions use to correct invalid, incomplete or inaccurate record transactions received and processed by the department electronically or manually?**

- (a) Reconcile and correct errors identified on the exception reports provided by the department; and
- (b) Submit corrected transactions to the department.

AMENDATORY SECTION (Amending WSR 01-17-091, filed 8/20/01, effective 9/20/01)

WAC 308-96A-355 Satisfaction of ~~((parking))~~ vehicle violations—Information to be supplied by issuing jurisdiction. What happens when outstanding ~~((parking))~~ vehicle violations are satisfied? Upon satisfaction of ~~((parking))~~ vehicle violations previously reported as outstanding against a vehicle, the issuing jurisdiction must:

- (1) Furnish the registered owner with a proof of payment form; and
- (2) ~~((Supply))~~ Notify the department ~~((with the following information))~~ within ten days of satisfaction of the ~~((parking))~~ vehicle violations.

~~((The information must be on a form approved by the department, on a computer listing sheet or electronic format in accordance with department instructions containing:))~~ (3) Both proof of payment and notification to the department must contain:

- (a) Jurisdiction name~~((:));~~
- (b) NCIC number/originating agency identifier (ORI)~~((:));~~/jurisdiction ID;
- (c) ~~((Parking))~~ Vehicle violation number~~((:));~~
- (d) Date ~~((parking))~~ vehicle violation was issued~~((:));~~
- (e) Vehicle license plate number~~((:));~~
- (f) Date of satisfaction~~((:));~~
- (g) Jurisdiction seal, except if filed electronically~~((:));~~
- (h) Signature of ~~((court))~~ representative and date signed, except if filed electronically.

~~((Information must be provided on a form approved by the department on a computer listing sheet or electronic format in accordance with department instructions.))~~ (4) If filed electronically, must be in accordance with department instructions.

WSR 11-13-120
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed June 21, 2011, 4:18 p.m.]

WAC 388-71-06320, proposed by the department of social and health services in WSR 10-24-103 appearing in issue 10-24 of the State Register, which was distributed on December 15, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 11-13-121
WITHDRAWAL OF PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD

(By the Code Reviser's Office)

[Filed June 21, 2011, 4:19 p.m.]

WAC 136-163-050, proposed by the county road administration board in WSR 10-24-112 appearing in issue 10-24 of the State Register, which was distributed on December 15, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 11-13-122
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed June 21, 2011, 4:28 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-282-012 Certificates of approval—Operation licenses, harvest site certificates (shellfish license renewal date change for shellstock shippers and shucker packers) and 246-282-990 Fees (2011 shellfish operation license fee proration due to the annual license renewal date change, annual paralytic shellfish poison (PSP) fees adjustment according to samples taken from the prior year, and export certificate fee increase pursuant to legislative approval in HB 1087).

Hearing Location(s): Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501, on August 5, 2011, at 10:00 a.m.

Date of Intended Adoption: August 8, 2011.

Submit Written Comments to: Brandy Brush, Department of Health, Office of Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by August 5, 2011.

Assistance for Persons with Disabilities: Contact Brandy Brush by July 29, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to change the annual shellfish operation license renewal date for shellstock shippers and shucker packers from October 1 to July 1 of each year, and to prorate the 2011 fee amount for the transition to the new date. Changing the renewal date will allow inspectors to focus on illness prevention and investigation during the summer months when *Vibrio parahaemolyticus* (Vp) poses the most serious public health threat. The proposal also equitably assesses the costs of commercial geoduck PSP testing following the redistribution formula. The formula is based on the number of tests done in the previous year. The testing is essential to public health as it is the only way to determine if dangerous levels of PSP exist in commercial geoduck, and ensure toxic shellfish do not reach consumers. The proposed rule also increases the export certificate fee per legislative approval in HB 1087.

Reasons Supporting Proposal: The proposed shellfish license renewal date will allow the department and shellfish industry to focus on essential activities when Vp is most dangerous to the public. The proposed 2011 prorated shellfish operation license renewal fee is not a permanent change to the annual fee and will not change the total revenue generated by the fee. The proposed geoduck PSP fee redistribution is based on 2010 total cost of service and number of tests done for the entities that submitted geoduck tests in 2009. The proposed export certificate fees increase is necessary to adequately fund the program.

Statutory Authority for Adoption: RCW 69.30.030 and 43.20.030.

Statute Being Implemented: RCW 69.30.030 and 43.20.030.

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

Name of Proponent: State board of health and department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Brandy Brush, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3342; **Implementation and Enforcement:** Rick Porso, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3302.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi)

exempts rules that set or adjust fees or rates pursuant to legislative standards.

June 21, 2011

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 01-04-054, filed 2/5/01, effective 3/8/01)

WAC 246-282-012 Certificates of approval—Operation licenses, harvest site certificates. (1) The department issues two types of certificates of approval to persons who conduct shellfish operations. They are shellfish operation licenses and harvest site certificates.

(2) Any person who possesses a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid shellfish operation license. To obtain a shellfish operation license, a person must:

(a) Submit to the department a completed application on a form developed by the department;

(b) Submit to the department an acceptable written plan of operations that completely describes the shellfish operation;

(c) Pass a preoperational inspection demonstrating compliance with chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance; and

(d) Pay the department any shellfish operation license fee required by this chapter.

(3) Any person who harvests a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must possess, or act on behalf of a person who possesses, a valid harvest site certificate. In order for a person to obtain a harvest site certificate, all of the following requirements must be met.

(a) The person possesses a valid shellfish operation license.

(b) The person submits to the department a completed application that describes the following characteristics of the site:

(i) Geographic location;

(ii) Map showing legal boundaries;

(iii) Unique government identification number, such as county parcel number, department of fish and wildlife tract number, department of fish and wildlife catch area number, or tribal identification number; and

(iv) Documentation of legal ownership or lease for shellfish harvesting.

(c) The harvest site is in a growing area that meets the requirements of chapter 69.30 RCW, this chapter, and the NSSP Model Ordinance for a commercial shellfish growing area.

(d) The harvest site is not impacted by any actual or potential sources of pollution.

(e) The harvest site passes a pollution assessment inspection conducted by the department if necessary to determine if the site is impacted by any actual or potential sources of pollution.

(f) The person signs the current conditionally approved area management plan, if applicable.

(g) The person pays the department any harvest site application fee required by this chapter.

(4) All shellfish operation licenses and harvest site certificates for shellfish dealers expire on the thirtieth day of ~~((September))~~ June each year. All shellfish operation licenses and harvest site certificates for harvesters expire on the thirty-first day of March each year ~~((beginning in 2002))~~.

AMENDATORY SECTION (Amending WSR 10-19-034, filed 9/9/10, effective 10/10/10)

WAC 246-282-990 Fees. (1) The required annual shellfish operation license fees for shellstock shippers and shucker-packers due October 1, 2011, shall be reduced by twenty-five percent of the annual shellfish operation license fees in subsection (2) of this section. Beginning July 1, 2012, and for every subsequent year, the full annual shellfish operation license fees in subsection (2) of this section shall be assessed.

(2) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

~~((2))~~ (3) The fee for each export certificate is ~~\$(40.30))~~ 20.00.

~~((3))~~ (4) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category	Number of Harvest Sites	Fee
Harvester	≤ 2	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
0 - 49 acres		
Shellstock Shipper	3 or more	\$292
0 - 49 acres		
Shellstock Shipper	N/A	\$468
50 or greater acres		
Shucker-Packer	≤ 2	\$354
(plants < 2000 ft ²)		
Shucker-Packer	3 or more	\$533
(plants < 2000 ft ²)		
Shucker-Packer	≤ 2	\$429

Fee Category

Type of Operation	Number of Harvest Sites	Fee
(plants 2000 - 5000 ft ²)		
Shucker-Packer	3 or more	\$644
(plants 2000 - 5000 ft ²)		
Shucker-Packer	N/A	\$1,189
(plants > 5000 ft ²)		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

~~((4))~~ (5) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
((Discovery Bay Shellfish	\$464))
Department of natural resources (quota tracts harvested by DNR contract holders)	\$(8,507)) <u>9,616</u>
Jamestown S'Klallam Tribe	\$(1,237)) <u>1,221</u>
Lower Elwha Klallam Tribe	\$(4,485)) <u>4,274</u>
((Lummi Nation	\$155))
Nisqually Indian Tribe	\$(2,014)) <u>3,968</u>
Port Gamble S'Klallam Tribe	\$(4,021)) <u>3,053</u>
Puyallup Tribe of Indians	\$(8,974)) <u>6,868</u>
((Skokomish Indian Tribe	\$155))
Seattle Shellfish	<u>\$1,374</u>
Squaxin Island Tribe	\$(618)) <u>3,968</u>
Suquamish Tribe	\$(21,189)) <u>16,026</u>
Swinomish Tribe	\$(619)) <u>458</u>
SYS Enterprises	<u>\$611</u>
Taylor Shellfish	<u>\$2,900</u>
Tulalip Tribe	\$(5,568)) <u>3,663</u>

~~((5))~~ (6) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

((6)) (7) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

WSR 11-13-125
PROPOSED RULES
DEPARTMENT OF ECOLOGY
 [Order 10-14—Filed June 22, 2011, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-08-062.

Title of Rule and Other Identifying Information: The department of ecology proposes to adopt amendments to the Uses and limitations of the water pollution control revolving fund (revolving fund), chapter 173-98 WAC, and Uses and limitations of centennial clean water fund (centennial), chapter 173-95A WAC.

Hearing Location(s): The public hearing will be held at the four sites listed below. The sites will be linked through video conferencing. Interested parties can attend any of the four sites to participate in the public hearing. Lacey will be the lead site for the hearing: Ecology Headquarters Office, 300 Desmond Drive S.E., Lacey, WA 98503; Ecology Central Regional Office, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902-3452; Ecology Eastern Regional Office, 4601 North Monroe Street, Spokane, WA 99205-1295; or Ecology NW Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008-5452; on July 26, 2011, at 2:00 p.m.

Date of Intended Adoption: September 7, 2011.

Submit Written Comments to: Joseph Coppo, P.O. Box 47600, Lacey, WA 98504-7600, e-mail joseph.coppo@ecy.wa.gov, fax (360) 407-7151, by August 3, 2011.

Assistance for Persons with Disabilities: Contact the water quality program, (360) 407-6502, by July 19, 2011. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to amend chapter 173-98 WAC to establish funding categories, ceiling amounts, and project eligibility for green project reserves (GPR) projects and forgivable principal loans as part of the revolving fund. Chapter 195-95A WAC is amended to maintain consistency between the revolving fund and centennial rules.

Reasons Supporting Proposal: Adopting these changes will allow ecology to continue to receive federal capitalization grants for the state's revolving fund program, which provides financial assistance to local governments for water quality improvement projects.

Statutory Authority for Adoption: RCW 90.48.035 provides ecology with authority to promulgate, amend, or rescind rules concerning water pollution control. RCW 43.21.080 provides ecology the authority to adopt rules and regulations. RCW 90.50A.040 provides clear and direct authority for ecology to revise rules to administer the water pollution control revolving fund.

Statute Being Implemented: Chapter 90.50A RCW, Water pollution control facilities - federal capitalization

grants, and chapter 70.146 RCW, Water pollution control facilities financing.

Rule is necessary because of federal law, Clean Water Act Title VI, 2011 Appropriation.

Name of Proponent: Department of ecology, water quality program, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Coppo, Headquarters, Lacey, Department of Ecology, (360) 407-6510; Implementation and Enforcement: Steve Carley, Headquarters, Lacey, Department of Ecology, (360) 407-6572.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rule changes are exempt from chapter 19.85 RCW because the stakeholders and clients impacted by the proposed rule changes are government bodies and therefore no small businesses are impacted.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule and the rule relates only to internal governmental operations that are not subject to violation by a nongovernment party.

June 20, 2011

Polly Zehm

Deputy Director

Chapter 173-95A WAC

**USES AND LIMITATIONS OF THE CENTENNIAL
 CLEAN WATER ((FUNDS)) PROGRAM**

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-010 Purpose. (1) The purpose of this chapter is to set forth requirements for the department of ecology's administration of the centennial clean water program, as authorized by chapter 70.146 RCW, Water pollution control facilities financing. This fund provides financial assistance to public bodies for statewide, high-priority water quality projects in the form of grants and loans through appropriation by the Washington state legislature.

(2) The centennial program may be used for the following purposes:

(a) To make grants and loans to finance the planning, design, and/or construction of water pollution control facilities; and

(b) To make grants and loans for nonpoint source pollution control management programs, including planning and implementing elements of the most current version of the ((⁽²⁾)) *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution*, ((⁽²⁾)) (ecology publication #05-10-027).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-015 Integrated funding approach. (1) Where possible, the Washington state department of ecology combines the management of the centennial program with other funding programs, such as the ((Washington state))

water pollution control revolving fund, and the Clean Water Act section 319 nonpoint source ~~((fund))~~ program.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-020 Definitions. For the purposes of this chapter:

- (1) **Activities** see water pollution control activities.
- (2) **Applicant** means a public body that has applied for funding.
- (3) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.
- (4) **Cash match** means moneys used to match the state share of a grant.
- (5) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.
- (6) **Centennial** means the centennial clean water program.
- (7) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from large commercial establishments, industrial facilities, or institutional sources such as state schools, hospitals, and prisons.
- (8) **Competitive funding** means moneys available for projects through a statewide evaluation process.
- (9) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.
- (10) **Concentrated animal feeding operation (CAFO)** means:
 - (a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event; or
 - (b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit; or
 - (c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or
 - (d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.
- (11) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.
- (12) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.
- (13) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

(15) **Department** means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all ~~((projects))~~ applications for financial assistance considered and those proposed for funding, based on ~~((an evaluation and the appropriations in the Washington state capital))~~ estimates of state and federal budgets.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-or-grant-funded activities or facilities.

(20) **Effective date** means the date the loan or grant agreement is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of ~~((the))~~ a facilities or activities project that can be funded based on program eligibility as defined in WAC 173-98-100 and in the most recently updated edition of the *Water Quality Financial Assistance Guidelines* (publication # 10-10-049).

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(23) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(24) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

(25) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

(26) **Equivalent residential unit (ERU)** means a unit of measurement used to express the average sewage loading discharged from a typical full-time single-family dwelling unit.

(27) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((27))~~ (28) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application ~~((, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit))~~.

~~((28))~~ (29) Existing residential need means that portion of a water pollution control facility's capacity reserved for ((the)) residential ((population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit)) structures that:

(a) Exists within the project service area at the time of application;

(b) Is connected to the facility or is scheduled to be connected to the facility in an approved engineering report; and

(c) Will bear the financial burden of paying for the new facility.

~~((29))~~ (30) Extended grant payments means cash disbursements for eligible project costs made with equal annual payments as established in RCW 70.146.075.

~~((30))~~ (31) Facilities see water pollution control facility.

~~((31))~~ (32) Facilities plan means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC (~~(, Submission of plans and reports for construction of wastewater facilities)).~~

~~((32))~~ (33) Final offer and applicant list means a catalog of all ~~((projects))~~ applications for financial assistance considered ((and proposed for funding)) and those offered funding, based on adopted state and federal budgets.

~~((33))~~ (34) Force account means loan or grant project work performed using labor, materials, or equipment of a public body.

~~((34))~~ (35) Funding cycle means the events related to the competitive process used to allocate moneys from the ~~((clean))~~ water ((state)) pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source ((fund)) program for a state fiscal year.

~~((35))~~ (36) Grant agreement means a contractual arrangement between a public body and the department.

~~((36))~~ (37) Growth means the portion of the flows to a facility reserved for future residential, commercial, industrial, or institutional flows.

(38) Indirect cost means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((37))~~ (39) In-kind contributions means the value of noncash contributions provided for a project.

~~((38))~~ (40) Interlocal agreement means a written arrangement between a grant recipient and another public body to provide eligible grant match contributions to a project. Interlocal agreements are subject to chapter 39.34 RCW, Interlocal Cooperation Act.

~~((39))~~ (41) Interlocal costs means the value of goods or services provided to a project by a public body under the terms of an interlocal agreement. Interlocal contributions satisfy cash matching requirements.

~~((40))~~ (42) Infiltration and inflow means water, other than wastewater, that enters a sewer system.

~~((41))~~ (43) Infiltration and inflow correction means the cost-effective alternative or alternatives identified in an approved facilities plan or engineering report for eliminating

or reducing the infiltration and inflow to an existing sewer system.

~~((42))~~ (44) Landowner agreement means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((43))~~ (45) Loan agreement means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

~~((44))~~ (46) Loan default means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((45))~~ (47) Match means the recipient share of eligible project costs.

~~((46))~~ (48) Nonpoint source water pollution means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from boats or other marine vessels.

~~((47))~~ (49) Plans and specifications means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((48))~~ (50) Preliminary project priority list means a catalog of all ~~((projects))~~ applications for financial assistance considered for funding ((based on the governor's budget)) and submitted to the Washington state legislature for its consideration during budget development.

~~((49))~~ (51) Project means a water quality improvement effort funded with a grant or loan.

~~((50))~~ (52) Project completion or expiration means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((51))~~ (53) Public body means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((52))~~ (54) Public health emergency means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((53))~~ (55) Recipient means a public body that has an effective loan or grant agreement with the department.

~~((54))~~ (56) Residential means the portion of the total flows to a facility that originates from single family houses, apartments, mobile home parks, small commercial facilities, and community facilities such as local K-12 public schools, libraries, and fire stations.

(57) Revolving fund means Washington state's water pollution control revolving fund.

(58) Riparian buffer or zone means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((55))~~ **(59) Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

~~((56))~~ **(60) Service area population** means the number of people served in the area of the project.

~~((57))~~ **(61) Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((58))~~ **(62) Sewer** means the pipe and related pump stations located on public property or on public rights of way and easements that convey wastewater from buildings.

~~((59))~~ **(63) Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((60))~~ **(64) State environmental review process (SERP)** means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((61))~~ **(65) Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((62))~~ **(66) Total project cost** means the sum of all expenses associated with a water quality project.

~~((63))~~ **(67) Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders ~~((such))~~ **the** waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((64))~~ **(68) Water pollution control activities or activities** means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((65))~~ **(69) Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((66))~~ **(70) Water resource inventory area (WRIA)** means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-100 Grant and loan eligible. Certain projects or project elements, including but not limited to the following may be eligible for centennial loan or grant assistance:

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution can be addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner;

(3) **BMP implementation** on public property;

(4) **Computer equipment and software** specific to the funded project and preapproved by the department;

(5) **Diagnostic studies** to assess current water quality;

(6) **Education and outreach** efforts for the public;

(7) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(8) **Equipment and tools** as identified in a grant or loan agreement;

(9) **Groundwater protection activities** such as well-head protection and critical aquifer recharge area protection;

(10) **Hardship assistance** for wastewater treatment facilities construction, ~~((storm water management, and))~~ on-site ~~((septic))~~ **sewage** system repair and replacement, and construction elements of a design-build-operate project;

(11) **Implementation** of eligible projects identified in water quality plans;

(12) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

(13) **Lake implementation and planning activities** on lakes with public access;

(14) **Landscaping for erosion control** directly related to a project, or site-specific landscaping ~~((in order))~~ to mitigate site conditions and comply with requirements in the State Environmental Policy Act or the National Environmental Policy Act;

(15) **Light refreshments** for meetings when specified in the loan or grant agreement;

(16) **Monitoring BMP effectiveness;**

(17) **Monitoring equipment** used for water quality assessment;

(18) **Monitoring water quality;**

(19) **On-site ~~((septic))~~ sewage systems:**

(a) **Development and administration of a local loan fund for on-site ~~((septic))~~ sewage system repair and**

replacement for residential and small commercial systems; and

(b) **On-site ((wastewater)) sewage** system surveys;

(20) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from non-point sources;

(21) **Planning, including** comprehensive basin plans, watershed plans, and area-wide water quality ((development)) plans;

(22) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

(23) **Sales tax**;

(24) **Stream restoration** that meets recognized water quality standards;

(25) **Storm water activities that are** certain nonpermit-related planning activities, such as education and outreach, establishing a storm water utility, identifying and mapping of pollution sources, and department-approved erosion control;

(26) **Total maximum daily load study** development and implementation;

(27) **Training** to develop specific skills that are necessary to directly satisfy the scope of work. Training, conference registration, or annual meeting fees must be preapproved by the department;

(28) **Wastewater or storm water utility development**;

(29) **Wastewater or storm water utility rate** or development impact fee studies;

(30) **Water quality education** and stewardship programs; and

(31) **Wellhead protection**.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-110 Loan only eligible. Certain projects or project elements, including but not limited to the following may be eligible for centennial loan assistance:

(1) **CAFOs**, for BMP implementation;

(2) **Facilities** for wastewater and storm water:

(a) **Planning**:

(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the Growth Management Act;

(ii) **Facilities planning** for water pollution control facilities; and

(iii) **Storm water** planning for permitted facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction** of:

(i) Combined sewer overflow abatement;

(ii) Side sewers or individual pump stations or other appurtenances on private residential property;

(iii) Sewers and side sewers on public property for infiltration and inflow correction projects, and to replace existing water pollution control facilities;

(iv) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of storm water; and

(v) Water pollution control facility construction ((with reserve capacities)) to meet ((up to one hundred ten percent of)) existing residential needs;

(d) **Value engineering** for water pollution control facilities;

(e) **Design or construction** costs associated with design-build or design-build-operate contracts;

(3) **Land acquisition**:

(a) As an integral part of the treatment process (e.g., land application);

(b) For prevention of water pollution;

(c) For siting of water pollution control facilities, sewer rights of way, easements, and associated costs; or

(d) for wetland habitat preservation;

(4) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

(5) **On-site ((septic)) sewage systems**:

(a) **Local loan fund** program development and administration;

(b) **New sewer systems** to eliminate failing or failed on-site ((septic)) sewage systems;

(6) **Spare parts, an** initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements; and

(7) **Transferring ownership** of a small wastewater system to a public body.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-120 Projects ineligible for centennial program funding. While it is impossible to list every project or project element that is not eligible, some examples of ineligible projects include:

(1) **Abandonment** or demolition of existing structures;

(2) **Acts of nature** that alter the natural environment, thereby causing water quality problems;

(3) **Commercial, institutional** or **industrial** wastewater pretreatment;

(4) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

(5) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(6) **Facilities** intended solely to control, transport, treat, dispose, or otherwise manage commercial, institutional, or industrial wastewater;

(7) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;

(8) **Flood control**, projects or project elements intended solely for flood control;

(9) **Funding application preparation** for loans or grants;

(10) **Interest** on bonds, interim financing, and associated costs to finance projects;

(11) **Landscaping** for aesthetic reasons;

(12) **Legal expenses** associated with claims and litigation;

(13) **Lobbying** or expenses associated with lobbying;

(14) **Monitoring equipment** for sampling and analysis of commercial, institutional, or industrial discharges;

(15) **Office furniture** not included in the recipient's indirect rate;

(16) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city ~~((council member))~~ council member, and city attorney ~~((,- etc-))~~;

(17) **Operation and maintenance** costs;

(18) **Overtime** differential paid to employees of a public body to complete administrative or force account work;

(19) **Permit fees**;

(20) **Professional dues**;

(21) **Reclamation** of abandoned mines;

(22) **Refinance** of existing debt;

(23) **Rework costs** or previously funded objectives;

(24) **Solid or hazardous waste**;

(25) **Utility local improvement district formation**;

~~((26))~~ (26) **Vehicle purchase**, except for vehicles intended for the transportation of liquid or dewatered sludge or septage; and

~~((26))~~ (27) **Water quantity** or other water resource projects that solely address water quantity issues.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-300 Application for funding. (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the ~~((agency))~~ department web site.

(2) The applicant may be asked to provide the following project information:

(a) Basic information such as names of contacts, addresses, and other tracking information;

(b) Project summary;

(c) Project goals, objectives, and milestones;

(d) Overall water quality benefits;

(e) Public health benefits;

(f) Sources of pollution addressed;

(g) How the project will address state and federal mandates, elements in ~~((⁽²⁾))~~ *Washington's Water Quality Plan to Control Nonpoint Sources of Pollution*, ~~((⁽²⁾))~~ or other such plans;

(h) Performance measures and postproject assessment monitoring;

(i) Readiness to proceed, likelihood of success, and measures of success specific to the project;

(j) Local initiatives, commitments, or priorities related to the project; or

(k) Other information requested by the department.

(3) Minimum score on application.

(a) An applicant must receive a minimum score equal to fifty percent of the available points on section three, water quality and public health improvements, of the water quality financial assistance application to be rated for the Draft Offer and Applicant List and Final Offer and Applicant List. An applicant with fewer than fifty percent of the points available on section three of the application is not eligible for funding consideration. The department may offer funding to appli-

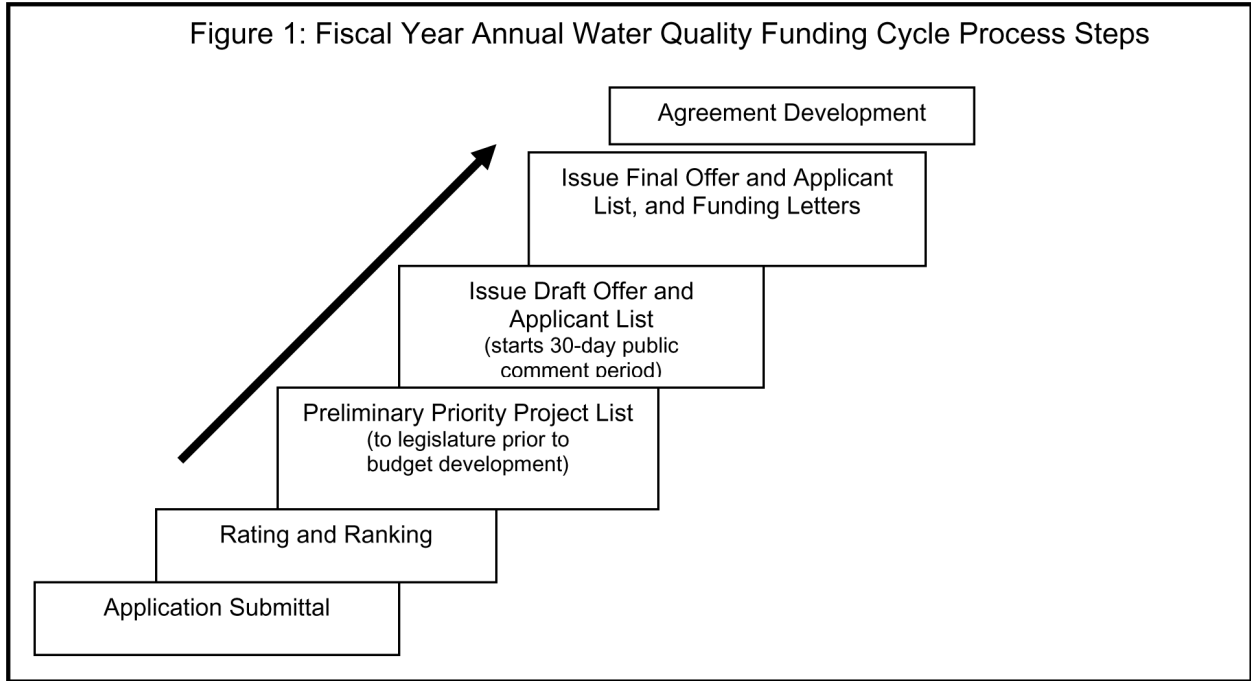
cants with fewer than fifty percent of the points available on section three if demand for funding is low.

(b) An applicant must receive a minimum score equal to sixty percent of the available points on the water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than sixty percent of the points available on the financial assistance application if demand for funding is low.

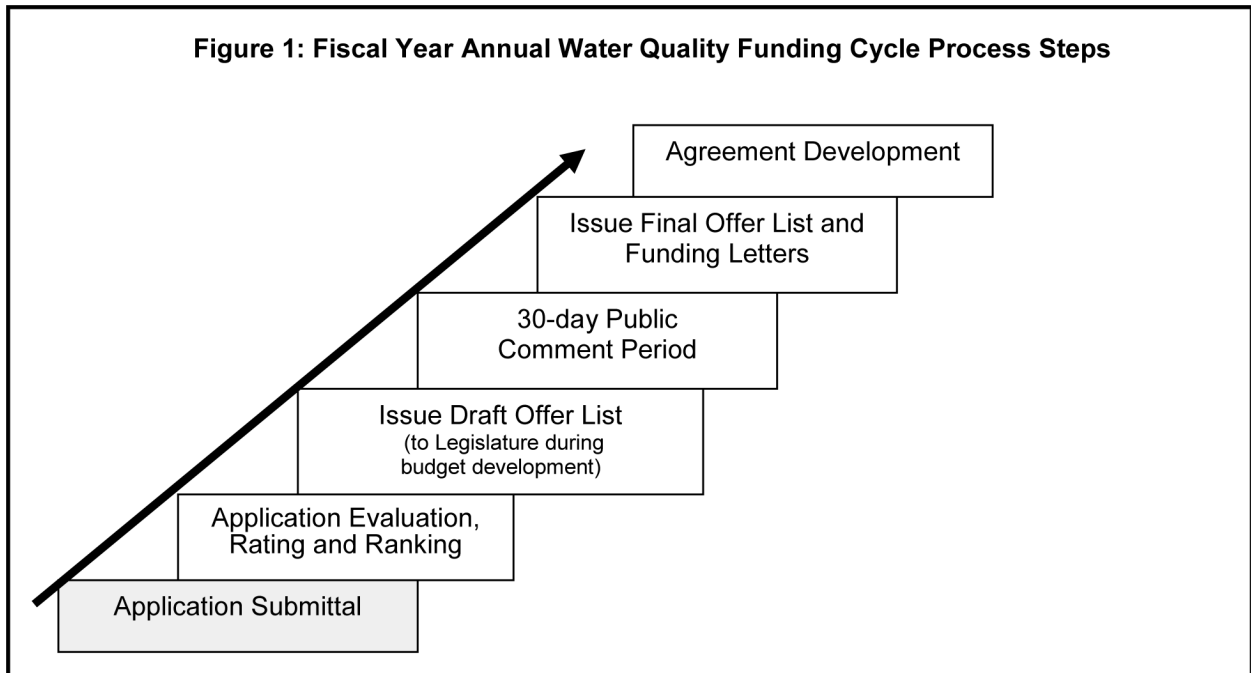
AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-310 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.

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(2) In general, ecology will provide the following services, although annual modifications may be made to accommodate legislative schedules and requirements:

- (a) Make available the application and applicable guidelines before the associated funding cycle begins;
- (b) Conduct at least one application workshop in each of ecology's four regions;
- (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
- (d) After the application deadline, complete an initial review of project proposals for funding eligibility;
- (e) Request other agencies to provide evaluation assistance as needed;
- (f) Rate and rank the applications using a consistent scoring system;
- (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
- (h) Submit preliminary project priority list to the state legislature ~~((for))~~ during budget ((consideration)) development;
- (i) Develop a combined *Draft Offer and Applicant List*;
- (j) Facilitate a public review and comment period for the combined *Draft Offer and Applicant List*;
- (k) Sponsor at least one public meeting to explain the combined *Draft Offer and Applicant List*;
- (l) Develop a combined ~~(())~~ *Final Offer and Applicant List*. ~~(())~~ Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;
- (m) Issue funding decision letters to all applicants; and
- (n) Negotiate, develop, and finalize loan or grant agreements.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-320 Final offer and applicant list. Loan and grant offers identified on the ~~(())~~ *Final Offer and Applicant List* ~~(())~~ will be effective for up to one year from the publication date of the ~~(())~~ *Final Offer and Applicant List*. ~~(())~~ Loan and grant offers that do not result in a signed agreement are automatically ~~((terminated))~~ ended.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-400 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of a wastewater treatment facilities projects:

- (a) Service area population;
 - (b) Existing residential need at the time of application; and
 - (c) Level of financial burden placed on the ratepayers.
- (2) **Service area population.** Applicants serving an area of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form, provided by the department, along with the grant and loan funding application. If the service area population is different from the population of the applicant, the applicant

must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** Water pollution control facilities construction costs that are associated with existing residential need ~~((plus ten percent))~~ at the time of application may be eligible for funding. Additional reserve capacity for growth is not eligible for grant funding.

~~((For example:~~

~~If an applicant applies for ten million dollars to finance facilities construction costs, where six million dollars is for existing residential need and the remaining four million dollars is for reserve capacity for growth, the applicant may be eligible for six million six hundred thousand dollars in grant funding.~~

Residential need:	\$6,000,000
Reserve capacity for growth (10% of \$6M):	\$600,000
Grant Eligible Amount	\$6,600,000))

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI) for the project area. The annual residential sewer user fee is calculated using:

- (i) Estimated construction costs;
- (ii) Existing annual operation and maintenance costs;
- ~~((iii))~~ (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- ~~((iv))~~ (iv) Projected future operation and maintenance costs for the total facility;
- ~~((v))~~ (v) The applicant's current and future annual debt service on the project;
- ~~((vi))~~ (vi) The annual debt service for the project if funded with a water pollution control revolving fund loan;
- ~~((vii))~~ (vii) Other grants and loans funding the project;
- ~~((viii))~~ (viii) Existing annual operation, maintenance, and equipment replacement costs;
- ~~((ix))~~ (ix) The applicant's level of debt for other wastewater facilities not associated with the project;
- ~~((x))~~ (x) The total number of households or equivalent residential units (ERUs) existing at the time of application that will be served by the project; ((and
- ~~((xi))~~ (xi) The nonresidential share of the total annual costs; and
- ~~((xii))~~ (xii) The MHI for the project area;
- (b) The sewer user fee as a percentage of the MHI is the basis for the department's grant and loan hardship-funding continuum (shown below in figure 2 and figure 3);
- (c) The most recent available ~~((census data))~~ American community survey data determines the ~~((median household income. This data is updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index))~~ MHI; and
- (d) If ~~((median household income))~~ MHI data are not available for a community ~~((or if the community))~~, the county MHI in which the community resides will be used;

(e) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the ~~((median household income))~~ MHI for the project area.

(5) **Hardship grant ceiling amounts.** The department uses the grant hardship-funding continuum, shown in figure 2 below, to determine the percent of grant awarded. There is a funding ceiling of five million dollars per project.

For example:

When a grant applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may receive a grant of seventy-five percent of eligible project costs, not to exceed five million dollars (see figure 2 below).

(6) If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, up to five million dollars, in the next funding cycle, and on a case-by-case basis. The department may require further hardship analysis before offering the remaining moneys.

(7) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum, shown in figure 2 below, to determine the hardship-loan interest rates. There is a funding ceiling of five million dollars. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When a loan applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 3 below).

(8) **Design-build-operate (construction portion).**

(a) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10

RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations;

(b) The construction portion of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for a grant if the public body can demonstrate financial hardship in accordance with WAC 173-95A-400. Hardship-grant ceiling amounts found in WAC 173-95A-520 apply;

(c) Design-build-operate projects must comply with chapter 35.58 RCW, Metropolitan municipal corporations;

(d) The project scope of work must implement a department-approved facilities plan;

(e) In addition to the project application information found in WAC 173-95A-300, the project will be evaluated on the applicant's level of administrative and technical expertise;

(f) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to ~~((utilize))~~ use the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(g) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(h) Costs associated with change orders are not eligible for reimbursement;

(i) Projects must be completed according to the timeline in WAC 173-95A-700 and 173-95A-710; and

(j) Before the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements.

(9) **Extended grant payments.** In some cases, the legislature may appropriate extended grant payments per RCW 70.146.075.

(10) **Figure 2: Grant Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below ((2.0%)) <u>two percent</u>	((2.0%)) <u>Two percent and above, but below</u> ((3.0%)) <u>three percent</u>	((3.0%)) <u>Three percent and above, but below</u> ((5.0%)) <u>five percent</u>	((5.0%)) <u>Five percent and above</u>
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))

Sewer User Fee divided by MHI	Below ((2.0%)) two percent	((2.0%)) Two percent and above, but below ((3.0%)) three percent	((3.0%)) Three percent and above, but below ((5.0%)) five percent	((5.0%)) Five percent and above
Grant Hardship-Funding Continuum	((0%)) Zero percent Grant	((50%)) Fifty percent Grant (up to five million dollars)	((75%)) Seventy-five percent Grant (up to five million dollars)	((100%)) One hundred percent Grant (up to five million dollars)

(11) Figure 3: Loan Hardship-Funding Continuum

Sewer User Fee divided by MHI	Below ((2.0%)) two percent	((2.0%)) Two percent and above, but below ((3.0%)) three percent	((3.0%)) Three percent and above, but below ((5.0%)) five percent	((5.0%)) Five percent and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Loan at ((60%)) sixty percent of market rate	Loan at ((40%)) forty percent of market rate	Loan at ((20%)) twenty percent of market rate	Loan at ((0%)) zero percent interest

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-410 On-site (~~septic~~) sewage system repair and replacement programs. Applicants may apply for grant funding in conjunction with a ~~((state))~~ water pollution control revolving fund loan to establish or continue programs that provide hardship funding for on-site (~~septic~~) sewage system repair and replacement for homeowners and small commercial enterprises. The ceiling amounts used for activities grants, cited in WAC 173-95A-520, also apply.

PART 5

((REQUIREMENTS FOR MANAGING GRANTS AND LOANS)) FUNDING DISTRIBUTION AND PROJECT DEVELOPMENT PROCESS

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-500 Funding allocation. There are two project categories in which the competitive funding is allocated: Activities and facilities.

(1) The scores derived from the application rating and ranking process will determine the allocation of the competitive funding;

(2) No more than two-thirds of the fund can go to either category;

(3) If the demand for funding is low in either category, then moneys may be shifted amongst categories; and

(4) The department will adjust the funding allocation based on the following:

(a) To provide match for other funding sources, such as the Clean Water Act section 319 nonpoint source ~~((fund))~~ program or other funding programs; or

(b) To comply with funding restrictions in legislative appropriations.

For example:

If fifty percent of the competitive centennial program funding is comprised of state building construction account moneys, then fifty percent of the centennial program funding must be allocated to projects approved for that funding source.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-520 Ceiling amounts. (1) **Activities projects.** Grants for activities projects made under the centennial program are subject to ceiling amounts of:

(a) Five hundred thousand dollars if the match for the grant is in the form of cash and/or interlocal costs; or

(b) Two hundred fifty thousand dollars if any part of the match is in the form of in-kind goods and services; and

(c) Five hundred thousand dollars for activities project loans.

(2) **Facilities projects.** Loans are subject to ceiling amounts of five million dollars.

(3) **Hardship projects.** Grants for facilities construction projects are subject to ceiling amounts of five million dollars. If a centennial program grant is provided for a hardship project in conjunction with a water pollution control revolving fund (revolving fund) forgivable principal loan award for hardship, then the ceiling amount for the combined revolving fund forgivable principal loan and Centennial program grant is five million dollars.

(4) ~~((Partially funded projects.~~ If a project is offered partial funding due to the lack of available centennial moneys, and the recipient is demonstrating progress on the proj-

ect, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(5)) Water pollution control facilities construction bid overruns.

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of moneys will be given to hardship communities based on the severity of financial need. For more information, see WAC 173-95A-400.

((6)) (5) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of moneys will be given to hardship communities based on the severity of financial need. For more information on hardship, see WAC 173-95A-400.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-540 Step process for facilities. (1) The step process is required for facilities construction projects. The process begins with site-specific planning, and continues through design to construction or implementation. At the time of application, all previous steps must be approved by the department. Draft documents must be sent to the department's engineers at least sixty days (~~prior to~~) before end of application cycle for approval by end of application cycle. Funding for one step does not guarantee the future funding of subsequent steps.

(2) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. Facilities plans must be approved by the department before an application for design can be considered for funding. Facilities plans approved by the department more than two years (~~prior to~~) before the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an appli-

cation for construction can be considered for funding. The applicant must also have a current rate study that includes the proposed project before an application for construction can be considered for funding. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The applicant must have an adopted fee ordinance based on the current rate study that includes the proposed project before the department will sign a loan agreement.

(3) **Combined steps for smaller design-bid-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one year of the effective date of the funding agreement. The applicant must also complete a rate study that includes the proposed project and adopt a fee ordinance based on the rate study before the department will approve plans and specifications as required in WAC 173-98-560, approval of plans and specifications. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The total project costs for step four projects must be five million dollars or less.

(4) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

NEW SECTION

WAC 173-95A-580 Approval of plans and specifications. The department must approve all plans and specifications before solicitation of bids according to chapter 173-240 WAC.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-600 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and (~~regulations~~) rules relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-610 The Growth Management Act.

(1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means that:

A county, city, or town that ~~((is required to))~~ must chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan or grant must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan or grant application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in ~~((such))~~ the quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan or grant must be documented by a letter signed by the director and addressed to the public official who signed the loan or grant application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funding while the county, city, or town

is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department; and

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-700 Starting a project. Costs incurred before a grant or loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department.

(1) Prior authorization to incur costs.

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the ~~((the))~~ Final Offer and Applicant List~~((the))~~;

(ii) Costs are incurred between the publication date of the ~~((the))~~ Final Offer and Applicant List~~((the))~~ and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred ~~((prior to))~~ before the publication date of the ~~((the))~~ Final Offer and Applicant List~~((the))~~ are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) Project initiation. Grant or loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the grant or loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the ~~((the))~~ Final Offer and Applicant List~~((the))~~ on which the project was proposed.

(b) Starting a project means making any measurable steps toward achieving the milestones, objectives, and overall goals of the project.

(c) Loan and grant offers identified on the ~~((the))~~ Final Offer and Applicant List~~((the))~~ will be effective for up to one year from the publication date of the ~~((the))~~ Final Offer and Applicant List~~((the))~~. Loan and grant offers that do not result in a signed agreement are automatically ~~((terminated))~~ ended, see WAC 173-95A-320 ~~((Final offer and applicant list))~~.

(3) **Project initiation extension.** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-710 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) **Project completion.**

(a) Work on a project must be completed within five years of the publication date of the ~~((^{the}))~~ Final Offer and Applicant List~~((^{the}))~~ on which the project was proposed. A shorter time period may be specified in the grant or loan agreement; and

(b) Completing a project means fulfilling all milestones and objectives associated with the goals of the grant or loan agreement.

(2) **Project completion extension.**

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

(i) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request must be made ~~((prior to))~~ before the completion or expiration date of the loan or grant agreement.

NEW SECTION

WAC 173-95A-720 Performance measures and post-project assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a post-project survey and interview regarding performance measures.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-95A-810 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision by a written appeal to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient may request review of the decision within thirty days to the deputy director;

(4) The deputy director will consider the appeal information, and may choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received, and that decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to ~~((such))~~ the appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-95A-420 Storm water projects.

WAC 173-95A-570 Performance measures and postproject assessment.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-010 Purpose. The purpose of this chapter is to set forth requirements for the Washington state department of ecology's ~~((the))~~ department administration of ~~((the))~~ Washington ~~((state))~~ state's water pollution control revolving fund ~~((revolving fund))~~, as authorized by chapter 90.50A RCW, water pollution control facilities financing. This fund is primarily comprised of federal capitalization grants, state matching moneys, and principal and interest repayments. It is used to provide loan assistance to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-020 Integrated funding approach. (1) Where possible, the ~~((Washington state))~~ department ~~((of ecology))~~ combines the management of the ~~((Washington state water pollution control))~~ revolving fund with other funding programs, such as the centennial clean water program, and the federal Clean Water Act section 319 nonpoint source ~~((fund))~~ program.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-030 Definitions. For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities**, see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the revolving fund.

(7) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

((7)) (8) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from large commercial establishments, industrial facilities, or institutional sources such as state schools, hospitals, and prisons.

((8)) (9) **Competitive funding** means moneys available for projects through a statewide evaluation process.

((9)) (10) **Completion date or expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

((10)) (11) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

((11)) (12) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

((12)) (13) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

((13)) (14) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

((14)) (15) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and

other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

((15)) (16) **Department** means the Washington state department of ecology.

((16)) (17) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

((17)) (18) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

((18)) (19) **Draft offer and applicant list** means a catalog of all ~~(projects)~~ applications for financial assistance considered and those proposed for funding, based on ~~(an evaluation and the appropriations in the Washington state capital)~~ estimates of state and federal budgets.

((19)) (20) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

((20)) (21) **Effective date** means the date the loan agreement is signed by the department's water quality program manager.

((21)) (22) **Eligible cost** means the portion of ~~(the)~~ a facilities or activities project that can be funded based on program eligibility as defined in WAC 173-98-100 and in the most recently updated edition of the *Water Quality Financial Assistance Guidelines* (publication # 10-10-049).

(23) **Energy efficiency** means the use of improved technologies and practices to reduce the energy consumption of water quality projects, use energy in a more efficient way, and produce/use renewable energy.

((22)) (24) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

((23)) (25) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC ~~(Submission of plans and reports for construction of wastewater facilities)~~.

((24)) (26) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

((25)) (27) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

((26)) (28) **Environmentally innovative** means projects that demonstrate new or innovative approaches to managing water quality issues in a more sustainable way.

(29) **Equivalent residential unit (ERU)** means a unit of measurement used to express the average sewage loading discharged from a typical full-time single-family dwelling unit.

(30) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

~~((27))~~ (31) Existing need means water pollution control facility's capacity reserved for all users, at the time of application ~~(, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit)~~.

~~((28))~~ (32) Existing residential need means that portion of a water pollution control facility's capacity reserved for ~~((the))~~ residential ~~((population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit))~~ structures that:

(a) Exist within the project service area at the time of application;

(b) Are connected to the facility or scheduled to be connected to the facility in an approved engineering report; and

(c) Will bear the financial burden of paying for the new facility.

~~((29))~~ (33) Facilities, see water pollution control facility.

~~((30))~~ (34) Facilities plan means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC ~~(, Submission of plans and reports for construction of wastewater facilities)~~.

~~((31))~~ (35) Federal capitalization grant ~~((means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund)), see capitalization grant.~~

~~((32))~~ (36) Final offer and applicant list means a catalog of all ~~((projects))~~ applications for financial assistance considered ~~((and proposed for funding))~~ and those offered funding, based on adopted state and federal budgets.

~~((33))~~ (37) Force account means loan project work performed using labor, materials, or equipment of a public body.

~~((34))~~ (38) Forgivable principal means the portion of a loan made by the department that is not required to be paid back by the borrower if allowable by Congress through federal appropriation.

(39) Funding category see "water pollution control activities funding category," ~~((and))~~ "water pollution control facilities funding category," "preconstruction activities funding category," and "green project reserves funding category."

~~((35))~~ (40) Funding cycle means the events related to the competitive process used to allocate moneys from the ~~((Washington state water pollution control))~~ revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source ~~((fund))~~ program for a state fiscal year.

~~((36))~~ (41) General obligation debt means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

~~((37))~~ (42) Green infrastructure means a wide array of practices at multiple scales that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring and harvesting and using storm water.

(43) Green project reserves means water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects.

(44) Green project reserves funding category means that portion of the revolving fund dedicated to green project reserves projects.

(45) Growth means the portion of the total flows to a facility that is reserved for future residential, commercial, industrial, and institutional flows.

(46) Indirect cost means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

~~((38))~~ (47) Infiltration and inflow means water, other than wastewater, that enters a sewer system.

~~((39))~~ (48) Infiltration and inflow correction means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

~~((40))~~ (49) Initiation of operation means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur ~~((prior to))~~ before final inspection or project completion.

~~((41))~~ (50) Intended use plan ~~((IUP))~~ means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the ~~((water pollution control))~~ revolving fund for a fiscal year as described in section 606(c) of the act.

~~((42))~~ (51) Landowner agreement means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

~~((43))~~ (52) Loan agreement means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

~~((44))~~ (53) Loan default means failure to make a loan repayment to the department within sixty days after the payment was due.

~~((45))~~ (54) Nonpoint source water pollution means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

~~((46))~~ (55) Perpetuity means the point at which the ~~((water pollution control))~~ revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

~~((47))~~ (56) Plans and specifications means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

~~((48))~~ (57) Preconstruction activities means facility planning, facility design, rate studies, value engineering, sewer use ordinances, and utility formation.

(58) Preconstruction activities funding category means that portion of the revolving fund dedicated to preconstruction activities projects.

(59) Preliminary project priority list means a catalog of all ~~(projects)~~ applications for financial assistance considered for funding ~~(based on the governor's budget)~~ and submitted to the Washington state legislature for its consideration during budget development.

~~((49))~~ (60) Project means a water quality improvement effort funded with a grant or loan.

~~((50))~~ (61) Project completion or expiration means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

~~((51))~~ (62) Public body means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

~~((52))~~ (63) Public health emergency means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

~~((53))~~ (64) Recipient means a public body that has an effective loan agreement with the department.

~~((54))~~ (65) Reserve account means an account created by the recipient to secure the payment of the principal and interest on the ~~(water pollution control)~~ revolving fund loan.

~~((55))~~ (66) Residential means the portion of the total flows to a facility that originates from single-family houses, apartments, mobile home parks, small commercial facilities, and community facilities such as local K-12 public schools, libraries, and fire stations.

(67) Revenue-secured debt means an obligation of the recipient secured by a pledge of the revenue of a utility.

~~((56))~~ (68) Revolving fund means ~~(the)~~ Washington state's water pollution control revolving fund.

~~((57))~~ (69) Riparian buffer or zone means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

~~((58))~~ (70) Scope of work means a detailed description of project tasks, milestones, and measurable objectives.

~~((59))~~ (71) Senior lien obligations means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

~~((60))~~ (72) Service area population means the number of people served in the area of the project.

~~((61))~~ (73) Severe public health hazard means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

~~((62))~~ (74) Sewer means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

~~((63))~~ (75) Side sewer means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

~~((64))~~ (76) State environmental review process (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

~~((65))~~ (77) Total eligible project cost means the sum of all expenses associated with a water quality project that are eligible for funding.

~~((66))~~ (78) Total project cost means the sum of all expenses associated with a water quality project.

~~((67))~~ (79) Water efficiency projects means the use of improved technologies and practices to deliver equal or better water quality services with less water. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future.

(80) Water pollution means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders ~~(such)~~ the waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

~~((68))~~ (81) Water pollution control activities or activities means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

~~((69))~~ (82) Water pollution control activities funding category means that portion of the ~~(water pollution control)~~ revolving fund dedicated to nonpoint source pollution projects.

~~((70))~~ (83) Water pollution control facility or facilities means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

~~((71))~~ (84) Water pollution control facilities funding category means that portion of the ~~(water pollution control)~~ revolving fund dedicated to facilities projects.

~~((72))~~ **(85) Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

~~((73))~~ **(86) Water resource inventory area** (WRIA) means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-040 (~~(Water pollution control)~~ **Revolving fund (~~(revolving fund))~~) uses. The revolving fund may be used for the following purposes:**

- (1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;
- (2) To provide loans for nonpoint source pollution control management projects that implement the *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution*, and for developing and implementing a conservation and management plan under section 320 of the act;
- (3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;
- (4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;
- (5) To guarantee or (~~(purchase))~~ buy insurance for local obligations to improve credit market access or reduce interest rates;
- (6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; (~~and~~)
- (7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW; and
- (8) To provide loan subsidies in the form of reduced interest rates and forgivable principal to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-100 Eligible. Certain projects or project elements(~~(s))~~ may be eligible for loan assistance including, but not limited to, the following(~~(, may be eligible for loan assistance))~~):

- (1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;
- (2) **BMP implementation** on private property:
 - (a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;
 - (b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a

conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

- (3) **BMP implementation** on public property;
- (4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;
- (5) **Computer equipment and software** specific to the funded project and preapproved by the department;
- (6) **Confined animal feeding operations** (CAFO) water pollution control projects located in federally designated national estuaries;
- (7) **Conservation planning;**
- (8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;
- (9) **Diagnostic studies** to assess current water quality;
- (10) **Education and outreach** efforts for the public;
- (11) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;
- (12) **Equipment and tools** as identified in a loan agreement;
- (13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial:
 - (a) **Planning:**
 - (i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the Growth Management Act;
 - (ii) **Storm water planning;**
 - (iii) **Facilities planning** for water pollution control facilities;
 - (b) **Design** preparation of plans and specifications for water pollution control facilities;
 - (c) **Construction of:**
 - (i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;
 - (ii) Combined sewer overflow abatement;
 - (iii) Facilities to meet existing needs plus twenty years for growth;
 - (iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site (~~(septic))~~ sewage systems;
 - (v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and
 - (vi) New sewer systems to eliminate failing or failed on-site (~~(septic))~~ sewage systems;
 - (d) **Value engineering** for water pollution control facilities;
 - (e) **Design or construction** costs associated with design-build or design-build-operate contracts.

~~((14))~~ ~~((Ground water))~~ **Green project reserves** projects such as water efficiency, energy efficiency, green infrastructure, and environmentally innovative projects or project elements as outlined in WAC 173-98-125, and as defined by EPA guidance.

~~((15))~~ **Groundwater protection activities** such as well-head protection and critical aquifer recharge area protection;

~~((16))~~ **Hardship assistance** for preconstruction activities, wastewater treatment facilities construction, ~~((storm water,))~~ and on-site ~~((septic))~~ sewage system repair and replacement;

~~((17))~~ **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

~~((18))~~ **Lake implementation and associated planning activities** on lakes with public access;

~~((19))~~ **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application); or

(b) For wetland habitat preservation;

~~((20))~~ **Landscaping for erosion control** directly related to a project, or site-specific landscaping ~~((in order))~~ to mitigate site conditions and comply with requirements in the SERP;

~~((21))~~ **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

~~((22))~~ **Light refreshments** for meetings when preapproved by the department;

~~((23))~~ **Mitigation, determined on a case-by-case basis, that addresses water quality impacts directly related to the project:**

~~((24))~~ **Monitoring BMP effectiveness;**

~~((25))~~ **Monitoring equipment** used for water quality assessment;

~~((26))~~ **Monitoring water quality;**

~~((27))~~ **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;

~~((28))~~ **On-site ~~((septic))~~ sewage systems:**

(a) **On-site ~~((septic))~~ sewage system repair and replacement** for residential and small commercial systems;

(b) **On-site ~~((wastewater))~~ sewage system** surveys;

(c) **Local loan fund** program development and implementation;

~~((29))~~ **Planning, including** comprehensive basin plans, watershed plans, and area-wide water quality ~~((development))~~ plans;

~~((30))~~ **Refinancing** of water pollution control facility debt;

~~((31))~~ **Riparian and wetlands habitat restoration** and enhancement, including revegetation;

~~((32))~~ **Sales tax;**

~~((33))~~ **Spare parts, an** initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

~~((34))~~ **Stream restoration projects;**

~~((35))~~ **Total maximum daily load study** development and implementation;

~~((36))~~ **Training** to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;

~~((37))~~ **Transferring ownership** of a small wastewater system to a public body;

~~((38))~~ **Wastewater or storm water utility development;**

~~((39))~~ **Wastewater or storm water utility rate** or development impact fee studies;

~~((40))~~ **Water quality education** and stewardship programs.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-110 ~~((Noneligible.))~~ Ineligible. Certain projects or project elements ~~((are))~~ are not eligible for loan assistance including, but not limited to, the following ~~((are not eligible for loan assistance))~~:

(1) **Abandonment** or demolition of existing structures not interfering with proposed construction of a wastewater or storm water treatment facility;

(2) **Acts of nature** that alter the natural environment, thereby causing water quality problems;

(3) **Aquatic plant control** for aesthetic reasons, navigational improvements, or other purposes unrelated to water quality;

(4) **Bond costs** for debt issuance;

(5) **Bonus or acceleration payments** to contractors to meet contractual completion dates for construction;

(6) **Commercial, institutional or industrial** wastewater pollution control activities or facilities or portions of those facilities that are solely intended to control, transport, treat, dispose, or otherwise manage wastewater;

(7) **Commercial, institutional or industrial** monitoring equipment for sampling and analysis of discharges from municipal water pollution control facilities;

(8) **Commercial, institutional or industrial** wastewater pretreatment;

(9) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

(10) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(11) **Engineering reports;**

(12) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;

(13) **Flood control**, projects or project elements intended solely for flood control;

(14) **Funding application preparation** for loans or grants;

(15) **Interest** on bonds, interim financing, and associated costs to finance projects;

(16) **Landscaping** for aesthetic reasons;

(17) **Legal expenses** associated with claims and litigation;

- (18) **Lobbying** or expenses associated with lobbying;
- (19) **Mitigation** is not eligible unless it addresses water quality impacts directly related to the project, and will be determined on a case-by-case basis;
- (20) **Office furniture** not included in the recipient's indirect rate;
- (21) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city ~~(council member)~~ council member, and city attorney ~~(, etc.)~~;
- (22) **Operation and maintenance** costs;
- (23) **Overtime** differential paid to employees of public body to complete administrative or force account work;
- (24) **Permit fees**;
- (25) **Personal injury compensation** or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means;
- (26) **Professional dues**;
- (27) **Reclamation** of abandoned mines;
- (28) **Refinancing** of existing debt;
- (29) **Solid or hazardous waste cleanup**;
- (30) **Utility local improvement district (ULID) formation**;
- (31) **Vehicle purchase**, except for vehicles intended for the transportation of liquid, dewatered sludge, septage, or special purpose vehicles as approved by the department; and
- ~~((31))~~ (32) **Water quantity** or other water resource projects that solely address water quantity issues.

NEW SECTION

WAC 173-98-130 Green project reserves projects.

When considering eligibility of green project reserves, the department will consider guidance documents provided by the EPA as well as the provisions provided in subsections (1) through (4) of this section.

(1) **Water efficiency.** Water efficiency projects are building activities that implement capital water efficiency projects. Water efficiency encompasses conservation and reuse efforts, as well as water loss reduction and prevention, to protect water resources for the future. Water efficiency projects can be stand-alone projects, or project elements of a larger capital improvement project.

(2) **Energy efficiency.** Energy efficiency projects include renewable energy projects that provide power to publicly owned treatment works (POTW), Collection System Infiltration/Inflow (I/I) detection equipment, and POTW energy management planning. Energy efficiency projects can be stand-alone projects, or project elements of a larger capital improvement project.

(3) **Green infrastructure.** Green infrastructure projects can be stand-alone projects, or project elements of a larger capital improvement project.

(a) On a regional scale, green infrastructure is the preservation and restoration of natural landscape features, such as forests, flood plains and wetlands, coupled with policies that reduce overall impervious impacts in a watershed.

(b) On the local scale, green infrastructure consists of site- and neighborhood-specific practices, such as bioretention, trees, green roofs, porous pavements, and cisterns.

(4) **Environmentally innovative projects.** Environmentally innovative projects include projects that:

(a) Achieve pollution prevention or pollutant removal with reduced costs;

(b) Prepare a POTW for adaptation to the long-term effects of climate change and/or extreme weather;

(c) Produce total/integrated water resources management planning likely to result in a capital project;

(d) Construct buildings or renovation of an existing building on POTW facilities that are U.S. Building Council LEED certified; and

(e) Develop decentralized wastewater treatment solutions to existing deficient or failing on-site wastewater systems.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-200 Application for funding. (1) To apply for funding, the applicant must submit a completed application to the department. The department will provide the application on the ~~((agency))~~ department web site.

(2) The applicant may be asked to provide the following project information:

(a) Basic information such as names of contacts, addresses, and other tracking information;

(b) Project summary;

(c) Project goals, objectives, and milestones;

(d) Overall water quality benefits;

(e) Public health benefits;

(f) Sources of pollution addressed;

(g) How the project will address state and federal mandates, elements in ~~((²))~~ *Washington's Water Quality Plan to Control Nonpoint Sources of Pollution*, ~~((²))~~ or other such plans;

(h) Performance measures and postproject assessment monitoring;

(i) Readiness to proceed, likelihood of success, and measures of success specific to the project;

(j) Local initiatives, commitments, or priorities related to the project; or

(k) Other information requested by the department.

(3) Minimum score on application.

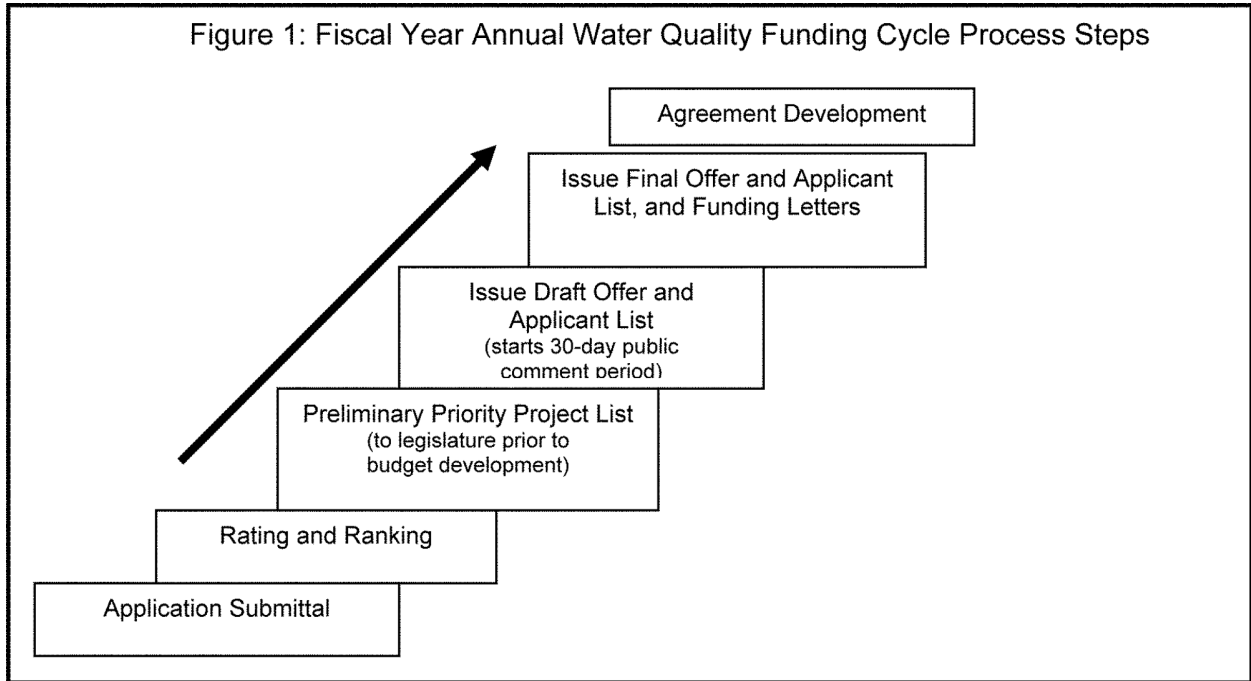
(a) An applicant must receive a minimum score equal to fifty percent of the available points on section three, water quality and public health improvements, of the water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than fifty percent of the points available on section three if demand for funding is low; and

(b) An applicant must also receive a minimum score equal to sixty percent of the available points on the entire water quality financial assistance application to be eligible for funding consideration. The department may offer funding to applicants with fewer than sixty percent of the points available on the financial assistance application if demand for funding is low.

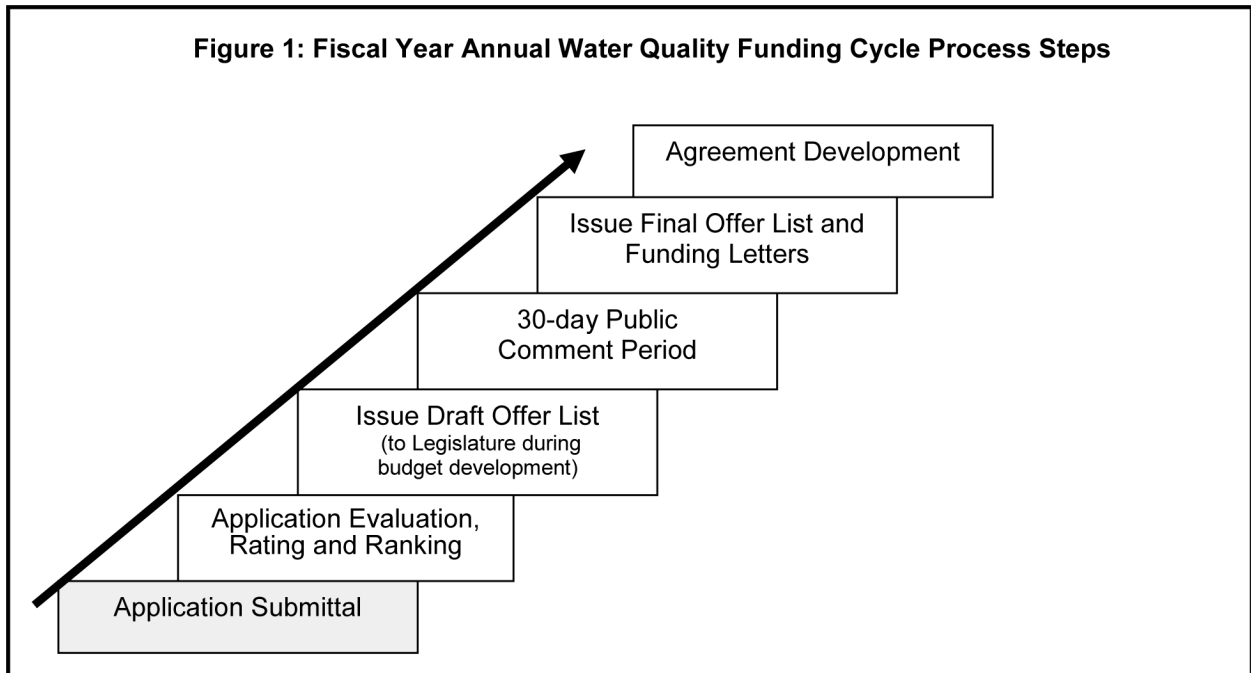
AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-210 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.

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(2) In general, ecology will provide the following services, although annual modifications may be made to accommodate legislative schedules and requirements:

- (a) Make available the application and applicable guidelines before the associated funding cycle begins;
- (b) Conduct at least one application workshop in each of ecology's four regions;
- (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
- (d) ~~((After the application deadline,))~~ Complete an initial review of project proposals for funding eligibility after the application deadline;
- (e) Request other agencies to provide evaluation assistance as needed;
- (f) Rate and rank the applications using a consistent scoring system;
- (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
- (h) Submit a preliminary project priority list to the state legislature ~~((for))~~ during budget ((consideration)) development;
- (i) Develop a combined Draft Offer and Applicant List and a Draft ((revolving fund)) IUP;
- (j) Facilitate a public review and comment period for the combined Draft Offer and Applicant List and ~~((revolving fund))~~ Draft IUP;
- (k) Sponsor at least one public meeting to explain the combined Draft Offer List and ((Applicant List)) and ((the revolving fund)) Draft IUP;
- (l) Develop a combined ~~((Final Offer and Applicant List))~~ Final Offer and Applicant List and a Final ((revolving fund)) IUP. Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;
- (m) Issue funding decision letters to all applicants; and
- (n) Negotiate, develop, and finalize loan agreements.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-220 Final offer and applicant list. Loan offers identified on the ~~((Final Offer and Applicant List))~~ will be effective for up to one year from the publication date of the ~~((Final Offer and Applicant List))~~. Loan offers that do not result in a signed agreement are automatically ~~((terminated))~~ ended.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-230 Revolving fund intended use plan (IUP). (1) As required by the EPA, the department issues ~~((a))~~ a Draft IUP and a Final IUP for each funding cycle.

(2) The Final IUP is issued in conjunction with the ~~((Final Offer and Applicant List))~~.

(3) It contains a detailed report of how the department expects to allocate moneys available in the current funding cycle.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-300 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

- (a) Service area population;
 - (b) Existing residential need at the time of application; and
 - (c) Level of financial burden placed on the ratepayers.
- (2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI) for the project area. The annual residential sewer user fee is calculated using ~~((the construction cost estimates including))~~:

- (i) Estimated construction costs;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current and future annual debt service on the project;
- (vi) The ~~((revolving fund))~~ annual debt service for the ~~((funded))~~ project if funded with a revolving fund loan;
- (vii) Other grants and loans funding the project;
- (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
- (ix) The total number of households or equivalent residential units (ERUs) existing at the time of application that will be served by the project;
- (x) The nonresidential share of the total annual costs is deducted; and
- (xi) ~~((Median household income))~~ MHI for the project area;

(b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;

(c) The most recent available ~~((census data))~~ American community survey data determines the ~~((median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the Consumer Price Index))~~ MHI; ~~((and))~~

(d) If ~~((median household income))~~ MHI data are not available for a community ~~((or if the community))~~, the county MHI in which the community resides will be used; and

(e) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the ~~((median household income))~~ MHI for the project area.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years, and forgivable principal loans as specified in WAC 173-98-330.

(6) **Figure 2. Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below ((2.0%)) <u>two percent</u>	((2.0%)) <u>Two percent and above, but Below ((3.0%)) <u>three percent</u></u>	((3.0%)) <u>Three percent and above, but Below ((5.0%)) <u>five percent</u></u>	((5.0%)) <u>Five percent and above</u>
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant or <u>forgivable principal</u> dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to ((median household income-)) MHI)((+))
Loan Hardship-Funding Continuum	Loan at ((60%)) <u>sixty percent</u> of market rate	Loan at ((40%)) <u>forty percent</u> of market rate	Loan at ((20%)) <u>twenty percent</u> of market rate	Loan at ((0%)) <u>zero percent</u> interest

(7) Partially funded projects: If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, subject to funding ceilings, in the next funding cycle, and on a case-by-case basis. The department may require further hardship analysis before offering the remaining moneys.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-310 On-site ~~((septic))~~ sewage system repair and replacement programs. (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site ~~((septic))~~ sewage repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county ~~((median household income))~~ MHI. For information on how the market rate is determined, see WAC 173-98-400.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the ~~((median household income))~~ MHI, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

Figure 3.

Homeowner Income is:	((20)) <u>Twenty-Year Term</u>	((5)) <u>Five-Year Term</u>	Hardship Level
Above ((80%)) <u>eighty percent</u> county MHI	((60%)) <u>Sixty percent</u> of MR	((30%)) <u>Thirty percent</u> of MR	Nonhardship
((50-80%)) <u>Fifty - eighty percent</u> county MHI	((30%)) <u>Thirty percent</u> of MR	Up to ((15%)) <u>fifteen percent</u> of MR	Moderate
Below ((50%)) <u>fifty percent</u> county MHI	Up to ((15%)) <u>fifteen percent</u> of MR	((0%)) <u>Zero percent</u>	Severe

~~((Figure 4.))~~

(4) Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Figure 4.

Small Commercial Enterprise Annual Gross Revenue is:	((20)) <u>Twenty-Year Term</u>	((5)) <u>Five-Year Term</u>	Hardship Level
Above (((\$100,000)) <u>one hundred thousand dollars</u>	((60%)) <u>Sixty percent of MR</u>	((30%)) <u>Thirty percent of MR</u>	Nonhardship
(((\$50,000--\$100,000)) <u>Fifty thousand dollars - one hundred thousand dollars</u>	((30%)) <u>Thirty percent of MR</u>	Up to ((+5%)) <u>fifteen percent of MR</u>	Moderate
Below (((\$50,000)) <u>fifty thousand dollars</u>	Up to ((+5%)) <u>fifteen percent of MR</u>	((0%)) <u>Zero percent</u>	Severe

~~((4))~~ (5) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the ~~((RECIPIENT))~~ recipient regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

- (a) Homeowner income:
 - (i) Above ~~((80%))~~ eighty percent of county MHI;
 - (ii) ~~((50 to 80%))~~ Fifty to eighty percent of county MHI;
 - (iii) Below ~~((50%))~~ fifty percent of county MHI.
- (b) Small commercial enterprise annual gross revenue:
 - (i) Above ~~(((\$100,000))~~ one hundred thousand dollars;
 - (ii) ~~(((\$50,000))~~ Fifty thousand dollars to (((\$100,000)) one hundred thousand dollars;
 - (iii) Below ~~(((\$50,000))~~ fifty thousand dollars.

Figure 5.

<u>Sewer User Fee divided by MHI</u>	<u>Below two percent</u>	<u>Two percent and above, but Below three percent</u>	<u>Three percent and above, but Below five percent</u>	<u>Five percent and above</u>
<u>Hardship Designation</u>	<u>Nonhardship</u> (Low sewer user rates in relation to MHI)	<u>Moderate Hardship</u>	<u>Elevated Hardship</u>	<u>Severe Hardship</u> (Very high sewer user rates in relation to MHI)
<u>Loan Hardship-Funding Continuum</u>	<u>Not eligible for forgivable principal loan</u>	<u>Fifty percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520</u>	<u>Seventy-five percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520</u>	<u>One hundred percent forgivable principal loan up to ceiling amount defined in WAC 173-98-520</u>

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-320 ~~((Storm water projects-))~~ Forgivable principal. ~~((1))~~ There are three primary factors in determining financial hardship for storm water projects:

- (a) Service area population;
- (b) Presence of a permit; and
- (c) Community's median household income (MHI).

~~((2))~~ **Service area population, presence of permit, and median household income.** Applicants under a permit, with a service area population of twenty-five thousand or less, and whose MHI is sixty percent or less of the average statewide MHI can request hardship funding consideration. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

~~((3))~~ If MHI data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI.

~~((4))~~ Figure 5 describes the interest rate schedule. For information on how the market rate is determined, see WAC 173-98-400.

Figure 5.

Service area MHI is:	20-Year Term	5-Year Term
Above 60% statewide MHI	Not eligible	Not eligible
60% or below statewide MHI	Up to 30% of MR	Up to 15% of MR)

~~((1))~~ Forgivable principal. The department will apply the funding hardship continuum provided in figure 5 below to determine the amount of forgivable principal loan funding provided to an eligible hardship project. Financial hardship will be determined based on the provisions in WAC 173-98-300.

~~((2))~~ Figure 5. Forgivable principal hardship continuum (to determine amounts of forgivable principal loan allowed for eligible costs using revolving funds):

NEW SECTION

WAC 173-98-330 Preconstruction activity category.

(1) An applicant can request hardship-funding consideration when submitting a funding application if the service area population is twenty-five thousand or less and the MHI is less than eighty percent of the state MHI.

(2) If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) The most recent available American community survey data determines the MHI.

(4) If MHI data are not available for a community then the county MHI in which the community resides will be used.

(5) If the applicant disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI for the project area.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

(a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and

(b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 (~~or 173-98-3010~~) and 173-98-310 for hardship interest rates.

Figure 6: Loan Terms and Interest Rates

Repayment Period	Interest Rate
Up to ((5)) <u>five</u> years:	((30%)) <u>Thirty percent</u> of the average market rate.
More than ((5)) <u>five</u> but no more than ((20)) <u>twenty</u> years:	((60%)) <u>Sixty percent</u> of the average market rate.

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-410 Refinancing. (1) There are two kinds of refinance with different ~~((regulations))~~ rules: Standard refinance and interim refinance.

(2) **Standard refinance** refers to a completed project funded with moneys from a source other than the department. It is limited to water pollution control facilities where project construction began after March 7, 1985.

(a) Applicants requesting standard refinancing must meet all the requirements contained in the act;

(b) Standard refinance projects will only be funded if there is limited demand for moneys for new projects;

(c) All department prerequisites must have been met at the time the project was undertaken;

(d) If multiple standard refinance applications are received, priority will be given based on impacts to the ~~((rate payers))~~ ratepayers in the service area of the project;

(e) Standard refinance projects are not eligible for hardship financial assistance; and

(f) Repayment begins six months after a funding agreement becomes effective.

(3) **Interim refinance** applies to a project that is in progress using moneys from a source other than the department. Interim refinance retires existing debt and also covers the remaining eligible project costs. Interim refinance projects must meet all applicable requirements of this chapter.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-430 Repayment. When a project is complete and all disbursements are made, the department will execute a final amendment that will include:

(1) A final loan repayment schedule that reflects the length of repayment terms and the principal from disbursements and accrued interest;

(2) The first repayment of principal and interest will be due one year after the initiation of operation date, or one year after the project completion date, whichever occurs first;

(3) Equal payments will be due every six months;

(4) If the due date for any payment falls on a Saturday, Sunday, or designated holiday for Washington state agencies, the payment shall be due on the next business day for Washington state agencies;

(5) Loan balances may be repaid or additional principal payments may be made at any time without penalty; and

(6) The department may assess a late fee for delinquent payments, according to WAC 173-98-470.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-450 Loan reserve requirements. For a revenue obligation secured loan with terms ~~((greater))~~ more than five years, the recipient must accumulate a reserve account equivalent to the annual debt service on the loan. This reserve must be established before or during the first five years of the loan repayment period. The reserve account may be used to make the last two payments on the revolving fund loan.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-460 Loan default. In the event of loan default, the state of Washington may withhold any amounts due to the recipient from the state for other purposes. ~~((Such))~~ The moneys will be applied to the debt.

PART 5

~~((WATER POLLUTION CONTROL REVOLVING-FUND REQUIREMENTS FOR MANAGING LOANS))~~

FUNDING DISTRIBUTION AND PROJECT DEVELOPMENT PROCESS

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-500 Funding categories. (1) The revolving fund is ~~((split))~~ ~~divided~~ into ~~((two))~~ ~~four~~ funding categories:

(a) Green project reserves category: An amount equal to twenty-five percent of the capitalization grant is allocated to the green project reserves category.

(b) Moneys for the green project reserves category are allocated before the remaining revolving fund is divided between the other categories; and

(c) Water pollution control facilities category: ~~((Eighty))~~ After allocating revolving fund moneys to the green project reserves category, seventy-five percent of the remaining revolving fund ~~((is used))~~ will be available for facilities projects as established under section 212 of the act; and

~~((b))~~ (d) Preconstruction activities category: After allocating revolving fund moneys to the green project reserves category, five percent of the remaining revolving fund will be available for preconstruction activities category; and

(e) Water pollution control activities category: After allocating revolving fund moneys to the green project reserves category, twenty percent of the remaining revolving fund will be available for the implementation of programs or projects established under the ~~((2))~~ *Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution.* ~~((2))~~

(2) Forgivable principal.

(a) Additional subsidization in the form of forgivable principal loans may be provided at an amount equal to nine percent of the capitalization grant;

(b) The amount of forgivable principal provided may be adjusted up to an amount equal to thirty percent of the capitalization grant to meet minimum requirements for green project reserves and demand for hardship funding; and

(c) The percentages listed in (a) and (b) of this subsection for forgivable principal offered may be adjusted as required to meet federal laws;

(d) Additional subsidization in the form of forgivable principal loans may be provided for eligible hardship projects, eligible green project reserves projects or project elements, and eligible preconstruction activities.

(3) If the demand is limited in ~~((either))~~ any of the funding ~~((category))~~ categories or to meet funding levels required in federal laws, the department can shift moneys between the funding categories.

(a) The amount of revolving funds dedicated to the green project reserves category may be adjusted as required to meet minimum requirements for forgivable principal or to meet funding levels required in federal laws;

(b) The amount of forgivable principal provided to the green project reserves category may be adjusted as required to meet green project reserves minimum requirements or to meet funding levels required in federal laws.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-520 Ceiling amounts. (1) **Green project reserves category:**

(a) No more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) The ceiling amount for forgivable principal provided for eligible green project reserves projects is up to fifty percent of total eligible project costs. If demand is limited for green project reserves projects, the ceiling amount may be raised to fully use available funding.

(2) **Preconstruction activities category:**

(a) No more than twenty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(b) The ceiling amount for a forgivable principal loan provided for financial hardship for WAC 173-98-330 is up to fifty percent of the eligible project costs. If demand is limited for projects eligible for preconstruction category, the ceiling amount may be raised to fully use available funding.

(c) The ceiling amount for this category applies to the combined total of all preconstruction activities for loans and forgivable principal loans.

(3) **Water pollution control facilities category:**

(a) ~~((Not))~~ No more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; ~~((and))~~

(b) The ceiling amount for a forgivable principal loan provided for financial hardship for WAC 173-98-330 is five million dollars. If a forgivable principal loan is provided for a hardship project in conjunction with a centennial program grant award for hardship, then the ceiling amount for the combined forgivable principal loan and centennial program grant is five million dollars; and

(c) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

~~((2))~~ (4) Water pollution control activities category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

~~((3))~~ Partially-funded projects: If a project is offered partial funding due to the lack of available revolving fund moneys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

~~((4))~~ (5) **Water pollution control facilities construction bid overruns:**

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

~~((5))~~ (6) **Water pollution control facilities construction change orders:**

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

(7) If a project qualifies for both hardship funding and green project reserves funding, then the ceiling amount for total forgivable principal and centennial grant funding for the project is the combined ceiling amount of both hardship and green project reserves categories.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-530 Step process for water pollution control facilities. (1) The step process is required for facilities projects. The process begins with site-specific planning, and continues through design to construction.

(2) For steps one through three, an applicant may only apply for funding for one step of the process at a time. At the time of application, completion of the previous steps must be approved by the department. Funding of one step does not guarantee the funding of subsequent steps.

(3) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. A facilities plan must be approved by the department before an application for design can be considered for funding.

Facilities plans approved by the department more than two years (~~(prior to)~~) before the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding. The applicant must also have a current rate study that includes the proposed project before an application for construction can be considered for funding. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The applicant must have an adopted fee ordinance based on the current rate study that includes the proposed project before the department will sign a loan agreement.

(4) **Combined steps for smaller design-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and

approved by the department within one year of the effective date of the funding agreement. The applicant must also complete a rate study that includes the proposed project and adopt a fee ordinance based on the rate study before the department will approve plans and specifications as required in WAC 173-98-560, approval of plans and specifications. The utility rate proposed in the rate study must be adequate to pay for O&M, debt service, and replacement of short lived assets, and any other associated project costs. The total project costs for step four projects must be five million dollars or less.

(5) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

~~**WAC 173-98-550 ((Declaration of construction after project completion-))**~~ **Preconstruction activities category.** ~~((Recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project completion-))~~ **Eligibility.** Only applicants with a population of twenty-five thousand or less and a median household income below the state median household income are eligible for funding in the preconstruction activities category.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

~~**WAC 173-98-560 ((Performance measures and post-project assessment-))**~~ **Approval of plans and specifications.** ~~((1) The department may require a recipient to develop and implement a postproject assessment plan.~~

~~((2) A recipient may be required to participate in a post-project survey and interview regarding performance measures-))~~ The department must approve all plans and specifications before solicitation of bids according to chapter 173-240 WAC.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-600 Design-build and design-build-operate project requirements. (1) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations.

(2) The ~~((design and))~~ construction portions of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for reduced interest rate and a forgivable principal loan if the public body can demonstrate financial hardship in accordance with WAC 173-98-300.

(3) The following conditions apply to design-build and design-build-operate projects:

- (a) The ceiling amounts in WAC 173-98-520;
- (b) If eligible project costs exceed the ceiling amounts in WAC 173-98-520, then public bodies can compete for additional funding in the subsequent funding cycle;
- (c) Interest rates for nonhardship projects are set according to WAC 173-98-400;
- (d) In the case of hardship, a reduced interest rate and a forgivable principal loan may be available for the ~~((design and))~~ construction portion of a design-build-operate project;
- (e) The project scope of work must implement a department-approved facilities plan;
- (f) In addition to the project application information listed in WAC 173-98-200, the project will be evaluated on the applicant's level of administrative and technical expertise;
- (g) Applicants may apply for up to one hundred ten percent of the facilities planning estimate for design and construction. The loan agreement will be written for the final negotiated contract price;
- (h) At the time of application, the following must be provided:
 - (i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to ~~((utilize))~~ use the process;
 - (ii) A department-approved facilities plan;
 - (iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;
- (i) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;
- (j) Costs associated with change orders are not eligible for reimbursement;
- (k) Before delegation authority is granted to the applicant and the loan agreement is signed, the following must be approved by the department:
 - (i) Primary design elements;
 - (ii) Final service agreements and/or contracts;
- (l) Projects funded ~~((prior to))~~ before the effective date of this rule will continue to be managed in accordance with the program guidelines for the year the project was funded; and

(m) Projects must be completed according to the timeline in WAC 173-98-800 and 173-98-810~~((; and~~

~~((n) Projects funded under the alternative contracting service agreement AC/SA pilot rule of 2002 are placed at the top of the "final offer and applicant list" and IUP each year in relative priority to other AC/SA projects. Loan moneys may be disbursed in equal annual payments or by other means that are not detrimental to the perpetuity of the revolving fund)).~~

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-700 General requirements. (1) Recipients must fully comply with all applicable federal, state, and

local laws and ~~((regulations))~~ rules relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-710 The Growth Management Act. (1)

A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means: A county, city, or town that ~~((is required to))~~ must or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in ~~((such))~~ the quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan must be documented by a letter signed by the director and addressed to the public official who signed the loan application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state;

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan for a water pollution control facilities project may not receive loan funds while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department;

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-800 Starting a project. Costs incurred before a loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department or interim refinancing is approved. For more information on interim refinancing, see WAC 173-98-410.

(1) Prior authorization to incur eligible costs.

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the *Final IUP*;

(ii) Costs are incurred between the publication date of the ((⁽²⁾))*Final Offer and Applicant List*((⁽²⁾)) and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred ((~~prior to~~)) before the publication date of the ((⁽²⁾))*Final Offer and Applicant List*((⁽²⁾)) are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) Project initiation. Loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the ((⁽²⁾))*Final Offer and Applicant List*((⁽²⁾)) on which the project was proposed.

(b) Starting a project means making any measurable step toward achieving the milestones, objectives, and overall goals of the project.

(c) Loan offers identified on the ((⁽²⁾))*Final Offer and Applicant List*((⁽²⁾)) will be effective for up to one year from the publication date of the ((⁽²⁾))*Final Offer and Applicant List*((⁽²⁾)). ~~Loan~~ Loan offers that do not result in a signed agreement are automatically ((~~terminated~~)) ended, see WAC 173-98-220 ((~~Final offer and applicant list~~)).

(3) Project initiation extension. Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year; or

(c) Other reasons as identified by the department on a case-by-case basis.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-810 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) Project completion.

(a) Work on a project must be completed within five years of the publication date of the ((⁽²⁾))*Final Offer and Applicant List*((⁽²⁾)) on which the project was proposed. A shorter time period may be specified in the loan agreement; and

(b) Completing a project means completing all milestones and objectives associated with the goals of the loan agreement.

(2) Project completion extension.

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

(i) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request must be made ((~~prior to~~)) before the completion or expiration date of the loan agreement.

NEW SECTION

WAC 173-98-820 Declaration of construction after project completion. Recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project completion.

NEW SECTION

WAC 173-98-830 Performance measures and post-project assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a post-project survey and interview regarding performance measures.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-900 ((Water pollution control)) ~~Revolving fund ((revolving fund))~~ perpetuity. (1) The act requires that the revolving fund be managed in perpetuity.

(2) The department will strive to achieve perpetuity, as defined by WAC 173-98-030, by 2016.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-920 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision in writing to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient has thirty days to submit a written request to the deputy director for a review of the decision;

(4) The deputy director will consider the appeal information, and may choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received. The deputy director's decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to ~~((such))~~ the appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-950 Indemnification. To the extent that the Constitution and laws of the state of Washington permit, the recipient shall indemnify and hold the department harmless from and against any liability for any or all injuries to persons or property arising out of a project funded with a revolving fund loan except for ~~((such))~~ the damage, claim, or

liability resulting from the negligence or omission of the department.

AMENDATORY SECTION (Amending Order 05-16, filed 6/29/07, effective 7/30/07)

WAC 173-98-970 Self-certification. (1) The department may authorize a recipient to certify compliance with selected program requirements. The recipient must:

- (a) Request certification authority;
- (b) Document that it has the capability and resources;
- (c) Document that it is in the best interest of the state;

and

(d) Demonstrate that the request is consistent with state and federal laws and ~~((regulations))~~ rules.

(2) Concurrences required in the environmental review process cannot be delegated to recipients.

WSR 11-13-126

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-07—Filed June 22, 2011, 9:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-09-084.

Title of Rule and Other Identifying Information: Postponing the transition date for title insurers to file their rates with the commissioner.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255 [98504-0255], on July 26, 2011, at 10:00 a.m.

Date of Intended Adoption: July 27, 2011.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail jimt@oic.wa.gov, fax (360) 586-3109, by July 25, 2011.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by July 25, 2011, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will amend WAC 284-29A-030 to postpone by one year the date: Upon which title insurers must file their rates with the commissioner under RCW 48.29.147 and when rate filings must be made under RCW 48.29A.147 rather than RCW 48.29.140.

Reasons Supporting Proposal: The title insurers have indicated that a one year snapshot [snapshot] of data would not be sufficient for determining their rates. A postponement of the transition date of filing the rates with the commissioner would permit the insurers to obtain at least two years of data from their agents and from their own businesses.

Statutory Authority for Adoption: RCW 48.02.060 and 48.29.140.

Statute Being Implemented: RCW 48.29.143 and 48.29.147.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Because this rule simply postpones for one year the transition date to the new rate approval system, it does not require title insurers or title insurance agents to incur any new costs. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.-05.328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

June 22, 2011
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2009-01, filed 7/20/10, effective 8/20/10)

WAC 284-29A-030 Transition to prior approval system. (1) On and after January 1, (~~2012~~) 2013, all rates used in Washington state must be filed and approved under RCW 48.29.147.

(2) Title insurers must submit the rate filings required under RCW 48.29.147 and subsection (1) of this section to the commissioner by September 1, (~~2011~~) 2012, for rates to be effective on January 1, (~~2012~~) 2013. This rule allows the commissioner time to take final action on rates filed under this chapter before the effective date of January 1, (~~2012~~) 2013.

(3) Rates filed under RCW 48.29.140(2) must not be used for commitments issued on or after January 1, (~~2012~~) 2013.

WSR 11-13-127

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 11-04—Filed June 22, 2011, 9:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-10-087.

Title of Rule and Other Identifying Information: General regulations for air pollution sources, chapter 173-400 WAC and Operating permit regulation, chapter 173-401 WAC.

Hearing Location(s): Ecology Headquarters Building, 300 Desmond Drive S.E., Lacey, WA 98503, on July 26, 2011, at 6:00 p.m.

Date of Intended Adoption: August 10, 2011.

Submit Written Comments to: Linda Whitcher, Department of Ecology Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail linda.whitcher@ecy.wa.gov, fax (360) 407-7534, by August 2, 2011.

Assistance for Persons with Disabilities: Contact air quality program at (360) 407-6800, by July 19, 2011, TTY (771) [(711)] or (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The United States Environmental Protection Agency (EPA) established thresholds for greenhouse gas emissions in June 2010 that ecology implemented through amendments to chapter 173-400 WAC, General regulations for air pollution sources and chapter 173-401 WAC, Operating permit regulation. EPA is working on amendments that will defer greenhouse gas permitting requirements for carbon dioxide emissions from biomass-fired and other biogenic sources. They plan to complete this rule making by July 2011 to defer permitting requirements for CO2 emissions from these sources for three years. Before the end of the three year period, EPA intends to issue a second rule making that determines how CO2 emissions should be treated or counted under GHG permitting requirements.

The purpose of this rule amendment is to assure the consistency between the provisions that implement the federal and state clean air acts. These rule amendments will impact greenhouse gas permitting under the prevention to significant deterioration (PSD) and Title V operating permit programs.

Reasons Supporting Proposal: Ecology is required to keep the rules that implement the Washington Clean Air Act in compliance with EPA regulations. These amendments will bring the rules for new source review into compliance with the federal regulations.

Statutory Authority for Adoption: RCW 70.94.510, Washington Clean Air Act.

Statute Being Implemented: Chapter 70.94 RCW, Washington Clean Air Act.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: EPA is currently reviewing comments submitted in response to their proposal to defer greenhouse gas permitting requirements for carbon dioxide emissions from biomass-fired and other biogenic sources. EPA's program is still in development. EPA expects to finalize its proposed rule by July 1, 2011. To maintain consistency and reduce costs for business and industry, ecology intends to adopt revisions to chapters 173-400 and 173-401 WAC that incorporate EPA's final language.

Name of Proponent: Air quality program, department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Linda Whitcher, Lacey, Washington, (360) 407-6875; Implementation and Enforcement: Rich Hibbard, Lacey, Washington, (360) 407-6896.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule revision is exempt from the requirement to prepare a small business economic impact statement. Chapter 19.85 RCW, Regulatory Fairness Act, requires that agencies prepare small business

economic impact statements when adopting new rules. This act contains some specific exemptions including RCW 19.85.025(3), Application of chapter—Limited.

(3) this chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).

RCW 34.05.310(4) states: (4) This section does not apply to:

(c) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

A cost-benefit analysis is not required under RCW 34.05.328. This rule revision is exempt from the requirement to prepare a cost-benefit analysis in compliance with RCW 34.05.328 (5)(b) (iii): Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

June 22, 2011

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-116 Increment protection. This section takes effect on the effective date of EPA's incorporation of this section into the Washington state implementation plan.

(1) Ecology will periodically review increment consumption. Within sixty days of the time that information becomes available to ecology that an applicable increment is or may be violated, ecology will review the state implementation plan for its adequacy to protect the increment from being exceeded. The plan will be revised to correct any inadequacies identified or to correct the increment violation. Any changes to the state implementation plan resulting from the review will be subject to public involvement in accordance with WAC 173-400-171 and EPA approval.

(2) PSD increments are published in 40 CFR 52.21(c) as ~~((published in the Federal Register as final rule on October 20, 2010))~~ adopted by reference in WAC 173-400-720 (4)(a)(iv).

(3) Exclusions from increment consumption. The following concentrations are excluded when determining increment consumption:

(a) Concentrations of particulate matter, PM-10, or PM-2.5, attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(b) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(c) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources, which are affected by a revision to the SIP approved by the administrator of the environmental protection agency. Such a revision must:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by the administrator.

(ii) Specify that the time period for excluding certain contributions in accordance with (c)(i) of this subsection is not renewable;

(iii) Allow no emissions increase from a stationary source, which would:

(A) Impact a Class I area or an area where an applicable increment is known to be violated; or

(B) Cause or contribute to the violation of a national ambient air quality standard.

(iv) Require limitations to be in effect by the end of the time period specified in accordance with (c)(i) of this subsection, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-720 Prevention of significant deterioration (PSD). (1) No major stationary source or major modification to which the requirements of this section apply is authorized to begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) WAC 173-400-113 (3) and (4).

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) The proposed major new source or major modification will comply with all applicable new source performance standards (40 CFR Part 60), National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61), and emission

standards adopted under chapter 70.94 RCW that have been incorporated into the Washington state implementation plan; and

(iv) The following subparts of 40 CFR 52.21, in effect on ~~((October 20, 2010, and the amendments to 40 CFR 52.21 as published in the Federal Register as final rule on October 20, 2010, which are adopted by reference))~~ July 1, 2011. Exceptions are listed in (b)(i), (ii), and (iii) of this subsection:

Section	Title
40 CFR 52.21 (a)(2)	Applicability Procedures.
40 CFR 52.21 (b)	Definitions.
40 CFR 52.21 (c)	Ambient air increments.
40 CFR 52.21 (d)	Ambient air ceilings.
40 CFR 52.21 (h)	Stack heights.
40 CFR 52.21 (i)	Review of major stationary sources and major modifications - source applicability and exemptions.
40 CFR 52.21 (j)	Control technology review.
40 CFR 52.21 (k)	Source impact analysis.
40 CFR 52.21 (l)	Air quality models.
40 CFR 52.21 (m)	Air quality analysis.
40 CFR 52.21 (n)	Source information.
40 CFR 52.21 (o)	Additional impact analysis.
40 CFR 52.21 (p)(1) through (4)	Sources impacting federal Class I areas - additional requirements
40 CFR 52.21 (r)	Source obligation.
40 CFR 52.21 (v)	Innovative control technology.
40 CFR 52.21 (w)	Permit rescission.
40 CFR 52.21 (aa)	Actuals Plantwide Applicability Limitation.

(b) Exceptions to adopting 40 CFR 52.21 by reference.

(i) Every use of the word "administrator" in 40 CFR 52.21 means ecology except for the following:

(A) In 40 CFR 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 CFR 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 CFR 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 CFR 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 CFR 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(F) In 40 CFR 52.21 (b)(37) related to the definition of repowering, "administrator" means the EPA administrator.

(G) In 40 CFR 52.21 (b)(51) related to the definition of reviewing authority, "administrator" means the EPA administrator.

(ii) Each reference in 40 CFR 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (p) (1) - (4) of this section, paragraph (r) of this section, WAC 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 CFR 52.21:

(A) In 40 CFR 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(B) 40 CFR 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(C) 40 CFR 52.21(c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption.

(D) 40 CFR 52.21 (r)(6)

"The provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in paragraphs 40 CFR 52.21 (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 CFR 52.21 (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) The owner or operator shall submit a copy of the information set out in paragraph 40 CFR 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is

emitted by any emissions unit identified in paragraph 40 CFR 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit. For purposes of this paragraph (r)(6)(iii), fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in 40 CFR 52.21 (b)(1)(iii) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

- (iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 CFR 52.21 (r)(6)(iii) setting out the unit's annual emissions, as monitored pursuant to 40 CFR 52.21 (r)(6)(iii), during the calendar year that preceded submission of the report.
- (v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 CFR 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 CFR 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:
 - (a) The name, address and telephone number of the major stationary source;
 - (b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and
 - (c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection)."

(E) 40 CFR 52.21 (r)(7) The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 CFR 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 CFR 70.4 (b)(3)(viii).

(F) 40 CFR 52.21 (aa)(2)(ix) PAL permit means the PSD permit, an ecology issued order of approval issued under

WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source.

(G) 40 CFR 52.21 (aa)(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740.

(H) 40 CFR 52.21 (aa)(9)(i)(b) Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate.

(I) 40 CFR 52.21 (aa)(14) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 CFR 52.21 (aa)(14)(i) through (iii).

(J) 40 CFR 52.21 (aa)(14)(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3).

(iv) 40 CFR 52.21 (r)(2) is not adopted by reference.

AMENDATORY SECTION (Amending Order 10-13, filed 12/1/10, effective 1/1/11)

WAC 173-401-200 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference, unless otherwise defined here. Unless a different meaning is clearly required by context, the following words and phrases, as used in this chapter, shall have the following meanings:

(1) "Affected source" means a source that includes one or more affected units.

(2) "Affected states" are the states or (~~federally recognized~~) federally recognized Tribal Nations:

(a) Whose air quality may be affected when a chapter 401 permit, permit modification, or permit renewal is being proposed; or

(b) That are within fifty miles of the permitted source.

(3) "Affected unit" means a fossil-fuel fired combustion device or a source that opts-in under 40 CFR part 74, that is subject to any emission reduction requirement or limitation under the Acid Rain Program.

(4) "Applicable requirement" means all of the following as they apply to emissions units in a chapter 401 source (including requirements that have been promulgated or approved by EPA, ecology or a local authority through rule making at the time of permit issuance but have future-effective compliance dates):

(a) The following provisions of the Federal Clean Air Act (FCAA):

(i) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the FCAA (Air Pollution Prevention and Control) that implements the relevant requirements of the FCAA, including any revisions to that plan promulgated in 40 CFR 52;

(ii) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C (Prevention of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas), of the FCAA;

(iii) Any standard or other requirement under section 111 (New Source Performance Standards) of the FCAA, including section 111(d);

(iv) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the FCAA, including any requirement concerning accident prevention under section 112 (r)(7) of the FCAA;

(v) Any standard or other requirement of the acid rain program under Title IV of the FCAA (Acid Deposition Control) or the regulations promulgated thereunder;

(vi) Any requirements established pursuant to section 504(b) or section 114 (a)(3) of the FCAA;

(vii) Any standard or other requirement governing solid waste incineration, under section 129 of the FCAA;

(viii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the FCAA;

(ix) Any standard or other requirement for tank vessels, under section 183(f) of the FCAA;

(x) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the FCAA;

(xi) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator has determined that such requirements need not be contained in a Title V permit; and

(xii) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to WAC 173-401-635.

(b) Chapter 70.94 RCW and rules adopted thereunder. This includes requirements in regulatory orders issued by the permitting authority.

(c) In permits issued by local air pollution control authorities, the requirements of any order or regulation adopted by the authority.

(d) Chapter 70.98 RCW and rules adopted thereunder.

(e) Chapter 80.50 RCW and rules adopted thereunder.

(5) "Chapter 401 permit" or "permit" means any permit or group of permits covering a chapter 401 source that is issued, renewed, amended, or revised pursuant to this chapter.

(6) "Chapter 401 source" means any source subject to the permitting requirements of this chapter.

(7) "Continuous compliance" means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, except for

unavoidable excess emissions or other operating conditions during which compliance is not required. Monitoring data includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.

(8) "Delegated authority" means an air pollution control authority that has been delegated the permit program pursuant to RCW 70.94.161 (2)(b).

(9) "Designated representative" shall have the meaning given to it in section 402(26) of the FCAA and the regulations promulgated thereunder and in effect on April 7, 1993.

(10) "Draft permit" means the version of a permit for which the permitting authority offers public participation or affected state review.

(11) "Emissions allowable under the permit" means an enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(12) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(13) The "EPA" or the "administrator" means the administrator of the U.S. Environmental Protection Agency or her/his designee.

(14) "Federal Clean Air Act" or "FCAA" means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392. December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(15) "Final permit" means the version of a chapter 401 permit issued by the permitting authority that has completed all review procedures required by this chapter and 40 CFR §§ 70.7 and 70.8.

(16) "General permit" means a permit which covers multiple similar sources or emissions units in lieu of individual permits being issued to each source.

(17) "Insignificant activity" or "insignificant emissions unit" means any activity or emissions unit located at a chapter 401 source which qualifies as insignificant under the criteria listed in WAC 173-401-530. These units and activities are exempt from permit program requirements except as provided in WAC 173-401-530.

(18) "Intermittent compliance" means any form of compliance other than continuous compliance. A certification of intermittent compliance under WAC 173-401-630(5) shall be filed where the monitoring data or other information available to the permittee shows either there are periods of non-compliance, or periods of time during which the monitoring required by the permit was not performed or recorded.

(19) "Major source" means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping and that

are described in (a), (b), or (c) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1987.

(a) A major source under section 112 of the FCAA, which is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the FCAA, or twenty-five tpy or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) A major stationary source of air pollutants, as defined in section 302 of the FCAA, that directly emits or has the potential to emit, one hundred tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; or

(xxvii) All other stationary source categories, which as of August 7, 1980, were being regulated by a standard promulgated under section 111 or 112 of the FCAA;

(c) A major stationary source as defined in part D of Title I of the FCAA, including:

(i) For ozone nonattainment areas, sources with the potential to emit one hundred tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," fifty tpy or more in areas classified as "serious," twenty-five tpy or more in areas classified as "severe," and ten tpy or more in areas classified as "extreme"; except that the references in this paragraph to one hundred, fifty, twenty-five, and ten tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under section 182 (f)(1) or (2) of the FCAA, that requirements under section 182(f) of the FCAA do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the FCAA, sources with the potential to emit fifty tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas (A) that are classified as "serious," and (B) in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty tpy or more of carbon monoxide; and

(iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit seventy tpy or more of PM-10.

(20) "Permit modification" means a revision to a chapter 401 permit that meets the requirements of WAC 173-401-725.

(21) "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program (whether such costs are incurred by the permitting authority or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).

(22) "Permit revision" means any permit modification or administrative permit amendment.

(23) "Permitting authority" means the department of ecology, local air authority, or other agency authorized under RCW 70.94.161 (3)(b) and approved by EPA to carry out a permit program under this chapter.

(24) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or the regulations promulgated thereunder.

(25) "Proposed permit" means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 40 CFR 70.8.

(26) "Regulated air pollutant" means the following:

(a) Nitrogen oxides or any volatile organic compounds;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under section 111 of the FCAA;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(e) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), including the following:

(i) Any pollutant subject to requirements under section 112(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the FCAA; and

(ii) Any pollutant for which the requirements of section 112 (g)(2) of the FCAA have been met, but only with respect to the individual source subject to section 112 (g)(2) requirement; and

(f) Any air pollutant for which numerical emission standards, operational requirements, work practices, or monitoring requirements applicable to the source have been adopted under RCW 70.94.331, 70.94.380, and 70.94.395.

(27) "Regulated pollutant (for fee calculation)," which is used only for purposes of WAC 173-401-900, means any "regulated air pollutant" except the following:

(a) Carbon monoxide;

(b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the FCAA.

(d) Any regulated air pollutant emitted from an insignificant activity or emissions unit as determined under WAC 173-401-530.

(28) "Renewal" means the process by which a permit is reissued at the end of its term.

(29) "Responsible official" means one of the following:

(a) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding forty-three million in 1992 dollars; or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(b) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(d) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder and in effect on April 7, 1993 are concerned; and

(ii) The designated representative for any other purposes under 40 CFR part 70.

(30) "Section 502 (b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(31) "Small business stationary source" means a stationary source that:

(a) Is owned or operated by a person that employs one hundred or fewer individuals;

(b) Is a small business concern as defined in the Federal Small Business Act;

(c) Is not a major source;

(d) Does not emit fifty tons or more per year of any regulated pollutant; and

(e) Emits less than seventy-five tons per year of all regulated pollutants.

(32) "Solid waste incineration unit" (for purposes of this chapter) means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925). The term "solid waste incineration unit" does not include:

(a) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(b) Qualifying small power production facilities, as defined in section (3)(17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)) or qualifying cogeneration facilities as defined in section (3)(18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes; or

(c) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes, and clean lumber

and that such air curtain incinerators comply with opacity limitations to be established by the administrator by rule.

(33) "State" means any nonfederal permitting authority, including any local agency, interstate association, or state-wide program.

(34) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant. For purposes of this chapter, air contaminants include any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA.

(35) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the FCAA, or a nationally applicable regulation codified by EPA in subchapter C of 40 CFR chapter 1 (in effect on October 6, 2010), that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) Greenhouse gases (GHGs), the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions.

(b) The term "tpy (tons per year) CO₂ equivalent emissions" (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e. For purposes of this subsection (b), prior to July 1, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

(36) "Title I modification" or "modification under any provision of Title I of the FCAA" means any modification under Sections 111 (Standards of Performance for New Stationary Sources) or 112 (Hazardous Air Pollutants) of the FCAA and any physical change or change in the method of operations that is subject to the preconstruction review regulations promulgated under Parts C (Prevention of Significant Deterioration) and D (Plan Requirements for Nonattainment Areas) of Title I of the FCAA.

WSR 11-13-128
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed June 22, 2011, 10:08 a.m.]

Supplemental Notice to WSR 11-12-082.

Preproposal statement of inquiry was filed as WSR 10-15-116.

Title of Rule and Other Identifying Information: Chapter 170-290 WAC, Working connections and seasonal child care programs. Supplemental proposed rule-making notice amending sections in Parts I and II of this chapter, and repealing WAC 170-290-0100.

Hearing Location(s): On Tuesday, July 26, 2011, at 6:00 p.m. to 8:30 p.m., at the Department of Early Learning Office, Nisqually Room, Point Plaza East, Building 2, 6860 Capital Boulevard S.E., Tumwater, WA 98501; on Thursday, July 28, 2011, at 6:00 p.m. to 8:30 p.m., at the Department of Early Learning Office, Downstairs Conference Room, 3600 South Graham Street, Seattle, WA 98118; and on Saturday, July 30, 2011, at 11:00 a.m. to 1:30 p.m., at the Spokane Public Library, Downtown Branch, Room 1-A, 906 West Main Avenue, Spokane, WA 99201.

The previously announced public hearings on July 12, 14 and 16 (noted in WSR 11-12-082) are cancelled.

The deadline for sending written comments on this proposed rule is midnight on Sunday, July 31, 2011.

Comments may be sent at the DEL on-line rules comment web page <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, by e-mail to Rules@del.wa.gov, by fax to (360) 725-4459, or mail to DEL Rules Coordinator, P.O. Box 40972, Olympia, WA 98504-0972.

Everyone who comments on the proposed rules, either in writing or at a public hearing, will receive the department's combined written response, called a *concise explanatory statement*. This statement is also available to anyone who requests it, by e-mailing the DEL rules coordinator at Rules@del.wa.gov, or by writing to the DEL Rules Coordinator, P.O. Box 40972, Olympia, WA 98504-0972.

DEL encourages public use of the department's Facebook and Blog pages on the internet to review and give input on department programs and initiatives. But in order to have a comment become part of the public record for these proposed rules, and to receive the department's concise explanatory statement, the comment must be received by the comment deadline at the on-line comment web page, e-mail, fax or mailing address listed in the "Send written comments to" section of this notice.

Date of Intended Adoption: After August 1, 2011.

Submit Written Comments to: Department of Early Learning (DEL) Rules Coordinator, P.O. Box 40972, Olympia, WA 98504-0972, DEL On-line Comment Web Site <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, or fax (360) 725-4459, by 11:59 p.m., July 31, 2011.

Assistance for Persons with Disabilities: Contact the DEL rules coordinator, by July 21, 2011, (360) 725-4397.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is revising rules in chapter 170-290 WAC, Parts I and II for the

working connections child care (WCCC) and seasonal child care (SCC) programs. Many of the WCCC rules proposed for amendment are applied by reference in the SCC rules in Part III of chapter 170-290 WAC. In general, the proposed rules are intended to: Increase program effectiveness; address state budget cutbacks by increasing program cost effectiveness; increase accountability as the lead agency for the state's child care and development fund grant; address audit findings; reduce fraud; address concerns from the legislative temporary assistance for needy families (TANF) redesign and WorkFirst one-table discussions; and allow DEL and the department of social and health services (DSHS)* to more efficiently and effectively implement the child care subsidy programs. The proposal is also intended to permanently adopt provisions in emergency rules filed since September 24, 2010, revising consumer eligibility requirements and copayments, and emergency rules filed since February 15, 2011, limiting consumer entry into the WCCC and SCC programs.

Specifically, the proposed rules:

- Establish that DEL may limit entry into WCCC or SCC by limiting or closing enrollment, creating priority lists for receiving program benefits, and creating waiting lists when appropriate to keep the program within available funds.
- Change the family countable income limit to qualify for WCCC from two hundred percent of the federal poverty guidelines (FPG) to one hundred seventy-five percent of FPG. The one hundred seventy-five percent limit has been in effect by emergency rule since October 1, 2010. This provision also complies with section 612(16), chapter 5, Laws of 2011 regular session (ESHB 1086), and with 2ESHB 1087, section 617(7). A family becomes ineligible for child care subsidy benefits when their monthly income exceeds the limit.
- Align the rules with section 11 of ESSB 5921 enacted by the 2011 legislature and to comply with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996:
 - a. Requiring WCCC and SCC consumers to be seeking services from the DSHS division of child support as a condition of receiving subsidy benefits, unless there is good cause not to;
 - b. Noting that WCCC and SCC recipients are eligible for six months of eligibility before having to reestablish eligibility, if entry into WCCC/SCC are capped.
- Increase monthly copayment amounts for families with income over eighty-two percent through one hundred seventy-five percent of the FPG. This increase has been in effect by emergency rules effective February 1 and March 1, 2011. The \$15 per month copayment for families with income at or below eighty-two percent of the FPG remains unchanged.
- Clarify the WCCC eligibility process, including when the eligibility of parents and their child needing child care are considered separately. The proposed rules align terms and definitions regarding citizenship or legal resident status for children eligible to receive subsidy benefits with DSHS rules proposed as WSR 11-10-073 (see this web link <http://www.dshs.wa.gov/pdf/ms/rpau/102-11-10-073.pdf>).
- Clarify requirements for families to maintain current WCCC eligibility and reapply for benefits on time. A family must reapply before their current WCCC benefits end to avoid being dropped from the program and having to submit a new application. The family may then risk being placed on a waiting list for WCCC.
- Limit payment of field trip fees (up to \$20 per WCCC child per month) to DEL licensed and certified family home child care providers, and eliminating the age restriction for receiving field trip fees. This change has been in effect by emergency rule since January 2011.
- Clarify the family income verification process to address concerns raised in audits and in administrative hearings.
- Address audit findings and fraud concerns by clarifying that child care subsidy benefits may be used only when the consumer is working or in approved activities outside of his or her home, by adding the following:
 - a. An in-home/relative child care provider who is paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.
 - b. A consumer's spouse or partner may not receive WCCC payment for caring for the consumer's child. This provision exists in WAC currently for licensed family home child care and is needed to clearly include legal guardians and in-loco parentis caregivers to comply with federal rules.
- Revise WCCC requirements regarding relative caregivers, self-employed consumers, legal guardians and in loco parentis custodians, to streamline and clarify the rules and address audit findings.
- Eliminate differences regarding when program benefits begin for families receiving TANF and families not receiving TANF where appropriate. See amended WAC 170-290-0095 and repealed WAC 170-290-0100.
- Clarify when a WCCC consumer may use the twenty-eight day "gap" period when the consumer is laid off temporarily or not currently in an approved activity.
- Update the WCCC "consumer's responsibilities" section to align with current practice.
- Move existing wording to different sections in the chapter for clarity and more logical placement.
- Update obsolete wording and cross references, and clarify existing wording where appropriate.

**DEL and DSHS jointly operate the WCCC program under section 501 (uncodified), chapter 265, Laws of 2006.*

DEL adopts rules and policy for WCCC. DSHS receives WCCC applications, determines eligibility, and processes payments to child care providers.

Reasons Supporting Proposal: Since October 2010, DEL and DSHS have implemented directives to reduce expenditures in the WorkFirst program and child care subsidy programs to avoid a projected \$82 million WorkFirst budget deficit in state fiscal year 2011, and projected deficits in succeeding years. (WorkFirst is Washington state's various "welfare-to-work" programs and agencies, including WCCC and TANF). DEL has filed a series of emergency rules since September 24, 2011, intended to limit the number of families that may receive WCCC and SCC program benefits, thereby regulating program expenditures. Those emergency rules were extended on May 27, 2011, filing number WSR 11-12-053, while DEL completes the permanent rule-making process.

Under the current emergency rules, WCCC provides subsidy benefits to approximately 35,200 eligible families per month. Additional families who apply are placed on a waiting list. As space becomes available, individual families are notified that they are eligible to move off the waiting list. The family must then update their application and be found eligible for WCCC benefits. At this time, families are on the waiting list from two to four weeks on average.

Changing the income limit to qualify for child care subsidies to one hundred seventy-five percent of the FPG reduced the number of families receiving WCCC by about 2,500 compared to pre-October 2010 levels. Copayment levels (the share of monthly child care costs that parents must pay out-of-pocket) were increased in February and March 2011 by emergency rule. This reduced the amount of monthly state-paid assistance per child, and so reduced WCCC and WorkFirst program expenditures further.

These measures must be continued into the succeeding fiscal years as declining state revenues and federal supports to fund WorkFirst and WCCC are projected to fall short of increased WorkFirst caseloads and demand for child care subsidy assistance.

This filing complies with office of financial management guidance regarding Executive Order 10-06 suspending non-critical rule making, but allowing rules to proceed that are necessary: To "manage budget shortfalls," "required to maintain federally delegated or authorized programs," and to "finalize permanent rule making that has previously been covered by emergency rules."

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

Statute Being Implemented: Chapter 43.215 RCW; section 612(16), chapter 5, Laws of 2011 regular session; chapter 42, Laws of 2011 1st sp. sess. (ESSB 5921).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The 2011 legislature passed ESSB 5921 that includes provisions relevant to rules in chapter 170-290 WAC that take effect on July 1, 2011. Passage of this bill requires revision of the proposed rules filed as WSR 11-12-082 and may require adoption of emergency rules.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Rosen and Shannon Blood, DEL, Lacey, Washington, (360) 725-4665; Implementation: DSHS field offices and call centers, statewide; and Enforcement: DSHS field offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose new compliance requirements on small child care businesses, nor any new reporting or record-keeping requirement. Preparation of a comprehensive small business economic impact statement is not required. Implementation of certain rules (by emergency adoption) in this proposal has resulted in fewer families and children being found eligible for WCCC program benefits. This has resulted in reduced revenue for some child care businesses that provide care for children that is paid for with WCCC subsidy benefits. Impacts vary by provider. Businesses that provide care for children only on a private-pay basis would not likely be impacted by these rules.

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

June 22, 2011

Elizabeth M. Hyde

Director

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0001 Purpose and intent. (1) This chapter establishes the requirements for eligible families to receive subsidized child care through the working connections child care (WCCC) and seasonal child care (SCC) programs under applicable state and federal law, to the extent of available funds. As used in chapter 170-290 WAC, "to the extent of available funds" includes one or more of the following:

(a) Limiting or closing enrollment;

(b) Establishing a priority list for new enrollees subject to applicable state and federal law; or

(c) Creating and maintaining a waiting list.

(2) The purpose of WCCC, as provided in part II of this chapter, is to:

(a) Assist eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs; and

(b) Consider the health and safety of children while they are in care and receiving child care subsidies.

(3) The purpose of SCC, as provided in part III of this chapter, is to:

(a) Assist eligible families who are seasonally employed in agriculturally related work to pay for licensed child care; and

(b) Consider the health and safety of children while they are in care and receiving child care subsidies.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0005 ((Consumers-)) Eligibility. (1) ~~((H))~~ **Parents.** To be eligible for WCCC, ~~((an eligible consumer has))~~ the person applying for benefits must:

(a) Have parental control of one or more eligible children((- lives));

(b) Live in the state of Washington((- and is));

(c) Be the child's:

~~((a))~~ (i) Parent, either biological or adopted;

~~((b))~~ (ii) Stepparent;

~~((e))~~ (iii) Legal guardian verified by a legal or court document;

~~((d))~~ (iv) Adult sibling or step-sibling;

~~((e))~~ (v) Nephew or niece;

~~((f))~~ (vi) Aunt;

~~((g))~~ (vii) Uncle;

~~((h))~~ (viii) Grandparent; ((or

~~((i))~~ (ix) Any of the relatives in ~~((f), (g), or (h))~~ (c)(vi), (vii), or (viii) of this subsection with the prefix "great ~~((for example)),~~" such as great-aunt((-

~~((2))~~ Consumers may be eligible for WCCC benefits if they:

~~((a))~~ Meet eligibility requirements for WCCC described under part II of this chapter;

~~((b))~~; or

(x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;

(d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

~~((e))~~ (e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020; ~~((and~~

~~((d))~~ (f) Have countable income at or below ~~((two))~~ one hundred seventy-five percent of the federal poverty guidelines (FPG) ~~((under WAC 170-290-0065)).~~

~~((3))~~ A consumer is not eligible for WCCC benefits when he or she:

~~((a))~~ Is the only parent in the family and will be away from the home for more than thirty days in a row; or

~~((b))~~ Has a monthly copayment that is higher than the rate the state will pay for all eligible children in care). The consumer's eligibility shall end if the consumer's countable income is greater than one hundred seventy-five percent of the FPG;

(g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;

(h) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and

(i) Meet eligibility requirements for WCCC described in Part II of this chapter.

(2) Children. To be eligible for WCCC, the child must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005:

(b) Live in Washington state, and be:

(i) Less than age thirteen; or

(ii) Less than age nineteen, and:

(A) Have a verified special need, according WAC 170-290-0220; or

(B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0012 Verifying consumers' information. (1) A consumer must complete the DSHS application for WCCC benefits and provide all required information to DSHS to determine eligibility when:

(a) The consumer initially applies for benefits;

(b) The consumer reapplies for benefits;

(c) The consumer reports a change of circumstances ~~((occurs, which is either reported by the consumer or determined by DSHS));~~

(d) DSHS finds out that the consumer's circumstances may have changed; or

(e) The information DSHS has is inconsistent, conflicting, or outdated.

(2) ~~((DSHS may accept any verification that the consumer can easily obtain when it reasonably supports the consumer's statement or circumstances.))~~ The verification that the consumer gives to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; ~~((and))~~

(c) Be accurate, complete, and consistent; and

(d) As applicable, include, but not be limited to, the following:

(i) A current WorkFirst IRP for consumers receiving TANF;

(ii) Employer name, address, and phone number;

(iii) State business registration and license, if self-employed;

(iv) Work, school, or training schedule (when requesting child care for non-TANF activities);

(v) Hourly wage or salary;

(vi) Either the:

(A) Gross income for the last three months;

(B) Federal income tax return for the preceding calendar year; or

(C) DSHS employment verification form;

(vii) Monthly unearned income the consumer receives, such as child support or Supplemental Security Income (SSI) benefits;

(viii) If the other parent is in the household, the same information for them;

(ix) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

(A) A U.S. citizen;

(B) A U.S. national;

(C) A qualified alien; or

(D) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005:

(x) Proof of child enrollment in a head start, early head start or early childhood education and assistance program for twelve-month eligibility;

(xi) Name and phone number of the licensed child care provider; and

(xii) For the in-home/relative child care provider, a:

(A) Completed and signed criminal background check form;

(B) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;

(C) Legible copy of the proposed providers' valid Social Security card; and

(D) All other information required by WAC 170-290-0135.

(3) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

(4) If the verification that a consumer provides to DSHS is inconsistent, conflicting, or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the division of fraud investigations (DFI) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(5) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0015 Eligibility—Family size. DSHS determines a consumer's family size as follows:

(1) If a consumer's family includes:	DSHS counts the following individuals as part of the family for WCCC eligibility:
(a) A single parent, including a minor parent living independently.	The consumer and the consumer's children.
(b) Unmarried parents who have at least one mutual child.	Both parents and all their children living in the household.
(c) Unmarried parents with no mutual children.	Unmarried parents and their respective children living in the household as separate WCCC families.
(d) Married parents.	Both parents and all their children living in the household.

(e) ((Undocumented)) Parents <u>who are undocumented aliens as defined in WAC 388-424-0001.</u>	Parents and children, documented and undocumented, as long as the child needing care ((is a)) <u>belongs to one of the following groups as defined in WAC 388-414-0001:</u> <u>(i) A U.S. citizen</u> ((or legally residing in the United States-)) ; <u>(ii) A U.S. national;</u> <u>(iii) A qualified alien; or</u> <u>(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.</u> All other family rules in this section apply.
(f) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.	The children only (the children and their income are counted).
(g) A minor parent with children and lives with a parent/guardian.	Only the minor parent and their children.
(h) A parent who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	The consumer, the absent parent, and the children. Subsection (1)(b) and (d) of this section apply.
(i) A parent who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	The consumer, the absent parent, and the children. Subsection (1)(b) and (d) of this section apply as well as WAC 170-290-0020.
(j) An incarcerated parent.	The incarcerated individual is not part of the household count in determining income and eligibility. DSHS counts all remaining household members. All other family rules in this section apply.

(2) If the consumer's household includes:	DSHS counts the following individuals as part of the family for WCCC eligibility:
(a) Eighteen year old siblings of the children who require care and are enrolled in high school or general equivalency diploma (GED) program.	The eighteen year olds (unless they are a parent themselves), until they turn nineteen or complete high school/GED, whichever comes first. All other family rules in this section apply.
(b) Siblings of the children requiring care who are up to twenty-one years of age and who are participating in an approved program through the school district's special education department under RCW 28A.155.020.	The individual participating in an approved program through RCW 28A.155.020 up to twenty-one years of age (unless they are a parent themselves). All other family rules in this section apply.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0020 Eligibility—Special circumstances. ~~((1) A consumer may be eligible for WCCC if he or she is:~~

~~(a) An employee at a child care center where the consumer's child receives care and the consumer does not provide direct care to his or her own children during the time WCCC is requested;~~

~~(b) A sanctioned WorkFirst participant or an applicant who was terminated by a sanction review panel and in an activity needed to remove a sanction penalty or to reopen his or her case;~~

~~(c) A parent in a two-parent family and one parent is not able or available to provide care for the children while the other is working, looking for work, or preparing for work;~~

~~(i) "Able" means physically and mentally capable of caring for a child in a responsible manner. If a consumer claims one parent is unable to care for the children, the consumer must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:~~

~~(A) Reason the parent is unable to care for the children;~~
~~(B) Expected duration and severity of the condition that keeps the parent from caring for the children; and~~

~~(C) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still unable to care for the children.~~

~~(ii) "Available" means free to provide care when not participating in an approved work activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed; or~~

~~(d) A married consumer described under WAC 170-290-0005 (1)(d) through (i). Only the consumer or the consumer's spouse must be participating in activities under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055.~~

(2) A consumer might be eligible for WCCC if his or her children are legally residing in the country, are living in Washington state, and are:

(a) Less than age thirteen; or

(b) Less than age nineteen, and:

(i) Have a verified special need, according to WAC 170-290-0220; or

(ii) Are under court supervision.

(3) Any of a consumer's children who receive care at the same place where the consumer works (other than (1)(a) of this section) are not eligible for WCCC payments but may be included in the consumer's household if they meet the requirements of WAC 170-290-0015. This includes if a consumer works:

(a) In a family home child care in any capacity and his or her children are receiving care at the same home during the consumer's hours of employment; or

(b) In their own home or another location and his or her children receive care at the same location during the consumer's hours of employment.) **(1) Child care provided at the consumer's place of work.** A consumer is not eligible for WCCC benefits for his or her children when child care is provided at the same location where the consumer works.

(2) Consumer's child care employment.

(a) A consumer may be eligible for WCCC benefits during the time she or he works in a child care center but does not provide direct care in the same classroom to his or her children during work hours.

(b) A consumer is not eligible for WCCC benefits during the time she or he works in a family home child care where his or her children are also receiving subsidized child care.

(c) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.

(d) A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.

(3) Two-parent family.

(a) A consumer may be eligible for WCCC if he or she is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is working or participating in approved activities.

(b) If a consumer claims one parent is not able to care for the children the consumer must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:

(i) Reason the parent is not able to care for the children;

(ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and

(iii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.

(4) **Single-parent family.** A consumer is not eligible for WCCC benefits when he or she is the only parent in the family and will be away from the home for more than thirty days in a row.

(5) Legal guardians.

(a) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for his or her work or approved activities without his or her spouse or live-in partner's availability to provide care being considered unless his or her spouse or live-in partner is also named on the permanent custody order.

(b) Eligibility for WCCC benefits is based on the consumer's work or approved activities schedule, the child's need for care, and the child's income eligibility and family size of one.

(c) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(6) In loco parentis custodians.

(a) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or step-parents.

(b) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she has:

(i) A written, signed agreement between the parent and the caregiver assuming custodial responsibility; or

(ii) Receives a TANF grant on behalf of the eligible child.

(c) Eligibility for WCCC benefits is based on his or her work schedule, the child's need for care, and the child's income eligibility and family size of one.

(d) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(7) WorkFirst sanction.

(a) A consumer may be eligible for WCCC if he or she is a sanctioned WorkFirst participant and participating in an activity needed to remove a sanction penalty or to reopen his or her WorkFirst case.

(b) A WorkFirst participant who loses his or her TANF grant due to exceeding the federal time limit for receiving TANF may still be eligible for WCCC benefits under WAC 170-290-0055.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0025 Consumers' rights. When a consumer applies for or receives WCCC benefits, the consumer has the right to:

(1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Have WCCC eligibility determined within thirty days from his or her application date per WAC ~~((170-290-0100(2)))~~ 170-290-0095;

(3) Be informed, in writing, of his or her legal rights and responsibilities related to WCCC benefits;

(4) Receive a written notice at least ten days before DSHS makes changes to lower or stop benefits except as stated in WAC 170-290-0120;

(5) Ask for an administrative hearing if he or she does not agree with DSHS about a decision per WAC 170-290-0280;

(6) Ask a supervisor or administrator to review a decision or action affecting the consumer's benefits without affecting the right to an administrative hearing;

(7) Have an interpreter or translator service provided by DSHS within a reasonable amount of time and at no cost to the consumer;

(8) Choose a provider as long as the provider meets the requirements in WAC 170-290-0125;

(9) Ask the fraud early detection (FRED) investigator from the division of fraud investigations (DFI) to come back at another time. A consumer does not have to let an investigator into his or her home. This request will not affect the consumer's eligibility for benefits. If the consumer refuses to cooperate (provide the information requested) with the investigator, it could affect his or her benefits;

(10) Access his or her child at all times while the child is in child care;

(11) Terminate child care without cause and without notice to the provider. Notice must be given to DSHS within five days of termination;

(12) Not be charged by the consumer's licensed or certified provider, or be made to pay for:

(a) The difference between the provider's private rate and the state maximum rate, when the provider's private rate for child care or the registration fee is higher;

(b) Any day when the consumer's child is absent;

(c) Vacation days when the provider chooses to close;

(d) A higher amount than the state allows for field trips.

If the consumer requests, and the provider has a policy in place, the consumer may voluntarily pay the difference between the amount that the state allows and the actual field trip cost;

(e) A preschool tuition fee in addition to regular child care services; or

(f) Child care services after the final day of care, when the provider chooses to stop caring for the consumer's children.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0030 Consumers' responsibilities.

When a ~~((consumer))~~ person applies for or receives WCCC benefits, the applicant or consumer must as a condition of receiving those benefits:

(1) Give DSHS correct and current information so DSHS can determine eligibility and authorize child care payments correctly;

(2) Choose a provider who meets requirements of WAC 170-290-0125;

(3) Pay, or make a plan to have someone pay, the WCCC copayment directly to the child care provider;

(4) Only use WCCC benefits while the consumer is working or in WCCC approved activities outside the consumer's home. ~~((If the consumer is not in an approved activity and wants to use the provider, he or she must make a plan to pay the provider if the provider wants payment. The provider~~

~~may charge the consumer the same rate that the provider charges to other parents who are not in the WCCC program;))~~

~~(5) Pay the provider for child care services when he or she requests additional child care for personal reasons other than working or participating in WCCC approved activities that have been authorized by DSHS;~~

~~(6) Pay the provider for optional child care programs that he or she requests. The provider must have a written policy in place charging all families for these optional child care programs;~~

~~(7) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;~~

~~((6)) (8) Ensure that care is provided in the correct home per WAC 170-290-130 if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;~~

~~((7)) (9) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remains ineligible until he or she meets quality assurance requirements. If DSHS determines that a consumer is not cooperating, the consumer will not be eligible for WCCC benefits. The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter;~~

~~((8)) (10) Provide the information requested by DSHS's WCCC staff or the fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her benefits;~~

~~((9)) (11) Document the children's attendance as described in WAC 170-290-0138, 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; ~~and~~~~

~~(10)) (12) Provide to his or her in-home/relative provider the names, addresses, and telephone numbers of persons who are authorized to pick up the child from care; ~~and~~~~

~~(13) Seek child support enforcement services from the DSHS division of child support, unless DSHS finds that the applicant or consumer has good cause not to cooperate as defined under WAC 388-422-0020 or as provided in (a) of this subsection.~~

~~(a) For the purposes of this subsection, "good cause" also includes the following:~~

~~(i) The applicant or consumer has a current court order showing the child support amount ordered on behalf of the child who will receive the child care subsidy benefits;~~

~~(ii) The applicant or consumer already complies with child support enforcement services, either voluntarily or to meet other public assistance benefits requirements;~~

~~(iii) The applicants or consumers are married parents, or unmarried two-parent families with a child in common needing child care living in the same household;~~

~~(iv) The applicant or consumer is a single-parent family when the other parent is deceased;~~

~~(v) The applicant or consumer is a single-parent family when the other parent is incarcerated for one year or longer;~~

~~(vi) The applicants or consumers are both minor parents; or~~

~~(vii) The DSHS division of child support does not have jurisdiction over the child support case, such as for tribal child support cases or cases outside of the United States.~~

~~(b) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply.~~

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0035 DSHS's responsibilities to consumers. DSHS's WCCC staff is responsible to:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Determine a consumer's eligibility within thirty days from the date the consumer applied (application date as described in WAC ~~((170-290-0100(2)))~~ 170-290-0095);

(3) Allow a consumer to choose his or her provider as long as the provider meets the requirements in WAC 170-290-0125;

(4) Review a consumer's chosen in-home/relative provider's background check results;

(5) Authorize payments only to child care providers who allow a consumer to access his or her children whenever they are in care;

(6) Only authorize payment when no adult in a consumer's family (under WAC 170-290-0015) is ~~((able))~~ able ~~((available))~~ available (under WAC ~~((170-290-0020))~~ 170-290-0003) to care for the consumer's children;

(7) Inform a consumer of:

(a) His or her rights and responsibilities under the WCCC program at the time of application and reapplication;

(b) The types of child care providers DSHS can pay;

(c) The community resources that can help a consumer select child care when needed; and

(d) Any change in a consumer's copayment during the authorization period except under WAC 170-290-0120(5).

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) WCCC eligibility;

(b) Copayment; or

(c) Providers.

(9) Provide prompt child care payments to a consumer's child care provider; ~~((and))~~

(10) Provide an interpreter or translator service within a reasonable amount of time and at no cost to the consumer; ~~and~~

(11) Ensure that Social Security cards, driver's licenses, or other government-issued identification for in-home/relative providers are valid and verified.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0040 Approved activities for TANF consumers. If a consumer receives a temporary assistance for needy families (TANF) grant, he or she may be eligible for WCCC benefits, for approved activities in his or her individual responsibility plan (IRP), for up to a maximum of sixteen hours per day ~~((for his or her hours of participation in the following)), including:~~

(1) An approved WorkFirst activity under WAC 388-310-0200, with the following exception: In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care. These consumers may be eligible for other approved activities in their IRPs;

(2) Employment ~~((or self-employment. "Employment" or "work" means:~~

(a) ~~Engaging in any legal, income-generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States; or~~

(b) ~~Working in a federal or state paid work study program. The consumer may receive WCCC for paid work study and transportation hours (not for the time the consumer is in an unapproved activity);) as defined in WAC 170-290-0003;~~

(3) Self-employment as defined in WAC 170-290-0003 and as described in the consumer's current WorkFirst IRP;

(4) Transportation time between the location of child care and the consumer's place of employment or approved activity;

~~((4)) (5) Up to ten hours per week of study time ((before or after regularly scheduled classes or up to three hours of study time per day when needed to cover time between)) for approved classes; and~~

~~((5)) (6) Up to eight hours per day of sleep time when it is needed, such as if the consumer works nights and sleeps days.~~

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0045 Approved activities for consumers not receiving TANF. If a consumer does not receive TANF, he or she may be eligible for WCCC benefits for:

(1) Up to a maximum of sixteen hours per day, including travel, study, and sleep time, for the hours of his or her participation in the following:

(a) ~~((Full or part-time))~~ Employment ((or)) as defined in WAC 170-290-0003;

(b) Self-employment ((under WAC 170-290-0050. "Employment" or "work" means:

(i) ~~Legal, income-generating activity taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States; or~~

(ii) Federal or state paid work study.

~~(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed)) as defined in WAC 170-290-0003;~~

(c) High school (HS) or general equivalency diploma (GED) program until the consumer reaches his or her twenty-second birthday (the consumer may be enrolled in a HS or GED program without a minimum number of employment hours);

(d) Approved WorkFirst activities according to WAC 388-310-0200 or 388-310-0700 if the consumer is a TANF applicant; or

(e) Food stamp employment and training program under chapter 388-444 WAC.

(2) If a consumer is participating in an activity listed in subsections (3) through (8) of this section, he or she may be eligible for WCCC benefits as described in subsection (1) of this section if the consumer is actually working either:

(a) Twenty or more hours per week; or

(b) Sixteen or more hours per week in a paid federal or state work study program.

(3) Adult basic education (ABE).

(4) English as a second language (ESL).

(5) High school or GED completion if the consumer is twenty-two years of age or older.

(6) Vocational education (Voc Ed). The Voc Ed program must:

(a) Lead to a degree or certificate in a specific occupation;

(b) Cannot include prerequisite classes or programs; and

(c) Be offered by the following accredited entities only:

(i) Public and private technical college or school;

(ii) Community college; or

(iii) Tribal college.

(7) Job skills training: For no more than fourteen consecutive days. Job skills training is not tied to a specific occupation but is training in specific skills directly related to employment, such as CPR/First Aid, keyboarding, computer programs, project management, and oral and written communication skills. Training offered or required by a current employer, at or off the consumer's job site, may extend past the fourteen consecutive day limit.

(8) Post-employment services under WAC 388-310-1800.

(9) Child care for participation in Voc Ed is limited to thirty-six months regardless of the length of the educational program. The thirty-six months includes the months in which the following occurred at the same time:

(a) WCCC benefits were paid to support the consumer's participation in a Voc Ed program; or

(b) The consumer or someone in his or her household received TANF benefits.

(10) WCCC may be approved for activities listed in WAC 170-290-0040 ~~((2)(b) through (d))~~ (4), (5), and (6), when needed.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0050 Additional requirements for self-employed WCCC consumers. ~~((1) Consumers~~

receiving TANF. If a consumer receives TANF and is also self-employed:

(a) The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;

(b) The amount of WCCC a consumer receives for self-employment is equal to the number of hours in his or her approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

(2) Consumers not receiving TANF. If a consumer does not receive TANF at the time of application for WCCC and is establishing a new self-employment business (established less than six months):

(a) The hours of care the consumer is eligible to receive for the first six months is based on his or her report of how many hours are needed, up to sixteen hours per day; and

(b) The consumer's self-employment income is based on WAC 170-290-0060.

(c) A consumer is eligible for the calculation discussed in (a) of this subsection one time only. If the consumer changes self-employment during the initial six-month period, any months left are covered by child care according to (a) of this subsection.

(d) After the first six months of self-employment, the number of hours of WCCC a consumer can receive each month is based on the lesser of (c)(i) or (ii) of this subsection.

(e) For an established self-employment business (established for six months or more) the number of hours of child care the consumer is eligible to receive is based on whichever is greater:

(i) The consumer's work hours reported in his or her business records; or

(ii) The average number of monthly hours equal to dividing the consumer's monthly self-employment income by the federal or state minimum wage (whichever minimum wage is lower--); (1) **Self-employment generally.** To be considered self-employed, a WCCC consumer must:

(a) Earn income directly from his or her trade or business, not from wages paid by an employer;

(b) Be responsible to pay his or her self-employment Social Security and federal withholding taxes;

(c) Not have work schedule, activities or services controlled in an employee-employer relationship;

(d) Participate directly in the production of goods or services that generate the consumer's income; and

(e) Work outside of the home during the hours he or she requests WCCC benefits. If a consumer's self-employment activities are split between the home and outside of the home, only self-employment and other approved activities outside of the home will be eligible for child care benefits.

(2) Self-employed consumers receiving TANF. If a consumer receives TANF and is also self-employed, he or she may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;

(b) The amount of WCCC benefits a consumer receives for self-employment is equal to the number of hours in his or her approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

(3) Self-employed consumers not receiving TANF. If a consumer does not receive TANF and requests WCCC benefits for his or her self-employment, he or she may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) Consumers who do not receive TANF cash assistance and request WCCC benefits for self-employment must provide DSHS with his or her:

(i) Washington state business license, or a tribal, county, or city business or occupation license, as applicable;

(ii) Uniform business identification (UBI) number;

(iii) Completed self-employment plan that is written, signed, dated and includes, but is not limited to, a description of the self-employment business, proposed days and hours of work activity including time needed for transportation, and the location of work activity;

(iv) Profit and loss statement (or projected profit and loss statement, if starting a new business); and

(v) Either:

(A) Federal self-employment tax reporting forms for the most current reporting year; or

(B) DSHS self-employment income and expense declaration form.

(b) During the first six consecutive months of starting a new self-employment business, the hours of care the consumer is eligible to receive is based on his or her report of how many hours are needed, up to sixteen hours per day. A consumer is eligible to receive this provision only once during his or her lifetime. The consumer must use the benefit provided by this provision within the consumer's authorization period.

(c) A consumer's need for care after she or he has received WCCC benefits for self-employment for six consecutive months as provided in (b) of this subsection is determined by DSHS in the following manner:

(i) Dividing the consumer's gross monthly self-employment income by the federal or state minimum wage (whichever is lower) to determine the average monthly hours of care needed by the consumer; and

(ii) Adding the consumer's additional child care needs for other approved employment, education, training, or travel to the total approved self-employment hours.

(d) If both parents in a two-parent family are self-employed, at the same or a different business, each parent must report his or her own self-employment earnings and self-employment plan. If the requested verification is not provided, then WAC 170-290-0012(5) applies to determining eligibility.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0055 Receipt of benefits when not engaged in approved activities. When care is approved in the situations described in subsections (1) and (2) of this section, the child needs to attend for the provider to bill.

(1) **Fourteen-day wait period.** DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.

(2) **Twenty-eight-day gap period.** DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in his or her employment or approved activity. The consumer may be eligible for this twenty-eight-day gap period:

(a) Twice in a calendar year; and

(b) For the same number of units open while the consumer is in the approved activity, not to exceed two hundred thirty hours a month.

(3) The twenty-eight-day gap period must be used within the consumer's authorization period.

(4) In order for a consumer to qualify for the twenty-eight-day gap period:

(a) The consumer must be currently receiving WCCC benefits;

(b) The consumer must report to DSHS within ten days the loss of his or her employment or approved activity; and

(c) The consumer must:

(i) Be looking for another job; or

(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight-day gap period.

~~((4))~~ (5) A consumer is eligible for the minimum copayment during the fourteen-day wait period or twenty-eight-day gap period.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0060 Countable income. DSHS counts income as money ~~((a))~~ an applicant or consumer earns or receives from:

(1) A TANF grant, except when the grant is for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

(2) The following child support payment~~((s))~~ amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services because they are exempt for good cause under WAC 170-290-0030 (13)(a)(i), the amount as shown on a current court order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(3) Supplemental Security Income (SSI);

(4) Other Social Security payments, such as SSA and SSDI;

(5) Refugee assistance payments;

(6) Payments from the Veterans' Administration, disability payments, or payments from labor and industries (L&I);

(7) Unemployment compensation;

(8) Other types of income not listed in WAC 170-290-0070;

(9) VISTA volunteers, AmeriCorps, and Washington Service Corps (WSC) if the income is taxed;

(10) Gross wages from employment or self-employment as defined in WAC 170-290-0003. Gross wages includes any wages that are taxable ~~((-"Self-employment income" means a consumer's gross income from self-employment minus allowable business expenses in WAC 388-450-0085))~~;

(11) Corporate compensation received by or on behalf of the consumer, such as rent, living expenses, or transportation expenses;

(12) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and

~~((12))~~ (13) Income for the sale of property as follows:

(a) If a consumer sold the property before application, DSHS considers the proceeds an asset and does not count as income;

(b) If a consumer sold the property in the month he or she applies or during his or her eligibility period, DSHS counts it as a lump sum payment as described in WAC 170-290-0065(2);

(c) Property does not include small personal items such as furniture, clothes, and jewelry.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0070 Excluded income and deductions. (1) The WCCC program does not count the following income types when determining a consumer's income eligibility and copayment:

(a) Income types as defined in WAC 388-450-0035, 388-450-0040, and 388-450-0055;

(b) Compensatory awards, such as an insurance settlement or court-ordered payment for personal injury, damage, or loss of property;

(c) Adoption support assistance and foster care payments;

(d) Reimbursements, such as an income tax refund;

(e) Diversion cash assistance;

~~((f))~~ ~~(Income in kind that is untaxed, such as working for rent;~~

~~((g))~~ Military housing and food allowance;

~~((h))~~ (g) The TANF grant for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

~~((i))~~ (h) Payments to the consumer from his or her employer for benefits such as medical plans;

~~((j))~~ (i) Earned income of a WCCC family member defined under WAC 170-290-0015(2);

~~((k))~~ (j) Income of consumers described in WAC 170-290-0005 (1)(c) through (i);

~~((l))~~ (k) Earned income from a minor child who DSHS counts as part of the consumer's WCCC household; and

~~((m))~~ (l) Benefits received by children of Vietnam War veterans who are diagnosed with any forms of manifestations of spina bifida except spina bifida occulta.

(2) WCCC deducts the amount a consumer pays for child support under court order, division of child support adminis-

trative order, or tribal government order, from the consumer's other countable income when figuring his or her eligibility and copayment for the WCCC program.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0075 Determining income eligibility and copayment amounts. (1) DSHS takes the following steps to determine a consumer's eligibility and copayment:

(a) Determine the consumer's family size (under WAC 170-290-0015); and

(b) Determine the consumer's countable income (under WAC 170-290-0065).

(2) Before February 1, 2011, if the consumer's ((family's)) family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$50
(c) Above 137.5% of the FPG through ((200)) 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding \$50
(d) Above ((200)) 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(3) Effective February 1, 2011, through February 28, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$60
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding \$60
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(4) On or after March 1, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$65
(c) Above 137.5% of the FPG through 175% of the FPG.	The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 50%, then adding \$65

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.	

(5) DSHS does not prorate the copayment when a consumer uses care for part of a month.

~~((4))~~ (6) The FPG is updated every year on April 1. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

AMENDATORY SECTION (Amending WSR 10-15-063 and 10-16-128, filed 7/15/10 and 8/3/10, effective 9/1/10)

WAC 170-290-0082 Eligibility period. (1) **Six-month eligibility.**

(a) A consumer who meets all of the requirements of part II of this chapter is eligible ~~((for))~~ to receive WCCC subsidies for six months before having to redetermine his or her income eligibility, except as provided in subsection (2) of this section. The six-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1). Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.

(b) A consumer's eligibility may be for less than six months if:

- (i) Requested by the consumer; or
- (ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than six months.

(c) A consumer's eligibility may end sooner than six months if:

- (i) The consumer no longer wishes to participate in WCCC; or
- (ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

(2) **Twelve-month eligibility.**

(a) A consumer who meets all of the requirements of part II of this chapter, and has a child receiving services from head start (HS), early head start (EHS), or an early childhood education and assistance program (ECEAP), is eligible for WCCC subsidies for twelve months.

(b) A consumer's eligibility may be for less than twelve months if:

- (i) Requested by the consumer; or
- (ii) A TANF consumer's individual responsibility plan indicates child care is needed for less than twelve months.

(c) The consumer's eligibility may end sooner than twelve months if:

- (i) The consumer no longer wishes to participate in WCCC; or
- (ii) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

(d) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

(e) The twelve-month eligibility period begins:

(i)(A) When benefits begin under WAC 170-290-0095 ~~((for TANF consumers or WAC 170-290-0100 for consumers not receiving TANF));~~ or

(B) Upon reapplication under WAC 170-290-0109(4) ~~((for TANF consumers or WAC 170-290-0109(5) for consumers not receiving TANF));~~ and

(ii) When DSHS verifies that the child is receiving services from HS, EHS, or ECEAP.

(f) The twelve-month eligibility continues regardless of whether the child continues to receive services from HS, EHS, or ECEAP.

(g) During a consumer's twelve-month eligibility period, parent education and family development classes offered by HS, EHS, or ECEAP are approved activities. As funds are available, other DEL-approved parent education and family development classes may be authorized.

(h) Each child who is receiving services from HS, EHS, or ECEAP and is receiving WCCC subsidies will be assigned a unique early learning student identifier. Student information may be merged with information from the office of superintendent of public instruction, the education research and data center, or both, to measure the child's educational progress from preschool through grade twelve.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0085 Change in copayment. (1) Once DSHS determines that a consumer is eligible for WCCC benefits, his or her copayment may change when:

(a) The consumer's monthly income decreases;

(b) The consumer's family size increases;

(c) DSHS makes an error in the consumer's copayment computation;

(d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication;

(e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;

(f) DEL makes a mass change in benefits due to a change in law or program funding;

(g) The consumer is approved for a new eligibility period; or

(h) The consumer is approved for the fourteen-day wait period or twenty-eight-day gap period as provided in WAC 170-290-0055.

(2) If a consumer's copayment changes during his or her eligibility period, the change is effective on the first day of the month following DSHS becoming aware of the change.

(3) DSHS does not increase a consumer's copayment during his or her current eligibility period when his or her countable income remains at or below ~~((two hundred percent of the FPG))~~ the maximum eligibility limit as provided in WAC 170-290-0005, and:

(a) The consumer's monthly countable income increases; or

(b) The consumer's family size decreases.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0095 When WCCC benefits start ~~((for TANF consumers))~~. ~~((When a consumer receives TANF and is eligible for WCCC, his or her benefits begin when:~~

~~(1) The consumer's eligible provider (under WAC 170-290-0125) is caring for his or her children; and~~

~~(2) The consumer is participating in an approved activity under WAC 170-290-0040 or 170-290-0055.)~~ (1) WCCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required WCCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application or reapplication for WCCC benefits;

(b) The consumer is working or participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050 or 170-290-0055;

(c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for WCCC benefits; and

(d) The consumer's eligible provider (under WAC 170-290-0125) is caring for his or her children.

(2) If a consumer fails to turn in all information within thirty days from his or her application date, the consumer must restart the application process.

(3) The consumer's application date is whichever is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0107 Denial of benefits—Date of re-determining eligibility. DSHS sends a consumer a denial letter when the consumer has applied for child care and the consumer:

(1) Withdraws his or her request;

(2) Is not eligible due to the consumer's:

(a) Family composition;

(b) Income; or

(c) Activity.

(3) Did not provide information required to determine the consumer's eligibility according to WAC 170-290-0012;

(4) If a consumer turns in information or otherwise meets eligibility requirements after DSHS sends the consumer a denial letter, DSHS determines the consumer's benefit begin date ~~((by:~~

~~(a) WAC 170-290-0095 if the consumer is a TANF consumer; or~~

~~(b) WAC 170-290-0100 if the consumer is not receiving TANF))~~ as provided in WAC 170-290-0095(3).

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0109 New eligibility period. (1) If a consumer wants to receive child care benefits for another eligibility period, he or she must reapply for WCCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests ~~((application))~~ reapplication information before the end date of the consumer's current WCCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:

(a) DSHS receives the consumer's ~~((application))~~ reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and

(c) The consumer meets all WCCC eligibility requirements.

(3) If DSHS determines that a consumer is eligible for WCCC benefits based on his or her ~~((application))~~ reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

(4) When a ~~((TANF))~~ consumer submits ~~((an application))~~ a reapplication after the last day of his or her current eligibility period, the consumer's benefits begin ~~((when))~~:

~~((a) The consumer is participating in an approved TANF/WorkFirst activity; and~~

~~((b) The consumer's child is being cared for by his or her eligible WCCC provider.~~

~~((5) When a consumer who is not receiving TANF submits an application after the last day of his or her current eligibility period, his or her benefits begin:))~~

(a) On the date that the consumer's ~~((application))~~ reapplication is date-stamped as received in DSHS's community service office ~~((CSO))~~ or entered into the ~~((CSO))~~ DSHS automated system, whichever date is earlier;

(b) When the consumer is working or participating in an approved WorkFirst activity; and

(c) The consumer's child is being cared for by his or her eligible WCCC provider.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0120 When notice of payment changes is not required. DSHS does not give a consumer written notice ~~((in the following circumstances))~~ of changes to WCCC eligibility or provider payments when:

(1) The consumer tells DSHS that he or she no longer wants WCCC; or

(2) The ~~((consumer's whereabouts are unknown to DSHS;~~

~~((3) The consumer is receiving duplicate child care benefits;~~

~~((4) The consumer's current eligibility period is scheduled to end;~~

~~((5) The consumer's new eligibility period results in a change in child care benefits;~~

~~((6) The location where child care occurs does not meet requirements under WAC 170-290-0130; or~~

~~((7) DSHS determines that a consumer's in-home/relative provider:~~

~~((a) Is not of suitable character and competence;~~

~~((b) May cause a risk of harm to the consumer's children based on the provider's physical or mental health; or~~

~~((c) Has been convicted of, or has charges pending for crimes on the DEL director's list in WAC 170-06-0120)) consumer has not informed DSHS of his or her new mailing address.~~

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0130 In-home/relative providers—Eligibility. (1) To be eligible as an in-home/relative provider to care for children under WCCC, the applicant must be:

(a) Eighteen years of age or older;

(b) A citizen or legal resident of the U.S.; and

(c) Meet all of the requirements listed in WAC 170-290-0135.

(2) Additionally, eligible in-home/relative providers must:

(a) Meet all applicable background check requirements in part II of this chapter;

(b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs; and

(c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the parent for his or her DSHS approved activities or work hours.

(3) The following eligible in-home/relative providers, except those providers residing with a disqualified person, may provide care in either their home or the child's home:

(a) Adult siblings that live outside the child's home;

(b) Extended tribal family members;

(c) Grandparent or great-grandparent; or

(d) Aunt or uncle, or great-aunt or great-uncle.

(4) All other eligible providers, including other family members, friends, neighbors, or nannies must provide care in the child's home only.

(5) The following persons are not eligible to provide in-home/relative care under part II of this chapter:

(a) The child's biological, adoptive, or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

(6) WCCC consumers may have up to two in-home/relative providers authorized for payment during the consumer's eligibility period, plus one back-up provider, either licensed or in-home/relative also authorized to care for the consumer's children.

(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. WCCC consumers

must ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, except in cases based on religious preference or medical conditions.

(8) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care. (1) DSHS may authorize and pay for the following child care hours:

~~((a))~~ Half-day care, which is less than one hundred ten hours per calendar month; and

~~(b))~~ Full day care, which is one hundred ten or more hours per calendar month.

~~(2) DSHS authorizes:))~~

(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care ~~((for))~~ between five ~~((or more))~~ and ten hours per day;

(b) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;

(c) Hourly child care for in-home/relative child care;

(d) A registration fee (under WAC 170-290-0245);

(e) A field trip fee (under WAC 170-290-0247);

(f) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(g) A nonstandard hours bonus under WAC 170-290-0249.

~~((3))~~ (2) DSHS may authorize up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the home or work (activity) site.

"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

~~((4))~~ (3) DSHS authorizes an additional amount of care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's written policy is to charge all families for these ~~((extra))~~ hours of care in excess of ten hours per day.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0247 Field trip fees. ~~((+))~~ DSHS pays licensed or certified family home child care providers ~~((and DEL contracted seasonal day camps))~~ a monthly field trip fee up to twenty dollars per child or the provider's actual cost for

the field trip, whichever is less, only if the fees are required of all parents whose children are in the provider's care. DEL-licensed or certified child care centers and school-age centers are not eligible to receive field trip fees. The field trip fee is to cover the provider's actual expenses for:

~~((a))~~ (1) Admission;

~~((b))~~ (2) Transportation (not to include the provider's gas and insurance); and

~~((c))~~ (3) The cost of hiring a nonemployee to provide an in-house field trip activity.

~~((2) The field trip fee can only be reimbursed for children three years of age and older.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 170-290-0100

When WCCC benefits start for consumers not receiving TANF.