

WSR 07-21-081
PROPOSED RULES
FOREST PRACTICES BOARD

[Filed October 16, 2007, 3:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-20-097.

Title of Rule and Other Identifying Information: Achieving desired future conditions in riparian management zones. This rule proposal amends WAC 222-30-021 to change timber harvest and leave tree requirements in riparian management zones adjacent to Type S and F waters as defined in WAC 222-16-030. It pertains to forest lands in western Washington.

Hearing Location(s): Holiday Inn, 3105 Pine Street, Everett, (425) 993-2000, on Tuesday, March 18, 2008, at 6:00 p.m.; and at the Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, (360) 902-1400, on Thursday, March 20, 2008, at 6:00 p.m.

Date of Intended Adoption: May 14, 2008.

Submit Written Comments to: Patricia Anderson, DNR Forest Practices Division, 1111 Washington Street S.E., P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@wadnr.gov, fax (360) 902-1428, by March 21, 2008.

Assistance for Persons with Disabilities: Contact forest practices division at (360) 902-1400, by March 10, 2008, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 222-30-021 provides prescriptions and options to harvesting trees in forested "riparian management zones" as defined in WAC 222-16-010.

Pursuant to RCW 76.09.370, the forest practices board incorporates a scientific-based adaptive management process to determine the effectiveness of forest practices rules in aiding Washington's salmon recovery effort. Under this adaptive management process, a scientific study was completed by the forest practices board's cooperative monitoring, evaluation, and research committee. The study, entitled *Validation of the Western Washington Riparian Desired Future Condition (DFC) Performance Targets in the Washington State Forest Practices Rules with Data From Mature, Unmanaged, Conifer-Dominated Riparian Stands*. The study's findings were that basal areas per acre of mature, unmanaged conifer-dominated riparian stands are greater than the values used in the rule (see WAC 222-20-021(1) for values in existing rule).

The board is considering two alternative rule amendments to respond to the study findings. The effects of both would increase the basal area retained in riparian management zones, thereby decreasing allowable harvest.

- The first would increase the target basal area per acre (325 sq. ft. for all site classes) that a forest stand is projected to reach at one hundred forty years from the year of harvest in the riparian management zone.
- The second would increase the target basal area per acre the same as the first alternative rule amendment, and also change the methods of thinning trees in the inner zones - see WAC 222-30-021 (1)(b)(ii)(B)(I) and (II).

Reasons Supporting Proposal: The proposed rule changes are based on recommendations resulting from the scientifically based adaptive management process outlined in WAC 222-12-045. Through this process, the board has determined that the forest practices rules should be adjusted to ensure that appropriate riparian buffers are maintained on forest land covered by the Forest Practices Act.

Statutory Authority for Adoption: RCW 76.09.040 and 76.09.370(6).

Statute Being Implemented: Not applicable.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Marc Engel, 1111 Washington Street S.E., Olympia, (360) 902-1390; Implementation: Gary Graves, 1111 Washington Street S.E., Olympia, (360) 902-1483; and Enforcement: Lenny Young, 1111 Washington Street S.E., Olympia, (360) 902-1744.

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

Small Business Economic Impact Statement

OBJECTIVES: The forest practices board will be considering permanent rule making that will affect timber harvest in riparian management zones in western Washington. The objectives of this economic analysis are to determine whether the benefits of the proposed rules exceed the costs, and whether the compliance costs of the proposed rules will disproportionately affect the state's small businesses.

The Administrative Procedure Act (chapter 34.05 RCW)¹ requires completion of a cost-benefit analysis (CBA) prior to rule adoption that demonstrates that probable benefits of the proposal exceed its probable costs and that it is the most cost-effective means of achieving the goal of the rule change. A small business economic impact statement (SBEIS) is required by the Regulatory Fairness Act (chapter 19.85 RCW)² to consider the impacts of state administrative rules on small businesses, defined as those with fifty or fewer employees. An SBEIS compares the costs of compliance for small businesses with the cost of compliance for the 10% of businesses that are the largest businesses required to comply with the proposed rules.

This economic analysis combines the SBEIS and the CBA and complies with the legislative requirements for these analyses as part of the rule-making process.

HISTORICAL CONTEXT: The forests and fish negotiations resulted in rules that manage timber harvest in riparian zones, one of the objectives of which is to reach desired future conditions (DFC). The DFC of a riparian forest is a timber stand that demonstrates the characteristics of mature, unmanaged riparian stands at age 140³. One of the target metrics chosen to create these characteristics was basal area per acre at age 140 (bapa-140), with targets varying by site class.

As part of the adaptive management process, the riparian scientific advisory group (RSAG) of the cooperative monitoring, evaluation and research committee (CMER) commissioned a study of mature, unmanaged riparian forest stands in

western Washington (Schuett-Hames et al., 2005)⁴. One of the objectives of this study was to determine whether the bapa-140 targets in the forest practices rules were appropriate. The study concluded that the basal area targets are incorrect, but did not provide alternative target values. The study also concluded that there is no statistical difference for basal area targets between site classes.

PROPOSED RULES SUMMARY: This rule proposal changes the DFC target basal area at year 140 (bapa-140). The forest practices board is considering using one value for all site classes, and to use the median value for total live basal area per acre of the Schuett-Hames et al. study data, which is 325. The board is also considering an alternative proposal developed by the timber industry.

ECONOMIC ANALYSIS: To comply with the Administrative Procedure Act and Regulatory Fairness Act this analysis identifies potentially affected industries, defines small and large businesses and determines if there is a disproportionate economic impact on small businesses.

Potentially Affected Industries: The rule-complying community affected by the proposal is businesses that own or control the cutting rights on forestland or those with the right to dispose of the timber.

Small Businesses Versus Large Businesses: The Regulatory Fairness Act defines a "small business" as one with fifty or fewer employees. Forest ownership acreage is generally a more appropriate metric for characterizing small businesses in the timber industry. Small businesses are identified in this economic analysis as those meeting the state's eligibility criteria for small forest landowner status in the forestry riparian easement program; generally those who harvest less than two million board feet per year. All other private landowners are categorized as "large businesses" for purposes of this analysis.

Benefits and Costs Included in the Analysis: The costs of the rule change are measured as the potential loss of timber revenue, based on an estimate of the timber volume that is annually affected by the rule making. The benefits are related to the value of protecting habitat for fish and wildlife. These benefits cannot be quantified in this analysis because there is no known research applicable to Washington that quantifies the marginal benefits of protecting riparian habitat. Methodology is further discussed below.

Involvement of Concerned Stakeholders: This rule making is the result of the forests and fish adaptive management process described in WAC 222-12-045. This is a formal process including scientists and policy makers who represent stakeholders of Washington forest practices: Landowners of large and small forestland acreage, environmental and conservation organizations, tribal organizations, federal and state natural resource agencies, and Washington counties.

In reaction to the findings of the Schuett-Hames report, forests and fish policy petitioned the forest practices board to consider rule making responsive to the findings of the study. DNR's forest practices division held nine stakeholder meetings from May 2006 to November 2006 to develop a rule proposal that would be responsive to the study results. Stakeholder agreement was not reached on what changes should be made to the basal area targets, and the board is considering

using the study's median value of 325 square feet per acre for all site classes.

METHODS OF ANALYSIS: This analysis includes the following:

- The effects of a change in bapa-140 targets to 325 (median value from Schuett-Hames report) for all site classes.
- For comparison purposes, the effects of a change in bapa-140 targets to 341 (mean value) for all site classes.
- The effects of a proposal to change bapa-140 targets to 325 and modify other provisions of existing rules ("industry proposal").

These scenarios are analyzed for two harvest options as appropriate. Please refer to WAC 222-30-021 (1)(b)(ii)(B) (I)(II), and Section 7 of the forest practices board manual for existing rules and information pertaining to riparian zone harvest.

The industry proposal's option 1 is a simplified thinning option that requires a minimum number of leave conifers in the inner zone, based on average diameter. These range from sixty-five trees per acre (tpa) for eighteen-inch conifers (dbh) to one hundred trees per acre averaging eight inches in diameter. Besides this, the proposal differs from existing regulations and from the 325 and 341 scenarios in the following ways:

- All site classes and stream widths have an RMZ width of one hundred feet with a fifty foot core zone and a fifty foot inner zone.
- There is no outer zone.
- Thinning does not have to be "from below"—the largest trees do not have to be left.

The industry proposal's option 2 is similar to the bapa-140 of 325 scenario, except:

- The twenty tpa leave trees that must be left in the cut portion of the inner zone can be credited to meeting the bapa-140 target of 325.
- There are no minimum no-cut floors in the inner zone.
- All harvest sites, regardless of stream size and site class, are eligible to use option 2.

The changes included in the industry proposal necessitate a more complicated approach to the analyses than would have been the case if proposed changes were limited to changing bapa-140 targets. This analysis estimates changes in the tree inventory that would be left in the inner and outer zones under existing regulations as well as the three scenarios listed above.⁵ The effects on annual harvest in riparian zones for the three scenarios can then be calculated using existing regulations as the base case.

These estimates are based on a statewide extrapolation of the data set used by McConnell et al. in the draft CMER report, *An Analysis of Forest Practices Applications: DFC Model Projected Core and Inner Zone Basal Areas at Stand Age 140 for FFR Riparian Prescriptions and the Relative Effect of Rule Components on the Results Obtained*. The data set consists of one hundred fifty randomly selected forest practices applications (FPAs) from 2003 and 2004 that pro-

posed timber harvesting from within the inner portion of the riparian zone in western Washington.

The data set includes applicant-provided information as well as outputs from the model utilized to determine harvest requirements in riparian zones. The applicant provides stand characteristics, including an inventory of standing trees, both conifers and hardwoods. The model calculates basal area per acre (bapa) and projected bapa-140 without harvest, as well as bapa and projected bapa-140 attained by following the harvest regime that can take place utilizing the two options available. The harvest regime provided by the DFC model takes into account additional constraints: Trees per acre minimums (for option 1) and minimum inner zone floor widths (for option 2).

The DFC model determines the change in post-harvest basal area per acre from the time of harvest to year 140 based on the interaction of a number of stand factors, including stand age, species mix, trees per acre (tpa), current basal area, and site class. The model was designed using existing bapa-140 targets, and because these bapa-140 targets are hardwired into the model, it does not have the flexibility needed to change these bapa-140 targets. Given these circumstances, this analysis estimates the effects of changing these targets by calculating the additional conifers that need to be left in order to meet DFC, assuming that the model's growth projections hold at higher bapa-140 targets.

The estimation of the number of conifers that need to be left to meet the proposed rule is calculated differently for option 1 and option 2. For option 1, forest practices rules require the largest conifers be left to meet DFC. The model calculates the diameter at breast height (dbh) of the first tree that can be cut in the inner zone (marginal tree dbh) after existing DFC constraints have been met, and this is the size of tree that is used in this analysis to determine the tree volume that needs to be left to meet bapa-140 under existing rules, bapa-140 of 325 and bapa-140 of 341 for each FPA. This is actually a "tree-equivalent" measure, because for some FPAs in the data set, meeting bapa-140 will necessitate leaving larger numbers of smaller trees once the supply of trees sized at the marginal tree dbh is exhausted. This analysis thus calculates the additional trees needed to meet changes in bapa-140 targets separately for each FPA in the data set.

For the industry proposal option 1, conifer inventory data is used to determine if the harvest site meets proposed dbh/tpa targets. If the site meets the relevant target, the minimum number of trees necessary to meet the target is calculated in two ways: Assuming that the average dbh is maintained, and assuming that the minimum dbh target that can be met on the site is attained.

Option 2 assumes that conifer inventory is evenly spaced throughout the inner area of the riparian zone, and is therefore not sensitive to tree inventory distribution by dbh in the inner zone. The inner zone no-cut floor is calculated based on the relative contributions of the core and inner zones to meeting bapa-140, crediting cut-area leave trees for the industry proposal. Under option 2, harvesters that are constrained by the minimum floor area may harvest up to one-half of the trees in the outer riparian zone on a basal area for basal area basis (maintaining a minimum of ten trees per acre), reported as a basal area credit. Increasing bapa-140

targets will affect this credit, but since the model provides insufficient information to calculate this, these trees have been ignored for this analysis.

Option 1 or Option 2? In existing rules, applications for harvest in riparian areas in Site Class I, II, or on small streams in Class III have two options for harvest. Others must use option 1. Of the one hundred fifty FPAs in the data set, one hundred eight may use option 2. All but six of these FPAs chose option 2 as their harvest regime. This appears to be more a reflection of ease of operations than harvest level, since option 2 generally results in more leave trees than option 1. For this reason, this analysis does not attempt to choose the option that results in the largest inner-zone harvest for each FPA. The scenarios analyzed may affect the relative attractiveness of options 1 and 2, particularly for the industry proposal.

Estimating the value of the additional trees that need to be left in order to meet higher bapa-140 targets: To meet the requirements of a cost-benefit analysis, the change in the number of leave trees under each scenario were calculated for each FPA under options 1 and 2. Although different combinations of scenarios and options result in different average tree diameters, the average tree diameter of the data set was used, which is fourteen inches. Timber volume was converted to stumpage values using 2007 DNR timber sales data for western Washington.

ANALYSIS OF COSTS:

Estimating the number of leave trees under each scenario: McConnell et al's report provides information generated by running the DFC model on the one hundred fifty sample FPAs, as well as additional information that was calculated from the model outputs. The following data from McConnell et al's data set was used in this economic analysis:

- Site characteristics: Site class, stream size, major species (Douglas Fir or Western Hemlock), core and inner zone acreage, stand age.
- Tree inventory data.
- Attributes calculated from these data: Core and inner zone trees per acre (tpa), current basal area per acre (bapa), projected no-cut basal area per acre at age 140 (bapa-140), outer zone leave trees.
- Attributes following model-generated prescription (reported for core and inner zones as appropriate): Current bapa, bapa-140, size of first tree that may be cut (marginal tree dbh), tpa (option 1), no-cut floor (width of no-cut portion of inner zone, option 2).

A critical assumption is made in order to estimate the number of additional trees that would need to be left to meet higher bapa-140 targets—that the relationship between bapa and bapa-140 holds at higher target bapa-140 levels. Further analysis on this issue would help illuminate the effects of the proposed rule change on policy objectives.

The process used was as follows for option 1:

1. For each FPA, the difference between bapa-140 under current rules and bapa-140 targets of 325 and 341 was calculated. The result is the amount of additional bapa-140 that needs to be added back in order to meet higher bapa-140 targets.

2. A "growth factor" was calculated for each FPA, representing the relative change in bapa (from time of harvest to

age 140) after instituting the model-generated thinning prescription.

3. The difference calculated in step 1 above was adjusted to account for this growth, and converted into a count of trees by dividing by the basal area for the marginal-size tree for each individual FPA.

4. For the industry proposal, each FPA was checked against the appropriate dbh/tpa benchmark. If it met the benchmark, leave tree volume was calculated using two methods: Assuming stand inventory dbh was maintained, and assuming the minimum dbh-category benchmark was met, given the existing tree inventory.

For option 2, the following process was used:

1. The basal area at age 140 (ba-140) contribution of the core zones and inner zones were calculated.

2. The amount of excess core zone plus inner zone ba-140 was calculated (if any).

3. The proportion of the inner zone that could be harvested while meeting ba-140 targets was determined, crediting the twenty tpa that must be left in the cut portion of the inner zone (for the industry proposal only).

4. The no-cut floor was calculated.

5. For the forty-two FPAs that are not eligible to use option 2, option 1 results are substituted in the summary statistics except for the industry proposal, which allows option 2 for these FPAs.

For each FPA in the data set, this results in a count of the leave trees for each scenario. These calculations were

checked against the inventory of trees available for harvest in the inner zone under current rules to ensure that sufficient trees were available to leave. The average dbh of leave trees varies among FPAs and between scenarios; to simplify the presentation of the findings, the average diameter conifer in the 150 FPA data set is used (fourteen inches).

Table 1 compares the constraints among the scenarios. Highlights include:

- Using option 1, about half the FPAs are constrained by bapa-140 of 325, and 62% are constrained by bapa-140 of 341, compared to 5% constrained by current bapa-140 targets. The others are constrained by the fifty-seven trees per acre provision.
- Using option 2, about three-quarters of FPAs are constrained by bapa-140 of 325, and 89% are constrained by bapa-140 of 341, more than double the number constrained by current targets. The others are constrained by minimum no-cut floors.
- Higher bapa-140 targets preclude inner zone harvesting of conifers in considerably more FPAs under option 2 than under option 1.
- Eight of the 150 FPAs do not meet the dbh/tpa benchmarks under industry proposal option 1, and would not be able to harvest in the inner zone.
- 17% of the FPAs would not be able to harvest conifers in the inner zone under industry proposal option 2, similar to the rate for bapa-140 target of 325.

**Table 1
Bapa-140 and Harvest Constraints**

	Option 1				Option 2			
	Existing rules	325	341	Industry proposal	Existing rules	325	341	Industry proposal
Constrained by bapa-140	8/150	74/150	93/150	NA	40/108	83/108	96/108	NA
<i>Percent</i>	12%	49%	62%	NA	37%	77%	89%	NA
No conifers harvested in inner zone	3/150	7/150	13/150	8/150	1/108	17/108	31/108	26/150
<i>Percent</i>	2%	5%	9%	5%	1%	16%	29%	17%

Table 2 below summarizes the number of trees that would be left in the inner and outer zones for each scenario for the one hundred fifty sample FPAs. **These are reported as fourteen-inch tree-equivalents in order to facilitate comparison.** The actual average diameter of leave trees varies, from nineteen inches (option 1 - existing regulations) to eleven inches (industry proposal option 1, assuming minimum diameter trees are left). To account for the forty-two FPAs that cannot use option 2 under the existing regulations, bapa-140 of 325 and bapa-140 of 341 scenarios, option 1 results are substituted in the analysis.

**Table 2
Leave Tree Data for Harvest Option Scenarios**

	Inner Zone and Outer Zone 14-inch Leave Conifers	Inner Zone	Outer Zone	Percent of Inner Zone Conifers Left	Change in Leave Trees from Existing Rules
Option 1					
Total inventory conifers	NA	46,202	NA		
Existing rules	26,245	22,553	3,692	49%	
325 proposal	29,702	26,010	3,692	56%	3,457
341 proposal	31,402	27,710	3,692	60%	5,157

	Inner Zone and Outer Zone 14-inch Leave Conifers	Inner Zone	Outer Zone	Percent of Inner Zone Conifers Left	Change in Leave Trees from Existing Rules
Industry proposal @ average dbh	17,634	17,634	-	38%	(8,611)
Industry proposal @ minimum dbh	16,053	16,053	-	35%	(10,192)
Option 2					
Total inventory conifers	NA	44,679	NA		
Existing rules	33,760	29,971	3,789	67%	
325 proposal	38,145	34,356	3,789	77%	4,385
341 proposal	40,166	36,377	3,789	81%	6,406
Industry proposal	38,676	34,887	3,789	78%	4,916

Comparison between options 1 and 2. Option 2 leaves considerably more trees for each scenario. Under existing regulations, for example, half of the inner zone conifer inventory is left under option 1, and two-thirds is left under option 2.

Option 1 results. Changing the bapa-140 targets to 325 and 341 results in an additional 3,457 and 5,157 inner zone leave conifers, respectively, corresponding to increases of 7% and 11% of total conifer inventory.

Industry proposal option 1. Assuming that the inner zone conifer average diameter is maintained, an additional 11% of the conifer inner zone volume is harvested above that permitted by existing regulations, along with 3,692 outer zone conifers, corresponding to 8,611 additional trees harvested. Because harvesters are not required to maintain inner zone average conifer diameter, and the dbh/tpa combinations at lower diameters have lower basal area, we can assume that some harvests will be made at lower average diameters if the smaller trees are available in the inventory. To analyze whether this could significantly affect leave tree volume, the minimum diameter dbh-tpa benchmark was calculated for each FPA, accounting for conifer inventory. While the average diameter assumption results in leaving 17,634 trees averaging fourteen inches in diameter, the minimum diameter assumption results in leaving 21,388 trees averaging eleven inches in diameter. This corresponds to 16,053 fourteen-inch leave conifers, a decrease of 1,579 leave trees from the average diameter assumption.

Comparison of industry proposal option 1 with proposed option 1 bapa-140 of 325. The industry proposal leaves a similar number of conifers as the bapa-140 of 325 proposal, but impacts the average diameter of leave trees. The bapa-140 of 325 proposal leaves 21,886 trees averaging nineteen inches in diameter, and the industry proposal leaves 21,388 trees averaging eleven inches in diameter (assuming the dbh/tpa benchmark is attained by leaving the smallest trees available).

Option 2 results. Changing the bapa-140 targets to 325 and 341 results in an additional 4,385 and 6,406 inner zone leave conifers, respectively, corresponding to increases of 10% and 14% of total conifer inventory.

The industry proposal option 2 may be used by all harvesters, whereas the existing regulations and the 325 and 341

proposals restrict site class 3-large streams and site class 4 and 5 riparian harvest sites to option 1. The total number of leave conifers under the industry proposal is about 5,000 higher than is left under existing regulations, and similar to that of bapa-140 of 325, reflecting higher leave tree requirements to meet option 2 than to meet option 1. This increased number of leave trees from the forty-two FPAs that would no longer be precluded from using option 2 counterbalances the additional trees that would be harvested due to the elimination of minimum no-cut inner zone minimum floors, and the crediting of twenty leave trees per acre in the cut portion of the inner zone to bapa targets. Eliminating minimum floors and allowing harvesters to credit these leave trees decreases the no-cut floor by an average of two feet.

Statewide extrapolation: The data set used in McConnell et al. was randomly selected from all of the FPAs that included riparian inner zone harvest in 2003 and 2004. The draft report mentions that some FPAs were dropped for various reasons, and that in cases where there was more than one "stream reach," the first stream reach was chosen. For the purposes of extrapolation, these additional stream reaches are the equivalent of additional FPAs. There are three hundred forty-eight stream reaches in the one hundred fifty sample FPAs, or 2.32 stream reaches per FPA. There were three hundred ninety-one FPAs that included riparian zone harvest in 2003, and four hundred forty-four in 2004, for an average of four hundred eighteen. There are, therefore, an estimated nine hundred seventy stream reaches where riparian zone harvest activity is proposed annually, approximately 6.5 times more riparian area harvest activity per year than is found in the one hundred fifty survey FPAs. Table 3 adjusts the findings in Table 2 to a statewide extrapolation.

**Table 3
Statewide Extrapolation: Leave Tree Data for Harvest Option Scenarios**

	Inner Zone and Outer Zone 14-inch Leave Conifers	Inner Zone	Outer Zone	Percent of Inner Zone Conifers Left	Change in Leave Trees from Existing Rules
Option 1					
Total inventory conifers	NA	300,313	NA		
Existing rules	170,593	146,596	23,996	49%	
325 proposal	193,063	169,067	23,996	56%	22,471
341 proposal	204,113	180,117	23,996	60%	33,521
Industry proposal @ average dbh	114,621	114,621		38%	(55,972)
Industry proposal @ minimum dbh	104,345	104,345		35%	(66,248)
Option 2					
Total inventory conifers	NA	290,414	NA		
Existing rules	219,440	194,814	24,626	67%	
325 proposal	247,943	223,317	24,626	77%	28,503
341 proposal	261,079	236,453	24,626	81%	41,639
Industry proposal	251,394	226,768	24,626	78%	31,954

Calculating timber volume and stumpage value: The most accurate estimate of timber volume would calculate basal area for each FPA based on diameter (dbh) as well as site characteristics (site class, stand age, and species). Given time constraints, a simpler approach was used in this analysis, based on the following tables in the USFS Foresters Field Handbook:

- Westside Douglas Fir 50-Year Site Index table (to estimate tree height from site index and stand age).
- Board foot volume table for young Douglas Fir Scribner Log Rule.

The average tree height (119 feet) was estimated based on the average stand age (52) and average site index (116) of the data set. Volume was then calculated for a 14 inch diam-

eter Douglas Fir of this height — 218 board feet per tree. Stumpage value was calculated based on recent DNR timber sales in western Washington. The stumpage price used was \$400/mbf, appropriate for 12 to 18 inch diameter trees. This is net of costs, assumed to be \$150 per thousand board feet (mbf). This results in a stumpage value of \$87.20 per tree.

Table 4 presents leave conifer timber value for each scenario. Increasing the bapa-140 target to 325 results in an annual stumpage value loss of \$2.0 million under option 1 and \$2.5 million under option 2; increasing the bapa-140 target to 341 results in losses of \$2.9 million and \$3.6 million, respectively. Industry proposal option 1 results in an annual gain of between \$4.9 and \$5.8 million over existing regulations, while option 2 results in a loss of \$2.8 million.

**Table 4
Stumpage Value**

	Inner Zone and Outer Zone 14-inch Leave Conifers	Inner Zone	Outer Zone	Change in Leave Trees from Existing Rules
Option 1				
Total inventory conifers	NA	\$26,187,294	NA	
Existing rules	\$14,875,666	\$12,783,202	\$2,092,464	
325 proposal	\$16,835,094	\$14,742,630	\$2,092,464	\$1,959,428
341 proposal	\$17,798,654	\$15,706,190	\$2,092,464	\$2,922,988
Industry proposal @ average dbh	\$9,994,951	\$9,994,951		(\$4,880,715)
Industry proposal @ minimum dbh	\$9,098,840	\$90,98,840		(\$5,776,826)
Option 2				
Total inventory conifers	NA	\$25,324,057	NA	
Existing rules	\$19,135,168	\$16,987,806	\$2,147,362	
325 proposal	\$21,620,586	\$19,473,224	\$2,147,362	\$2,485,418

	Inner Zone and Outer Zone 14-inch Leave Conifers	Inner Zone	Outer Zone	Change in Leave Trees from Existing Rules
341 proposal	\$22,766,089	\$20,618,727	\$2,147,362	\$3,630,921
Industry proposal	\$21,921,557	\$19,774,195	\$2,147,362	\$2,786,389

Small Business Impacts: The one hundred fifty FPAs in the sample were not identified as to small forest landowner status. Anecdotal evidence suggests that nonindustrial harvesters are less likely to consider harvesting in riparian zones, due to the complicated nature of following the rules, such as the requirement to inventory each tree by two-inch diameter class. Those that choose to harvest may be more likely to utilize option 2, which is simpler to set up, in spite of the fact that option 1 usually allows more harvesting than option 2. Under these circumstances, we estimate that the effects on small business are similar to the industry as a whole for the bapa-140 of 325 and 341 scenarios.

The industry proposal's option 1 scenario facilitates the setting up of timber harvests compared to existing regulations, and therefore may induce more harvesters to thin riparian area inner zones. Small forest landowners would likely benefit to a relatively greater extent than industry.

BENEFITS: The benefits of the proposed rule change cannot be reasonably estimated because they occur at the margin, and marginal benefits of protecting riparian areas haven't been studied. That said, the major benefit of limiting harvest in riparian areas is to reach DFC, particularly the improved recruitment of large woody debris to the adjoining stream. There was a significant amount of discussion during the forest and fish negotiations as to how much thinning was appropriate to facilitate meeting DFC.

In twenty of the one hundred fifty sample FPAs, bapa-140 increased after the prescribed thinning compared to bapa-140 without a thinning. On the other hand, none of the one hundred eight eligible FPAs increased bapa-140 after an option 2 treatment. The fact that the vast majority (one hundred two out of one hundred eight) of FPAs in the sample chose option 2 over the thinning option even though more trees are left under option 2, and the large standard deviation in the mature stands reported by the Schuett-Hames study, suggest that the current regime may be counterproductive for stands that would benefit from thinning but cannot meet bapa-140 targets. Increasing bapa-140 targets may exacerbate the situation.

The benefits of industry proposal option 1 are even more difficult to analyze. If the proposal meets bapa-140 targets, it offers improved efficiencies in doing so, and would be simpler to implement. However, near-term riparian function may be affected if harvesters choose to reduce the average dbh of the riparian zone through thinning.

CONCLUSION: This economic analysis estimates the costs of the proposed rule making on an annual basis. Costs are defined as the annual statewide decrease in timber harvest revenue resulting from the proposed rule change.

The annual stumpage value of trees not harvested due to increasing the basal area per acre at age 140 to 325 is \$2.0 million under option 1 and \$2.5 million under option 2. The industry proposal analyzed here allows the harvest of an additional \$4.9 million of stumpage value annually under

option 1. Under option 2, an additional stumpage value of \$2.8 million is not harvested annually.

As discussed in the report, this analysis necessitated making a number of assumptions that were not field tested. These findings should therefore be considered at best as providing an indication of the scale of the effects of the proposed rule change.

Benefits are identified but not quantified due to the lack of relevant information. While we can generally conclude that the benefits of protecting riparian areas are considerable, of perhaps greater concern are outstanding questions related to whether increasing basal area-140 targets are in fact improving the chances of meeting desired future conditions. Consideration should also be given to the distribution of costs and benefits.

While the benefits accrue generally, the costs are borne by a limited number of forest practices applicants. The effects on individual applications vary considerably. About half of the FPAs are unaffected by changing the bapa-140 target to 325 or 341, because they have more than sufficient basal area, and would still be constrained by the fifty-seven trees-per-acre requirement. On the other hand, as mentioned previously, one third of the FPAs would be precluded from option 2 harvesting at a bapa-140 target of 325, and almost half at 341, because they are unable to meet bapa-140 in the core plus inner zones (which is narrower under option 1 than option 2 for some combinations of site class and stream size). Industry proposal option 1 is generally more favorable to higher site classes than existing regulations, due to smaller inner zone widths.

A copy of the statement may be obtained by contacting Gretchen Robinson, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gretchen Robinson, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov. Note: The small business economic impact statement and the preliminary cost-benefit analysis are combined in the document, *Preliminary Economic Analysis, Forest Practices Rule Making, Affecting Timber Harvest in Riparian Zones in Western Washington*.

October 4, 2007
Victoria Christiansen
Chair

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in

WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See the board manual section 7 for riparian design and layout guidelines.

***(1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See the board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is 140 years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	((285)) 325 sq. ft.
II	((275)) 325 sq. ft.
III	((258)) 325 sq. ft.
IV	((224)) 325 sq. ft.
V	((190)) 325 sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See the board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than 57 conifer trees per acre 8 inches or larger dbh in the conversion area;
- There are fewer than 100 conifer trees per acre larger than 4 inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns 500 feet upstream and 500 feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a 75-foot buffer with trees at least 40 feet tall on both sides of the stream for 500 feet upstream and 500 feet downstream of the proposed harvest unit (or the length of the stream, if less);
- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than 500 feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

• Type S and F (Type 1, 2, or 3) Water: Up to 50% of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a 75-foot buffer of trees at least 40 feet tall or:
- ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a 75-foot buffer of trees at least 40 feet tall.

• Not more than 25% of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than 20 inches dbh shall not be harvested;
- Not more than 10% of the conifer stems greater than 8 inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and
- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than 8 inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and
- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of 150 conifer trees greater than 8 inches dbh per acre.
- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for guidelines.
- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.
- Thinning cannot decrease the proportion of conifer in the stand.

- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of 75 feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.

- The number of residual conifer trees per acre in the inner zone will equal or exceed 57.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to 10 feet wide and RMZs in site class I and II for streams greater than 10 feet wide. Harvest must comply with the following:

- Harvest is not permitted within 30 feet of the core zone for streams less than or equal to 10 feet wide and harvest is not permitted within 50 feet of the core zone for streams greater than 10 feet wide;
- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;

- A minimum of 20 conifers per acre, with a minimum 12-inch dbh, will be retained in any portion of the inner zone where harvest occurs. These riparian leave trees will not be counted or considered towards meeting applicable stand requirements nor can the number be reduced below 20 for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of 10 trees per acre.

Option 2. Leaving trees closest to water.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive

credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than 10 trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave 20 riparian leave trees per acre after harvest. "**Outer zone riparian leave trees**" are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The 20 riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of 12 inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of 12" dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be 8 inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;
- (V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).
- (VI) Archeological or historical sites registered with the Washington state (~~office~~) department of archeology and historic preservation. See WAC 222-16-050 (1)(g); or
- (VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of 12 inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(ii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in the board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of 10 trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

- (I) Offsets will be measured on a basal area-for-basal area basis.
- (II) Conifer in a CMZ equal to or greater than 6" dbh will offset conifer in the outer zone at a one-to-one ratio.
- (III) Hardwood in a CMZ equal to or greater than 10" dbh will offset hardwood in the outer zone at a one-to-one ratio.
- (IV) Hardwood in a CMZ equal to or greater than 10" dbh will offset conifer in the outer zone at a three-to-one ratio.

*** (2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a 30-foot wide zone measured horizontally from the outer edge of the bank-full width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than 10% of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) Sensitive site and RMZs protection along Type Np Waters. Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A 50-foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within 50 feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within 50 feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a 56-foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a 56-foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least 50% of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of 100 feet in length. If an operating area is located more than 500 feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than 1,000 feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional 2-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than 20% in the tailed frog habitat range;
- (C) Hyporheic and ground water influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See ~~((the))~~ board manual section 7 for riparian design and layout guidelines.

***(1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See ~~((tables for))~~ management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the ~~((inner zone))~~ RMZ rules. See ~~((the))~~ board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed ~~((in))~~ within the fifty-foot core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management options as described in this section. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" ~~((means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is 140 years old.~~

Site Class	Desired future condition target basal area per acre (at 140 years)
I	285 sq. ft.
II	275 sq. ft.
III	258 sq. ft.
IV	224 sq. ft.
V	190 sq. ft.

~~Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See the board manual section 7)) is the minimum size, number and proportion of conifer trees per acre as listed in the retention standards described in inner zone management options 1 and 2, and the desire future condition basal area target of three hundred twenty-five square feet per acre at age one hundred forty. The growth modeling program provided by the department must be used to calculate whether a particular stand meets the stand requirement and is on the trajectory towards the desired future condition basal area target.~~

The retention standard for option 1 is expressed as the minimum number of residual conifer trees per acre by average stand diameter class in the inner zone as provided in the table for option 1 located in (b)(ii)(B)(I) of this subsection. The core zone must have a conifer dominated overstory to use this option. Every ten years, the department shall evaluate and report to the board the effectiveness of the thinning guidelines in meeting the target stand characteristics of desired future condition.

The retention standard for option 2 is expressed as the minimum number and size of conifer trees in the combined core and inner zones required to meet the basal area target as calculated by the desired future condition growth modeling program. The growth model is based on the stand characteristics of a site: The number of trees by diameter class, the percentage of conifer trees in the stand, and the age of the stand. See board manual section 7 for guidance on the proper use of the growth model.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the ~~((combined core and))~~ inner zone do not meet ~~((stand requirements))~~ retention standards listed in ((WAC 222-30-021-1)) (b)(ii)(B)(I) of this subsection (option 1));

- There are fewer than ~~((57))~~ fifty-seven conifer trees per acre ~~((8))~~ eight inches or larger dbh in the conversion area;

- There are fewer than ~~((100))~~ one hundred conifer trees per acre larger than ~~((4))~~ four inches dbh in the conversion area;

- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;

- The landowner owns ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the harvest unit;

- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a ~~((75))~~ seventy-five-foot buffer with trees at least ~~((40))~~ forty feet tall on both sides of the stream for ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the proposed harvest unit (or the length of the stream, if less);
- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than ~~((500))~~ five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

• Type S and F (Type 1, 2, or 3) Water: Up to ~~((50%))~~ fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75))~~ seventy-five-foot buffer of trees at least ~~((40))~~ forty feet tall or:

◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75))~~ seventy-five-foot buffer of trees at least ~~((40))~~ forty feet tall.

- Not more than 25% of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than ~~((20))~~ twenty inches dbh shall not be harvested;
- Not more than ~~((10%))~~ ten percent of the conifer stems greater than ~~((8))~~ eight inches dbh, exclusive of the conifer

noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than ~~((8))~~ eight inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

• Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of ~~((150))~~ one hundred fifty conifer trees greater than ~~((8))~~ eight inches dbh per acre.

• Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options in the inner zone.**

(A) No inner zone management. When ~~((the existing stands in the combined core and inner zone do not meet stand requirements))~~ retention standards cannot be met by either option 1 or 2, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	Total RMZ width	((Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)))	Combined core and inner zone width (measured from outer edge of ((core zone)) bankfull width or outer edge of CMZ)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	((50'))	((83')) <u>133'</u>
II	170'	((50'))	((63')) <u>113'</u>	((78')) <u>128'</u>	57'	42'
III	140'	((50'))	((43')) <u>93'</u>	((55')) <u>105'</u>	47'	35'
IV	110'	((50'))	((23')) <u>73'</u>	((33')) <u>83'</u>	37'	27'
V	90'	((50'))	((10')) <u>60'</u>	((18')) <u>68'</u>	30'	22'

(B) Inner zone management. ((If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:))

(I) **Option 1. ((Thinning from below.))** The objective of this thinning option is to distribute ((stand requirement)) trees in the inner zone in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. The total RMZ width under this option is one hundred fifty-three feet comprised of a fifty-foot wide no-harvest core zone, a sixty-foot wide inner zone and a forty-three foot wide outer zone. Thinning harvest under option 1 must ((empty with)) result in the following retention standards:

((Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.

- Thinning cannot decrease the proportion of conifer in the stand.

- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of 75 feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.

- The number of residual conifer trees per acre in the inner zone will equal or exceed 57.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'))

- A minimum number of residual conifer trees per acre greater than six inches dbh as shown in the table above for option 1.

Option 1. Residual Conifer Trees Per Acre

Average Conifer Tree Diameter	Minimum Residual Conifer Trees Per Acre
22" and greater	57
20"	60
18"	65
16"	70
14"	75
12"	80
10"	90
**8"	100

**Average tree conifer diameter is based on two-inch diameter classes. For example, the eight-inch diameter class represents an average diameter between 7.0 and 8.9 inches diameter at breast height.

- The average residual stand tree diameter is the same or larger than the average stand diameter before harvest.

- The distance between the residual conifer trees is no greater than fifty feet.

- The same proportion of conifer trees is present in the stand as before harvest.

In addition to the standards listed above, the landowner must confirm that shade retention is achieved according to WAC 222-30-040 for any harvest within seventy-five feet from the outer edge of bankfull width or the outer edge of the CMZ, whichever is greater.

Hardwoods may be harvested in the inner zone when the preharvest stand does not meet the retention standards listed in the table above for option 1 and contains the required stand conditions listed above in (b)(i) of this subsection regarding hardwood conversion in the inner zone.

(II) **Option 2. ((Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to 10 feet wide and RMZs in site class I and II for streams greater than 10 feet wide. Harvest must comply with the following:

- Harvest is not permitted within 30 feet of the core zone for streams less than or equal to 10 feet wide and harvest is not permitted within 50 feet of the core zone for streams greater than 10 feet wide;

- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;

- A minimum of 20 conifers per acre, with a minimum 12-inch dbh, will be retained in any portion of the inner zone where harvest occurs. These riparian leave trees will not be

counted or considered towards meeting applicable stand requirements nor can the number be reduced below 20 for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area for basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of 10 trees per acre.) The objective of this option is to retain an RMZ width that will maintain current riparian functions. The retention standards in this option provide sufficient residual conifer trees in the combined core and inner zones to reach the target basal area of three hundred twenty-five square feet per acre at age one hundred forty.

Inner zone harvest may occur under option 2 if the projected future basal area within the combined width of the core and inner zones exceeds the target basal area. The combined core and inner zone width must be determined using the leaving trees closest to the water table below; the future basal area must then be calculated using the growth model program provided by the department. The model will produce a minimum inner zone floor width. (The minimum floor width extends outward from the outer edge of the fifty-foot core zone.) In the event the model produces a minimum floor width less than the minimums shown in the leaving trees closest to the water table, the appropriate widths shown in the table must be used.

Harvest is permitted under option 2 in the following order:

- If the projected basal area within the combined core and inner zones exceeds the target basal area, an even-age harvest may occur in the area between the outer edge of the minimum inner zone floor and the outer edge of the inner zone.

Harvest must start at the outermost portion of the inner zone and progress to the inner zone floor edge.

In any portion of the inner zone where an even-age harvest method occurs, at least twenty conifer trees with a minimum dbh of twelve inches must be retained. The basal area of these trees will be counted towards meeting applicable stand requirements.

- If the projected basal area within the combined core and inner zones still exceeds the target basal area, the surplus conifer may be harvested. Harvest must be accomplished sequentially as follows until either the surplus is exhausted or the limits on harvest are reached, whichever occurs first.

- ◆ Conifer trees otherwise required to be left in the outer zone may be harvested on a basal-area-for-basal-area basis; however, only a maximum of ten conifer trees per acre may be harvested in the outer zone. (Tree counts, minimum size and placement of outer zone trees are specified below in (c) of this subsection.)

- ◆ If surplus conifer trees remain, inner zone trees may be thinned within the portion of the inner zone that is more than twenty-five feet from the outer edge of the core zone. Thinning must result in all of the following conditions:

The appropriate number of residual conifer trees per acre according to the inner zone thinning table for option 1, all greater than six inches dbh;

An average stand diameter equal to or greater than the average stand diameter before thinning; and

The distance between the residual conifer trees is no greater than fifty feet.

Option 2. ((Leaving trees closest to water.)) Riparian Management Zone Widths

Site class	Total RMZ width	((Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)))	Combined core and inner zone width (measured from outer edge of bankfull width or outer edge of CMZ)				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
			Core and inner zone width ((measured from outer edge of core zone))	minimum floor ((distance)) width (measured from outer edge of core zone)	Core and inner zone width (measured from outer edge of core zone)	minimum floor ((distance)) width (measured from outer edge of core zone)		
I	200'	((50'))	((84')) 134'	((30')) 80'	((84')) 134'	((50')) 100'	66'	66'
II	170'	((50'))	((64')) 114'	((30')) 80'	((70')) 120'	((50')) 100'	56'	50'
III	140'	((50'))	((44')) 94'	((30')) 80'	((**)) 105'	((**)) 80'	46'	((**)) 35'
IV	110'		74'		83'	80'	36'	27'
V	90'		61'		68'		29'	22'

((**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.))

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ~~((40))~~ ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave ~~((20))~~ twenty riparian leave trees per acre after harvest. "**Outer zone riparian leave trees**" are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The ~~((20))~~ twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of ~~((12))~~ twelve inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of ~~((12"))~~ twelve inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be ~~((8))~~ eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;
- (V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archeological or historical sites registered with the Washington state ~~((office))~~ department of archeology and historic preservation. See WAC 222-16-050 (1)(g); or

(VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of 12 inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(ii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in ~~((the))~~ board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of ~~((40))~~ ten trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than ~~((6"))~~ six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ~~((10"))~~ ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ~~((10"))~~ ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

***(2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((30))~~ thirty-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ~~((10%))~~ ten percent of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A 50-foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a ~~((56))~~ fifty-six-foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a ~~((56))~~ fifty-six-foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least ~~((50%))~~ fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream ~~((2))~~ two-sided buffers. Buffered segments must be a minimum of ~~((100))~~ one hundred feet in length. If an operating area is located more than ~~((500))~~ five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than ~~((1,000))~~ one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional 2-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than ~~((20%))~~ twenty percent in the tailed frog habitat range;
- (C) Hyporheic and ground water influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an

existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

WSR 07-21-140
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed October 24, 2007, 9:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-025.

Title of Rule and Other Identifying Information: The department is amending chapter 388-78A WAC, Boarding homes, to add new sections regarding the resident protection program and amend several existing sections in the chapter to be consistent with the new sections on the resident protection program.

Hearing Location(s): Blake Office Park East, First Floor, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on December 11, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 12, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRULESCOORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 11, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 4,

2007, 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: The proposed rule making adds sections to chapter 388-78A WAC regarding due process rights for persons alleged to have abandoned, abused, neglected, exploited or financially exploited boarding home residents/resident protection program. The proposal adds information about investigations, notification, hearings and appeals. Relevant definitions are clarified and additional relevant terms will be defined in WAC 388-78A-2020 Definitions. The department is amending WAC 388-78A-2600 Policies and procedures, to clarify that boarding homes need to train their staff about abandonment and financial exploitation of residents, and amending WAC 388-78A-2470 Criminal history background checks, to make language consistent with new resident protection program sections.

Reasons Supporting Proposal: Persons alleged to have abandoned, abused, neglected, exploited or financially exploited boarding home residents are entitled to due process. The proposed changes provide individuals, boarding home providers, the department and others with clear guidance regarding due process rights of individuals alleged to have abandoned, abused, neglected, exploited or financially exploited residents.

Statutory Authority for Adoption: RCW 18.20.090.

Statute Being Implemented: Chapters 18.20 and 74.34 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Todd Henry, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, (360) 725-2580; Implementation and Enforcement: Pat Jennings, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined there were no more than "minor costs" as defined in changes made in RCW 19.85.030 in 2007. A copy of the statement may be obtained by contacting Todd Henry, P.O. Box 45600, Mailstop 45600, Olympia, WA 98513, phone (360) 725-2580, fax (360) 438-7903, e-mail henryte@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Todd Henry, P.O. Box 45600, Mailstop 45600, Olympia, WA 98513, phone (360) 725-2580, fax (360) 438-7903, e-mail henryte@dshs.wa.gov.

October 19, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-13-028, filed 6/13/06, effective 7/14/06)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the

means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another(;

(5) ~~**"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage).~~

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Adult day services" means care and services provided to a nonresident individual by the boarding home on the boarding home premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing hands-on personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly supervised. Direct supervision means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

"Department" means the Washington state department of social and health services.

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

"Enforcement remedy" means one or more of the department's responses to a boarding home's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackage food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

(1) Blood glucose testing;

(2) Puree diets;

(3) Calorie controlled diabetic diets;

(4) Dementia care;

(5) Mental health care; or

(6) Developmental disabilities care.

"Independent living unit" means:

(1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) Boarding home unit where domiciliary services are not provided; or

(4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the boarding home license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Majority owner" means any person that owns:

(1) More than fifty percent interest; or

(2) If no one person owns more than fifty percent interest, the largest interest portion; or

(3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes).

chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is a least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical

or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in a boarding home and may receive one or more of the services listed in WAC 388-78A-2030 (2)(a) through (g). A nonresident individual may not receive domiciliary care as defined in this section, directly or indirectly by the boarding home, and may not receive the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section, except during the time the person is receiving adult day services as defined in this section.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

- (a) There has been a violation of a WAC or RCW; and
- (b) Significant harm has actually occurred to a resident;

or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed under general responsibility for the safety and well-being of the resident, and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" (~~means "vulnerable adult" as defined in chapter 74.34 RCW-~~) includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or
(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any boarding home; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Willful" means the deliberate, or nonaccidental, action or inaction by an alleged perpetrator that he/she knows or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

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

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2470 Criminal history background checks. (1) This section applies to any individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

- (a) Employees;
 - (b) Managers;
 - (c) Volunteers who are not residents;
 - (d) Contractors; and
 - (e) Students.
- (2) The boarding home must:

(a) Ensure any individual associated with the licensee or boarding home who may have unsupervised access to residents has had a background check of conviction records, pending charges and disciplinary board decisions completed within the past two years, and is repeated every two years thereafter, and that individual has not been:

(i) Convicted of a crime against children or other persons as defined in RCW 43.43.830 or 43.43.842;

(ii) Convicted of crimes relating to financial exploitation as defined in RCW 43.43.830 or 43.43.842;

(iii) Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;

(iv) The subject in a protective proceeding under chapter 74.34 RCW;

(v) Convicted of criminal mistreatment; or

(vi) Found by the department to have abandoned, abused, neglected or exploited a minor, or abandoned, abused, neglected, exploited, or financially exploited a ((minor or)) vulnerable person, provided the individual was offered an administrative hearing to contest the finding, and the finding was upheld, or the individual failed to timely appeal the finding.

(b) Not hire or retain, directly or by contract, or accept as a volunteer, any individual prohibited from having unsupervised access to residents under (a) of this subsection, except as provided in subsection (6) of this section and RCW 43.43.842.

(3) Prior to first starting his or her duties, the boarding home must:

(a) Require each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose, consistent with RCW 43.43.834(2), whether he or she:

(i) Has been convicted of a crime, including any of the following as defined in RCW 43.43.830:

- (A) All crimes against children or their persons;
- (B) All crimes relating to financial exploitation; and
- (C) All crimes relating to drugs;

(ii) Has had findings made against him or her in any civil adjudicative proceeding as defined in RCW 43.43.830; or

(iii) Has both convictions for (i) and findings made against him or her under (ii).

(b) Require each individual making the disclosures required in subsection (3)(a) of this section:

(i) To make the disclosures in writing;

(ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and

(iii) To sign the disclosure statement.

(4) Prior to first starting his or her duties, the boarding home must take one or more of the following three actions for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents:

(a) Initiate a background check on the individual through the department, which includes taking the following actions:

(i) Informing the individual that a background check is required.

(ii) Requiring the individual to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

(iii) Submitting all background check authorization forms to the department's:

(A) Aging and disability services administration with the initial application for licensure; and

(B) Background check central unit for currently licensed boarding homes.

(iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt.

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer was a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW;

(ii) The nursing home, boarding home or adult family home providing completed criminal background inquiry information for the individual is reasonably known to be the individual's most recent employer;

(iii) No more than twelve months has elapsed from the date the individual was employed by the nursing home, boarding home or adult family home and the date of the individual's current application;

(iv) The background inquiry for the individual is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in RCW 43.43.842.

(c) When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must establish, maintain and follow a written agreement with the agency or pool to ensure the requirements of subsection (2) of this section are met for the agency or pool staff who may work in the boarding home.

(5) The boarding home must ensure that all disclosure statements, and background check results obtained by the boarding home, are:

(a) Maintained on-site in a confidential and secure manner;

(b) Used for employment purposes only;

(c) Not disclosed to any individual except:

(i) The individual named on the background check result;

(ii) Authorized state and federal employees;

(iii) The Washington state patrol auditor; and

(iv) As otherwise authorized in chapter 43.43 RCW.

(d) Retained and available for department review:

(i) During the individual's employment or association with a facility; and

(ii) At least two years following termination of employment or association with a facility.

(6) The boarding home may conditionally hire, directly or by contract, an individual having unsupervised access to

residents pending a background inquiry, provided the boarding home:

(a) Obtains a criminal history background check authorization form from the individual prior to the individual beginning work;

(b) Submits the criminal history background check authorization form to the department no later than one business day after the individual started working; and

(c) Has received three positive references for the individual.

(7) The department may require the boarding home or any other individual associated with the boarding home who has unsupervised access to residents to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified under RCW 43.43.830 have occurred since completion of the previous disclosure statement or background inquiry.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2600 Policies and procedures. (1) The boarding home must develop and implement policies and procedures in support of services that are provided and are necessary to:

(a) Maintain or enhance the quality of life for residents including resident decision-making rights;

(b) Provide the necessary care and services for residents, including those with special needs;

(c) Safely operate the boarding home; and

(d) Operate in compliance with state and federal law, including, but not limited to, chapters 7.70, 11.88, 11.92, 11.94, 69.41, 70.122, 70.129, and 74.34 RCW, and any rules promulgated under these statutes.

(2) The boarding home must develop, implement and train staff persons on policies and procedures to address what staff persons must do:

(a) Related to suspected abandonment, abuse, neglect, exploitation, or financial exploitation of any resident;

(b) When there is reason to believe a resident is not capable of making necessary decisions and no substitute decision maker is available;

(c) When a substitute decision maker is no longer appropriate;

(d) When a resident stops breathing or a resident's heart appears to stop beating, including, but not limited to, any action staff persons must take related to advance directives and emergency care;

(e) When a resident does not have a personal physician or health care provider;

(f) In response to medical emergencies;

(g) When there are urgent situations in the boarding home requiring additional staff support;

(h) In the event of an internal or external disaster, consistent with WAC 388-78A-2700;

(i) To supervise and monitor residents, including accounting for residents who leave the premises;

(j) To appropriately respond to aggressive or assaultive residents, including, but not limited to:

(i) Actions to take if a resident becomes violent;

- (ii) Actions to take to protect other residents; and
 - (iii) When and how to seek outside intervention.
 - (k) To prevent and limit the spread of infections consistent with WAC 388-78A-2610;
 - (l) To manage residents' medications, consistent with WAC 388-78A-2210 through 388-78A-2290; sending medications with a resident when the resident leaves the premises;
 - (m) When services related to medications and treatments are provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;
 - (n) Related to food services consistent with chapter 246-215 WAC and WAC 388-78A-2300;
 - (o) Regarding the safe operation of any boarding home vehicles used to transport residents, and the qualifications of the drivers;
 - (p) To coordinate services and share resident information with outside resources, consistent with WAC 388-78A-2350;
 - (q) Regarding the management of pets in the boarding home, if permitted, consistent with WAC 388-78A-2620; and
 - (r) When receiving and responding to resident grievances consistent with RCW 70.129.060.
- (3) The boarding home must make the policies and procedures specified in subsection (2) of this section available to staff persons at all times and must inform residents and residents' representatives of their availability and make them available upon request.

NEW SECTION

WAC 388-78A-3400 Investigation of reports. (1) The department may investigate allegations of abandonment, abuse, neglect, exploitation, and financial exploitation of a resident.

- (2) A department investigation may include an investigation of allegations about one or more of the following:
- (a) A licensee;
 - (b) Boarding home administrator;
 - (c) Employee of the boarding home;
 - (d) Entity representative;
 - (e) Anyone affiliated with the boarding home; and
 - (f) Caregiver.

NEW SECTION

WAC 388-78A-3410 Notice of preliminary finding. (1) The department will notify the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident. The written notice:

- (a) Will not include the identities of the alleged victim, reporter and witnesses; and
- (b) Will include the necessary information for the individual to ask for an administrative hearing to challenge the preliminary finding.

(2) The department must make a reasonable, good faith effort to find the last known address of the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident.

(3) The department may extend the time frame for notification beyond ten working days for good cause.

(4) The department will serve notice of the preliminary finding as provided in chapter 388-02 WAC.

NEW SECTION**WAC 388-78A-3420 Reporting preliminary findings.**

(1) In a manner consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of a preliminary finding to:

- (a) The federal or state department or agency list of individuals found to have abandoned, abused, neglected, exploited or financially exploited a vulnerable adult;
- (b) Other divisions within the department;
- (c) The agency or program identified under RCW 74.34.068 with which the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident is associated as an employee;
- (d) The employer or program that is currently associated with the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident, if known;
- (e) Law enforcement; and
- (f) Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as a preliminary finding.

NEW SECTION**WAC 388-78A-3430 Disputing a preliminary finding.**

(1) The individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date written on the notice of the preliminary finding.

(4) The written request for a hearing must include:

- (a) The individual's full legal name, current mailing address and the telephone number;
- (b) A brief explanation of why the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident disagrees with the preliminary finding;
- (c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign or sign language interpreter or any reasonable accommodation for a disability; and
- (d) The individual's signature.

NEW SECTION

WAC 388-78A-3440 Hearing procedures to dispute preliminary finding. (1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding a preliminary finding.

(2) If a conflict exists between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

(3) If an administrative law judge within the office of administrative hearings determines that a preponderance of the evidence supports the preliminary finding that the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident, then the administrative law judge will issue an initial order.

NEW SECTION

WAC 388-78A-3450 Finalizing a preliminary finding. (1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident there is a preliminary finding pursuant to WAC 388-78A-3410; and

(b) The individual alleged to have abandoned, abused, neglected, exploited or financially exploited a resident does not ask for an administrative hearing; or

(c) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) Issues an initial order upholding the finding and the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident fails to appeal the initial order to the department's board of appeals; or

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if:

(a) It is rescinded following judicial review; or

(b) The department decides to remove a single finding of neglect from its records based upon a written petition by the individual found to have abandoned, abused, neglected, exploited, or financially exploited a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded.

NEW SECTION

WAC 388-78A-3460 Appeal of administrative law judge's initial order or finding. (1) If the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW, Administrative Procedures Act, and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

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

NEW SECTION

WAC 388-78A-3470 Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, exploitation and financial exploitation within ten working days to the following:

(1) The individual found to have abandoned, abused, neglected, exploited, or financially exploited a resident and for whom there is a final finding;

(2) The boarding home licensee or entity representative that was associated with the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident during the time of the incident;

(3) The employer or program that is currently associated with the individual, if known;

(4) The appropriate licensing, certification or registration authority;

(5) The federal or state department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult; and

(6) The findings may be disclosed to the public upon request subject to applicable public disclosure laws.

NEW SECTION

WAC 388-78A-3480 Disclosure of investigative and finding information. (1) Confidential information about residents and mandated reporters received from the department may only be used by the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident to challenge findings through the appeal process.

(2) Confidential information such as names and other personal identifying information of the reporter, witnesses, or the resident will be redacted from documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

WSR 07-22-032

WITHDRAWAL OF PROPOSED RULES

ENERGY FACILITY SITE EVALUATION COUNCIL

(By the Code Reviser's Office)

[Filed October 30, 2007, 8:32 a.m.]

WAC 463-66-070 and 463-66-080, proposed by the energy facility site evaluation council in WSR 07-09-059 appearing in issue 07-09 of the State Register, which was distributed on May 2, 2007, 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 07-22-033**WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed October 30, 2007, 8:33 a.m.]

WAC 230-40-800, proposed by the gambling commission in WSR 07-09-069 appearing in issue 07-09 of the State Register, which was distributed on May 2, 2007, 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 07-22-037**PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed October 30, 2007, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-032.

Title of Rule and Other Identifying Information: WAC 388-455-0005 How lump sum payments affect benefits, 388-455-0010 How the department treats lump sum payments as a resource for cash assistance and TANF/SFA-related medical assistance, and 388-455-0015 How the department treats lump sum payments as income for cash assistance and TANF/SFA-related medical assistance.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on December 11, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 12, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on December 11, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 4, 2007, 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: The current rules describe the department's policy on how a lump sum payment impacts a person's eligibility for cash, medical, and food assistance benefits.

The proposed changes correct a reference to another department rule and revise the text to make the rules more readily understood.

Reasons Supporting Proposal: The proposed changes are editorial in nature and do not change current policy related to lump sum payments.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, 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, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by setting eligibility rules related to how a lump sum payment impacts eligibility for cash, medical, and food assistance programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

October 26, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-24-008, filed 11/19/99, effective 1/1/00)

WAC 388-455-0005 How do lump sum payments affect benefits~~((:))~~ (1) ~~((For the purpose of determining benefits for cash assistance, temporary assistance for needy families (TANF)/state family assistance (SFA) related medical assistance, and food assistance,))~~ A lump sum payment is money that ~~((the client))~~ someone receives but does not expect to receive on a continuing basis.

(2) For cash assistance and TANF/SFA-related medical assistance, we count a lump sum payment:

(a) ~~((The department counts payments))~~ Awarded for wrongful death, personal injury, damage, or loss of property as a resource~~((s as described in))~~ under WAC 388-455-0010.

(b) ~~((We count all other lump sum payments))~~ Received for any other reason as income ~~((as described in))~~ under WAC 388-455-0015.

(3) ~~((For food assistance, all lump sum payments are counted as resources as described in WAC 388-470-0055))~~ For Basic Food, we count lump sum payments for a previous period as a resource under WAC 388-470-0055. We count any amount for current or future months as income to your assistance unit.

AMENDATORY SECTION (Amending WSR 99-24-008, filed 11/19/99, effective 1/1/00)

WAC 388-455-0010 ((How)) When does the department treat((s)) lump sum payments as a resource for cash

assistance and TANF/SFA-related medical assistance~~(?)~~ This section applies to cash assistance and TANF/SFA-related medical assistance.

(1) ~~((In the month the payment is received, the department does not count any amount of a lump sum payment))~~ If you receive a lump sum payment, we do not count any amount of the payment as income that is awarded for:

- (a) Wrongful death;
- (b) Personal injury;
- (c) Damage; or
- (d) Loss of property.

(2) ~~((In the month following the month of receipt, we count the entire amount as a resource except for the portion of the payment designated for:~~

~~(a) Repair or replacement of damaged or lost property; or
(b) Medical bills))~~ If a portion of the payment is designated for medical bills or to repair or replace damaged or lost property, we exclude this amount as a resource for sixty days after the month you received the payment.

(3) ~~((We do not count the portion described in subsection (2) of this section for sixty days following the month the payment is received. At the end of the sixty-day period, we count any amount that remains as a resource))~~ We count the following portion of your lump sum payment as a resource:

- (a) Any amount of the payment not designated for medical bills or to repair/replace damaged or lost property; and
- (b) Any amount of the payment you have left after the sixty-day period in subsection (2) is over.

AMENDATORY SECTION (Amending WSR 99-24-008, filed 11/19/99, effective 1/1/00)

WAC 388-455-0015 How ~~((the department treats))~~ do lump sum payments count as income for cash assistance and TANF/SFA-related medical assistance. ~~((For cash assistance and TANF/SFA-related medical assistance, lump sum payments not awarded for wrongful death, personal injury, damage, or loss of property are counted as income. They are budgeted against the client's benefits according to the effective dates in WAC 388-418-0020. The rules in this section describe what portion is countable and when the department counts it. For rules on how lump sum payments awarded for wrongful death, personal injury, damage, or loss of property affect benefits, see WAC 388-450-0010))~~ This section applies to cash, and TANF/SFA-related medical assistance.

(1) ~~((To identify what portion of the lump sum the department will count as income, we take the following steps:~~

- ~~(a) First, we subtract the value of your existing resources from the resource limit as described in WAC 388-470-0005;~~
- ~~(b) Then, we subtract the difference in (1)(a) from the total amount of the lump sum; and~~

~~(c) The amount left over is the countable amount of the lump sum))~~ If you receive a lump sum payment that is not awarded for wrongful death, personal injury, damage, or loss of property, we count this payment as income to your assistance unit. We budget this income according to effective date rules under WAC 388-418-0020.

(2) For cash assistance, ~~((the amount of the lump sum that is countable may change if any or all of the lump sum~~

~~becomes unavailable for reasons beyond your control. See WAC 388-450-0005. When the countable amount of the lump sum is:~~

~~(a) Less than your payment standard plus additional requirements, we consider it as income in the month it is received.~~

~~(b) More than one month's payment standard plus additional requirements but less than two months:~~

~~(i) We consider the portion equal to one month's payment standard plus additional requirements as income in the month it is received; and~~

~~(ii) We consider the remainder as income the following month.~~

~~(c) Equal to or greater than the total of the payment standard plus additional requirements for the month of receipt and the following month, we consider the payment as income for those months))~~ if you cannot access some or all of your lump sum payment for reasons beyond your control, we will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.

(3) ~~((If you are ineligible or disqualified from receiving cash benefits and you receive a one-time lump sum payment))~~ To decide the amount of your lump sum we count as income, we take the following steps:

~~(a) ((We allocate the payment to meet your needs as specified in WAC 388-450-0105))~~ First, we subtract the value of your current resources from the resource limit under WAC 388-470-0005; ~~((and))~~

~~(b) ((The remainder is treated as a lump sum payment available to the eligible assistance unit members according to the rules of this section))~~ Then, we subtract the difference in (3)(a) from the total amount of the lump sum; and

(c) The amount left over is what we count as income.

(4) ~~((You can avoid having the lump sum budgeted against your benefits if you request termination of your cash assistance the month before you receive the lump sum))~~ When the countable amount of the lump sum payment is:

(a) Less than your payment standard plus additional requirements, we consider it as income in the month it is received.

(b) More than one month's payment standard plus additional requirements but less than two months:

(i) We consider the portion equal to one month's payment standard plus additional requirements as income in the month it is received; and

(ii) We consider the remainder as income the following month.

(c) Equal to or greater than the total of the payment standard plus additional requirements for the month of receipt and the following month, we consider the payment as income for those months.

(5) If you are ineligible or disqualified from receiving cash benefits and you receive a one-time lump sum payment:

(a) We allocate the payment to meet your needs as described under WAC 388-450-0105; and

(b) Count the remainder as a lump sum payment available to eligible members of your assistance unit according to the rules of this section.

~~((5))~~ (6) For TANF/SFA-related medical assistance:

(a) We ~~((consider))~~ count lump sum payments as income in the month ~~((of receipt))~~ you receive the payment.

(b) We ~~((consider))~~ count any money that remains on the first of the next month as a resource.

WSR 07-22-038
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed October 30, 2007, 2:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-098.

Title of Rule and Other Identifying Information: WAC 388-416-0015 Certification periods for CN medical and SCHIP, 388-418-0025 Effect of changes on medical program eligibility, 388-450-0210 Countable income for medical programs, 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level, 388-505-0210 Children's medical eligibility, 388-505-0211 Premium requirements for SCHIP, 388-542-0010 Purpose and scope of SCHIP, 388-542-0020 Other rules that apply to SCHIP, 388-542-0050 Definitions for SCHIP terms, and 388-542-0300 Waiting period for SCHIP coverage following employer coverage.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on December 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on December 27, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 20, 2007, 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: To comply with provisions of 2SSB 5093 (chapter 5, Laws of 2007) which authorizes medical assistance coverage for all children living in households with income at or below 250% of the federal poverty level (FPL). An emergency rule was adopted under WSR 07-16-022 on July 22, 2007, while HRSA completes the permanent rule-making process.

Reasons Supporting Proposal: This rule change will expand healthcare coverage to more children.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, and 74.09.700.

Statute Being Implemented: 2SSB 5093 (chapter 5, Laws of 2007).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kevin Cornell, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1423.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical programs are exempt under RCW 34.05.328 (5)(b)(vii).

October 25, 2007

Stephanie E. Schiller

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 07-23 issue of the Register.

WSR 07-22-039
PROPOSED RULES
FOREST PRACTICES BOARD
[Filed October 30, 2007, 4:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-13-055.

Title of Rule and Other Identifying Information: Amend Title 222 WAC, Forest practices rules, related to northern spotted owl protection.

Hearing Location(s): Cowlitz County PUD, 961 12th Avenue, Kelso, on December 12, 2007, at 6 p.m.; at the Red Lion Hotel, 221 North Lincoln, Port Angeles, on December 19, 2007, at 6 p.m.; and at the Yakima County Building, 223 North First, Yakima, on January 8, 2008, at 6 p.m.

Date of Intended Adoption: February 13, 2008.

Submit Written Comments to: Patricia Anderson, Forest Practices Board, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by 5 p.m. on January 9, 2008.

Assistance for Persons with Disabilities: Contact forest practices division at (360) 902-1400, by November 30, 2007, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The forest practices board proposes to amend the definition of "northern spotted owl site center" in WAC 222-16-010. The amendment would place a moratorium on the practice of "decertifying" northern spotted owl (NSO) site centers until December 31, 2008. This will extend NSO habitat protection provided by the rules at all Status 1, 2, and 3 NSO site centers recorded by the department of fish and wildlife as of November 1, 2005. This will allow time for the forest practices board to review its rules protecting NSO habitat and determine whether these rules need to be adjusted in light of NSO population declines, threats posed by barred owls, and changes in NSO habitat.

Reasons Supporting Proposal: Since the forest practices board adopted rules to protect the habitat of the NSO in 1996, the amount of suitable habitat within spotted owl special emphasis areas and outside areas that are being managed under the aegis of habitat conservation plans or similar agreements has declined by an average of 16%. Furthermore, fewer plans to conserve NSO habitat at a landscape level have been developed than was anticipated when the NSO rules were adopted. With few landscape-level plans, the forest practices rules continue to rely heavily on the regulation of timber harvest at individual spotted owl sites to provide habitat conservation. During 2008, the board will determine whether to change the forest practices rules pertaining to northern spotted owl habitat.

Statutory Authority for Adoption: RCW 76.09.040.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Leonard Young, 1111 Washington Street S.E., Olympia, (360) 902-1744; and Implementation: Gary Graves, 1111 Washington Street S.E., Olympia, (360) 902-1483.

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

Small Business Economic Impact Statement

OBJECTIVES: On June 6, 2007, the forest practices board adopted an emergency rule to continue a moratorium on decertifying northern spotted owl site centers that has been in effect from November 30, 2005, to June 30, 2007. The board is now considering whether to adopt a rule that continues the moratorium until December 31, 2008.

The objective of this analysis is to estimate the benefits and the costs of a moratorium on northern spotted owl site center decertification from April 1, 2008, which is the approximate effective date of a new permanent rule, to December 31, 2008. For a base, it uses the data and methodology of a previous analysis produced for the board's 2006 permanent rule making that instituted the initial nineteen-month moratorium, hereinafter referred to as the 2006 economic analysis.¹

Agencies are required to conduct economic analyses to aide in determining whether to adopt rules. The Administrative Procedure Act (chapter 34.05 RCW)² requires completion of a cost-benefit analysis to determine whether the probable benefits of a proposed rule exceed its probable costs. A small business economic impact statement (SBEIS) is required by the Regulatory Fairness Act (chapter 19.85 RCW)³ to consider the impacts on small businesses. It compares the costs of compliance for small businesses with the cost of compliance for the 10% of businesses that are the largest businesses required to comply with the proposed rules. This document combines the cost-benefit analysis and the SBEIS.

CONTEXT: The forest practices board is made up of representatives of state natural resource agencies and general public members including representatives of both the small

and large industrial forest land ownership groups. The board adopts rules to establish minimum standards for forest practices. In 1990, the board responded to the federal Endangered Species Act listing of the northern spotted owl by adopting a series of emergency rules to protect spotted owl habitat, and ultimately adopted permanent rules on May 22, 1996. These rules:

- Identify "critical wildlife habitat" (state) for the northern spotted owl. Forest practices applications within these areas that involve suitable spotted owl habitat are Class IV-Special, and require additional environmental review under SEPA (State Environmental Policy Act). The rules do not prohibit harvesting.
- Provide SEPA guidance to DNR for threatened and endangered species, and specific SEPA guidance for the northern spotted owl.
- Delineate ten "spotted owl special emphasis areas" (SOSEAs) where critical wildlife habitat (state) is designated within circles around owl site centers (owl circles). Habitat goals (functions) are identified on maps for each SOSEA.
- Require SEPA review for seventy acres of habitat around owl site centers outside SOSEAs. This applies only during the nesting season, from March 1 to August 31.
- Provide a small parcel exemption from SEPA for landowners who own less than 500 acres in a SOSEA, if the proposed forest practice is not within 0.7 mile of a site center.
- Include two landscape planning processes: A landowner option plan for landowners currently impacted by spotted owls, and a cooperative habitat enhancement agreement for those not currently impacted by spotted owls.
- Identify certain restrictions against disturbance around owl site centers inside SOSEAs during the nesting season.

In the fall of 2005, the board recognized that Washington's northern spotted owl population and habitat had declined since the 1996 rules were adopted. In November 2005 the board adopted an emergency rule and started permanent rule making to (1) discontinue the practice of counting habitat that has actually been harvested, when calculating the amount of habitat remaining within a median home range circle, and (2) place a temporary moratorium with a specified end date of June 30, 2007, on the practice of "decertifying" Status 1, 2 and 3 northern spotted owl site centers documented by the state department of fish and wildlife.⁴ The board adopted the permanent rule on August 9, 2006.

The goal of the 2006 rule was to maintain habitat and regulatory options until the United States Fish and Wildlife Service completed a draft northern spotted owl recovery plan, an effort that was originally scheduled for September 2006 completion. The board intended to consider the outcome of the draft plan when considering modifying the state rules. However, production of the draft plan took longer than anticipated; the draft plan was not available until April 2007.

On June 6, 2007, the board approved an emergency rule to extend the sunset date of the moratorium on site center

decertification past June 30, 2007. The emergency rule expires on October 28, 2007. On July 25, 2007, the board approved the initiation of permanent rule making that would sunset the moratorium on December 31, 2008, with the objective of ensuring no loss of habitat while determining whether and how to modify the state rules to conserve habitat. The board may adopt another emergency rule to extend the moratorium past October 25, 2007, to ensure not [no] loss of habitat while the board decides whether to adopt the permanent rule proposal. This analysis, however, does not include the costs and benefits of any emergency rule time-frames.

INTRODUCTORY INFORMATION: The rule-complying community affected by the proposal is businesses that own or control the cutting rights on forest land or those with the right to dispose of the timber. For small forest landowners owning less than 500 acres in a SOSEA, the effects of the proposed rules are limited to habitat within the inner 0.7-mile circle. The Regulatory Fairness Act defines a "small business" as one with fifty or fewer employees. Ownership acreage is generally a more appropriate metric for characterizing small businesses in the timber industry. In this analysis, small businesses are identified as those subject to the small parcel exemption in WAC 222-16-080 [(1)](h)(iv) which states: "Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical habitat (state) for northern spotted owls." All other private landowners are categorized as "large businesses" for purposes of this analysis.

The forest land affected by the moratorium is: (1) Habitat within owl site centers (circles) and within SOSEA boundaries, excluding forest land that is in an HCP, owned by the federal government, or covered by a landowner option plan; and (2) habitat within a designated seventy-acre area around site centers outside SOSEAs. However, for purposes of this analysis, the latter category of forest land was not considered to be affected by the moratorium because landowners can carry out forest practices within these areas outside the owl's breeding season. Portions of a given circle that also fall within one or more other Status 1, 2 or 3 circles are not considered decertified.

Costs and benefits are calculated on a per-acre basis for comparison purposes and are limited to direct costs and benefits. The costs of the rule change are measured as the potential loss of timber revenue, based on an estimate of the habitat acreage affected by the rule proposal, for the period of time covered by the rule currently proposed by the board, i.e., eighteen months. Benefits are defined as the value of protecting the habitat based on the findings of a 1993 study done in Oregon that estimated the value to state residents of protecting northern spotted owl habitat. This was the best information available to us, and we use it with the caveat that there are uncertainties regarding its application to this analysis. Methods are further discussed below.

METHODS OF ANALYSIS: We determined costs by estimating the volume and stumpage value of timber affected by the proposed rule and calculating the cost of withholding this

timber from harvest during the period covered by the proposed rule - from April 1, 2008, which is the approximate effective date of the proposed rule, to December 31, 2008.

In the 2006 economic analysis, we estimated timber harvest revenue in a six-step process:

- Step 1. Identify owl circles potentially affected by the rule change.
- Step 2. Analyze spotted owl circles identified in Step 1.
- Step 3. Determine forest acreage affected by the rule change.
- Step 4. Estimate habitat acreage.
- Step 5. Estimate habitat that would have been harvested without the rule change.
- Step 6. Determine costs associated with a moratorium on decertification.

For this analysis we added an additional step:

- Step 7. Update the findings of the 2006 economic analysis to accommodate an additional nine-month moratorium.

We estimated benefits by applying the findings of the 1996 study by Loomis et al. that estimated the value of reducing fire hazards to old-growth forests in the Pacific Northwest⁵. The estimates are based on willingness to pay for protecting northern spotted owl habitat.

The effects on small businesses are highlighted where appropriate.

ANALYSIS:

Determining costs associated with a moratorium on decertification:

Step 1 - Identify owl circles potentially affected by the rule change. The Washington department of fish and wildlife provided a list of the spotted owl circles in which surveys were in progress or completed in anticipation of decertification. Five spotted owl circles were identified as potentially affected: Three in the I-90 East SOSEA located east of the Cascade Range Crest, and two in the Mineral Block SOSEA located on the west side. (An additional spotted owl circle in the process of decertification is not in a SOSEA, so is not affected by this proposal.)

Step 2 - Analyze spotted owl circles identified in Step 1. Circles that are entirely or partially within SOSEAs were analyzed using GIS to identify ownership (federal, state, industry, nonindustrial private), whether land parcels making up the circle were covered by a habitat conservation plan (HCP) or similar arrangement that exempted the area from forest practices rules pertaining to the spotted owl, and each parcel's seral stage(s). SOSEA boundaries and transecting Status 1, 2 and 3 spotted owl circles were also delineated, because the proposed rule does not affect the portion of circles outside of SOSEAs, or portions of decertified circles within SOSEAs that are also part of other Status 1, 2 or 3 circles.

Step 3 - Determine forest acreage affected by the rule change. Affected forest acreage was determined based on the GIS analysis. Forest acreage affected by the moratorium on decertification is limited to habitat within owl site circles within SOSEA boundaries, except acreage that is in an HCP, owned by the federal government, covered by a landowner option plan, or within one or more other Status 1, 2 or 3 cir-

cles. As previously explained, the effects on small forest landowners are limited to habitat within the inner 0.7-mile circle. If the circle includes more than 40% habitat, excess habitat is available for harvest.

Table 1 summarizes the amount of privately-owned forest acreage that is affected by the moratorium for the three owl circles on the east side and the two on the west side, as well as an estimate of the affected habitat acreage (discussed in Step 4 below). There are 14,407 acres potentially affected within the five owl circles included in the analysis; all but one hundred fifty-two acres are industrial forest land. These one hundred fifty-two acres are owned by landowners subject to the small parcel exemption provision.

Table 1
Forest and Habitat Acreage Affected by the Moratorium
(data collected for the 2006 Economic Analysis)

	Industrial Acreage		
	Forest	Habitat	% Habitat
East	8123	2624	32.3
West	6132	369	6.0
Total	14255	2993	21.0

	Small Landowner Acreage		
	Forest	Habitat	% Habitat
East	152	26	17.1
West	0	0	0.0
Total	152	26	17.1

	Total Acreage		
	Forest	Habitat	% Habitat
East	8275	2650	32.0
West	6132	369	6.0
Total	14407	3019	21.0

Step 4 - Estimate habitat acreage. We estimated habitat acreage affected by the rule proposal based on information from Pierce et al.'s 2005 Washington State Spotted Owl Habitat Assessment Report⁶. For each of the five owl circles included in the analysis, we estimated the amount of habitat by multiplying affected forest acreage in the circle by the average habitat proportion—by seral stage—estimated by Pierce et al. (Table 2). The three owl circles located in the I-90 East SOSEA are within the east Cascades zone, and the two circles within the Mineral Block SOSEA are in the south Cascades zone.

Table 2
Estimated Percentages of Northern Spotted Owl Habitat within Different Forest Seral Stages in the East and South Cascades Zones

ZONE	OTHER SERAL	EARLY SERAL	MID SERAL	LATE SERAL
East Cascades	2.1	12.5	58.8	65.7
South Cascades	2.1	0.4	45.0	60.9

From Pierce et al. (2005) Table 15, p. 51.

Habitat is defined differently on the west and east sides of the Cascade Range Crest, reflecting differences in northern spotted owl behavior. This is apparent in the habitat acreage estimates in Table 1. The proportion of habitat is much higher in the east (32.0%) than in the west (6.0%). We estimate there is a total of 3,019 acres of habitat affected by the rule proposal; that is, 3,019 acres of habitat that could have been harvested if the five owl circles were decertified. Only twenty-six acres of this acreage is in the small landowner category, leading us to conclude that the rule making does not have a disproportionate effect on small businesses.

Step 5 - Estimate habitat that would have been harvested without the rule change. While conducting the 2006 economic analysis, DNR field staff estimated that without the decertification moratorium, approximately 75% of the affected habitat would have been harvested. This amounts to 2,264 acres of forest land that could not be harvested because of the moratorium.

Step 6 - Determine costs associated with a moratorium on decertification. We calculated timber value by multiplying lost harvest acreage by average per-acre timber harvest revenue for western and eastern Washington. We estimated the stumpage revenue potential, assuming harvest of 75% of the habitat subject to the rule proposal in the five spotted owl circles. This calculation required that we make assumptions regarding the volume per acre and price. Stand quality and species composition are implicitly factored into these assumptions. For the 2006 economic analysis, the high-end estimate assumed volume of 50,000 board feet (fifty MBF) per acre at a price of \$400 per MBF, and the low-end estimate assumed volume of forty MBF per acre at a price of \$350 per MBF. Per-acre stumpage value was \$20,000 and \$14,000, respectively.

Step 7 - Update the findings of the 2006 economic analysis to accommodate an additional nine-month moratorium. The 2006 economic analysis limited the effects of the moratorium to those owl circles that had been surveyed at least once in anticipation of later decertification. The implied assumption was that the moratorium was temporary and thus did not affect other owl circles.

The first moratorium was in place from November 30, 2005, until June 30, 2007, a period of nineteen months. The proposed rule effectively extends this moratorium through December 31, 2008, a period of eighteen months, approximately the same length of time, though we are limiting our estimates of costs and benefits to the period covered by the proposed permanent rule which this analysis supports (April 1 through December 31, 2008). We are assuming that the pace of decertification activity would be about the same. The proposed moratorium extension thus affects the timber volume identified in the previous economic analysis, as well as additional timber volume approximately equal to that previously identified, thus doubling the affected acreage to 4,528 acres.

Determining benefits associated with a moratorium on decertification. The benefits of the moratorium are difficult to estimate. The intended purpose of the rule proposal is to help arrest the decline in northern spotted owl populations in Washington by providing additional habitat protection. Few studies have estimated values of protecting northern

spotted owls or their habitat (Hagen et al 1992; Rubin et al 1991; Loomis et al 1996). These studies use the contingent valuation method (CV) to measure the willingness to pay (WTP) for protecting the northern spotted owl and old growth forests. This approach is widely accepted among federal agencies for benefit-cost analysis that measure the benefits of nonmarket goods such as an endangered species. While all three studies use a CV approach to measure benefits and costs of protecting the northern spotted owl, the study by Loomis et al. provides the preferred approach for our purpose, as it estimates benefits of an incremental change in protected habitat of a specified number of acres. The report on the findings is available at the United States Forest Service Pacific Southwest Research Service web site at <http://www.fs.fed.us/psw/publications/documents/rp-229/>.

The Loomis et al. study surveyed residents of the state of Oregon in 1993 on their WTP for protecting old growth northern spotted owl habitat from fire in the Pacific Northwest. Following is a discussion of the methodology used in the study, the WTP results, and the limitations that may apply in terms of the transferability of these results to Washington. We use these results to evaluate the probable benefits of protecting northern spotted owl habitat in Washington state, adjusting the results as necessary.

Survey participants were asked to evaluate a scenario whereby approximately 3,500 acres of old growth northern spotted owl habitat was saved from fire. The median WTP of survey respondents was \$77 per household per year, which corresponded to \$24,170 per acre for Oregon's 1.1 million residents in 1993. Assuming that nonrespondents (about half of those sent surveys) had a WTP of \$0 provides a minimum value of \$45 per household per year.

We adjusted these findings to account for inflation and the number of households in Washington. WTP of protecting 3,500 acres of habitat in Washington is estimated to be \$104 per household per year, with a minimum value of \$61. The benefit to the state's 2.5 million households amounts to an average of between \$74,286 and \$43,571 per acre. (Although these estimates are on a per-year basis, we have assumed they are a one-time payment to mitigate for the uncertainties with using this benefit valuation approach.)

Although this study was the most applicable to our analysis, there are a number of factors that might have an effect on its transferability, with the potential for over- or under-estimation. These include:

- The base study was limited to Oregon residents. Attitudes towards protecting the northern spotted owl may differ between the states. Higher average incomes in Washington suggest that WTP may be higher in Washington.
- We extrapolated the Loomis et al. study results to Washington residents only; WTP for nonresidents was ignored, though it may be considerable.
- The base study valued protecting old growth forests from fire. The rule changes under consideration protect all levels of habitat from general loss. Washington residents likely value less mature forests lower than old growth. Other benefits accruing from avoidance of fire would not be applicable to this analysis, possibly overstating benefits.

- Attitudes towards protecting northern spotted owls and their habitat may have changed since 1993.
- Placing a value on nonmarket goods such as habitat protection is difficult for some people.

CONCLUSIONS:

Costs and Benefits: This economic analysis estimates ranges of costs and benefits of instituting a moratorium on northern spotted owl site center decertification for a period of nine months. Costs are estimated as the opportunity loss of the timber harvest revenue that could have been accrued if the moratorium was not in place. Estimated benefits are based on a study of willingness to pay for protecting spotted owl habitat published in 1996.

The estimated stumpage value of 4,528 acres of timber range from \$63.4 million to \$90.6 million, and the value of protecting this habitat ranges from \$196 million to \$336 million. On a per-acre basis, stumpage value ranges from \$14,000 to \$20,000 per acre, and habitat value ranges from \$43,571 to \$74,286 per acre.

This analysis estimates costs and benefits of the proposed rule for the time period beginning April 1, 2008, and ending at the sunset date of the current proposed rule, December 31, 2008. In essence, this is the costs of foregoing harvest until 2009, assuming that harvest would have taken place at the beginning of the period (April 1, 2008) in the absence of a moratorium⁷. We assumed that the timber would continue to grow (appreciate) at a rate of 1% per year, and used a discount rate of 5% to represent the time value of money, resulting in a net discount rate of 4%. At this rate, the cost of withholding timber from harvest from April 1, 2008, until December 31, 2008, is approximately 3% of its value. The cost of the proposed rule is thus 2.84% of estimated stumpage value of affected acreage (4,528 acres), or between \$1.8 and \$2.6 million. Applying the same rate to estimated habitat value results in benefits of between \$5.6 and \$9.6 million.

**Table 3
Estimated Costs and Benefits of the Proposal**

	Total Cost	Cost Per Acre	Total Benefit	Benefit Per Acre
High Estimate	\$2.6 million	\$1,140	\$9.6 million	\$4,234
Low Estimate	\$1.8 million	\$798	\$5.6 million	\$2,484

Per-acre cost estimates are dependent on price, stand quality and species composition assumptions. In addition, this analysis assumes that the pace and scope of decertification requests during the period of time covered by this proposed rule would have been similar to that covered by the 2006 economic analysis. Costs may be lower if a landowner chooses to develop a landowner option plan, which exempts the landowner from these rules.

Benefit estimates are more uncertain due to the lack of market price signals for environmental amenities. Although survey respondents may have implicitly valued other amenities that accrue from protecting northern spotted owl habitat (such as habitat for other species, open space, and water quality), some of the ancillary benefits of protecting habitat may not have been captured by this analysis.

In spite of these uncertainties, estimated benefits are sufficiently greater than costs to provide a reasonable degree of

certainty that the benefits of this rule making exceed the costs. It is worth noting, however, that this economic analysis estimates overall benefits and costs, not the distribution of costs and benefits (with the exception of impacts on small businesses, which in this case are minimal). The benefits of northern spotted owl habitat protection identified in this analysis will accrue to state residents in general, whereas the costs will primarily be borne by industrial forest landowners.

Small Business Impacts: The effects of the proposal on small forest landowners are limited to habitat within the inner 0.7-mile circle of spotted owl site centers within SOSEAs. We estimate that fifty-two acres of small forest landowner habitat are affected by the decertification provision of the proposed rules; this is less than 1% of the potentially affected habitat acreage⁸. There may be specific instances where individual small forest landowners are disproportionately affected, but small businesses are not affected disproportionately when compared to Washington timber industry businesses overall, and the number of small business jobs lost statewide as a result of this proposal would be negligible.

REFERENCES

Hagen, D., Vincent, J. and Welle, P., 1992. **Benefits of preserving old-growth forest and the spotted owl.** *Contemp. Policy Issues*, 10: 13-25.

Loomis, John B.; Gonzalez-Cabn, Armando; Gregory, Robin. 1996. **A contingent valuation study of the value of reducing fire hazards to old-growth forests in the Pacific Northwest.** Res. Paper PSW-RP-229-Web. Albany, CA: Pacific Southwest Research Station, Forest Service, U.S. Department of Agriculture; 24 p.

Pierce, D. J., J. B. Buchanan, B. L. Cosentino, and S. Snyder. 2005. **An assessment of Spotted Owl habitat on non-federal lands in Washington between 1996 and 2004.**

Final Report. Washington Department of Fish and Wildlife, Olympia, Washington, USA. 187 p.

Rubin, J.; Helfand, G., and Loomis, J. **A benefit-cost analysis of the northern spotted owl: Results from a contingent valuation survey.** *Journal of Forestry*. 1991; 89(12):25-30.

¹ Economic Analysis, August 2006. See <http://www.dnr.wa.gov/forestpractices/rules/activity/archive.html>.

² For CBA requirements, see RCW 34.05.328 - The Washington state legislature.

³ For SBEIS requirements, see RCW 19.85.040 - The Washington state legislature.

⁴ The decertification process follows the survey protocol endorsed by the United States Fish and Wildlife Service for spotted owl sites that are no longer occupied. The protocol states that "if no responses have been obtained from an historical site after three years of survey (using established guidelines), the site may be considered unoccupied, barring other evidence to the contrary." Unoccupied sites are changed to "status 5" and are not subject to forest practices rules pertaining to northern spotted owls.

⁵ Available at <http://www.fs.fed.us/psw/publications/documents/rp-229/>.

⁶ Available at http://wdfw.wa.gov/wlm/research/papers/spotted_owl/.

⁷ It is unknown when harvest would have taken place following decertification.

⁸ See Table 1 for the results of the 2006 Economic Analysis. We assume that the SFL proportion of affected acreage is the same in the additionally constrained acreage, thus doubling the findings of the 2006 economic analysis.

A copy of the statement may be obtained by contacting Gretchen Robinson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-

1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gretchen Robinson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov. Please note: The preliminary cost-benefit analysis and SBEIS are combined in the draft economic analysis.

October 30, 2007
Victoria Christiansen
Chair

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

WAC 222-16-010 *General definitions. Unless otherwise required by context, as used in these rules:

"**Act**" means the Forest Practices Act, chapter 76.09 RCW.

"**Affected Indian tribe**" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"**Alluvial fan**" see "sensitive sites" definition.

"**Appeals board**" means the forest practices appeals board established in the act.

"**Aquatic resources**" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"**Area of resource sensitivity**" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"**Bankfull depth**" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"**Bankfull width**" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

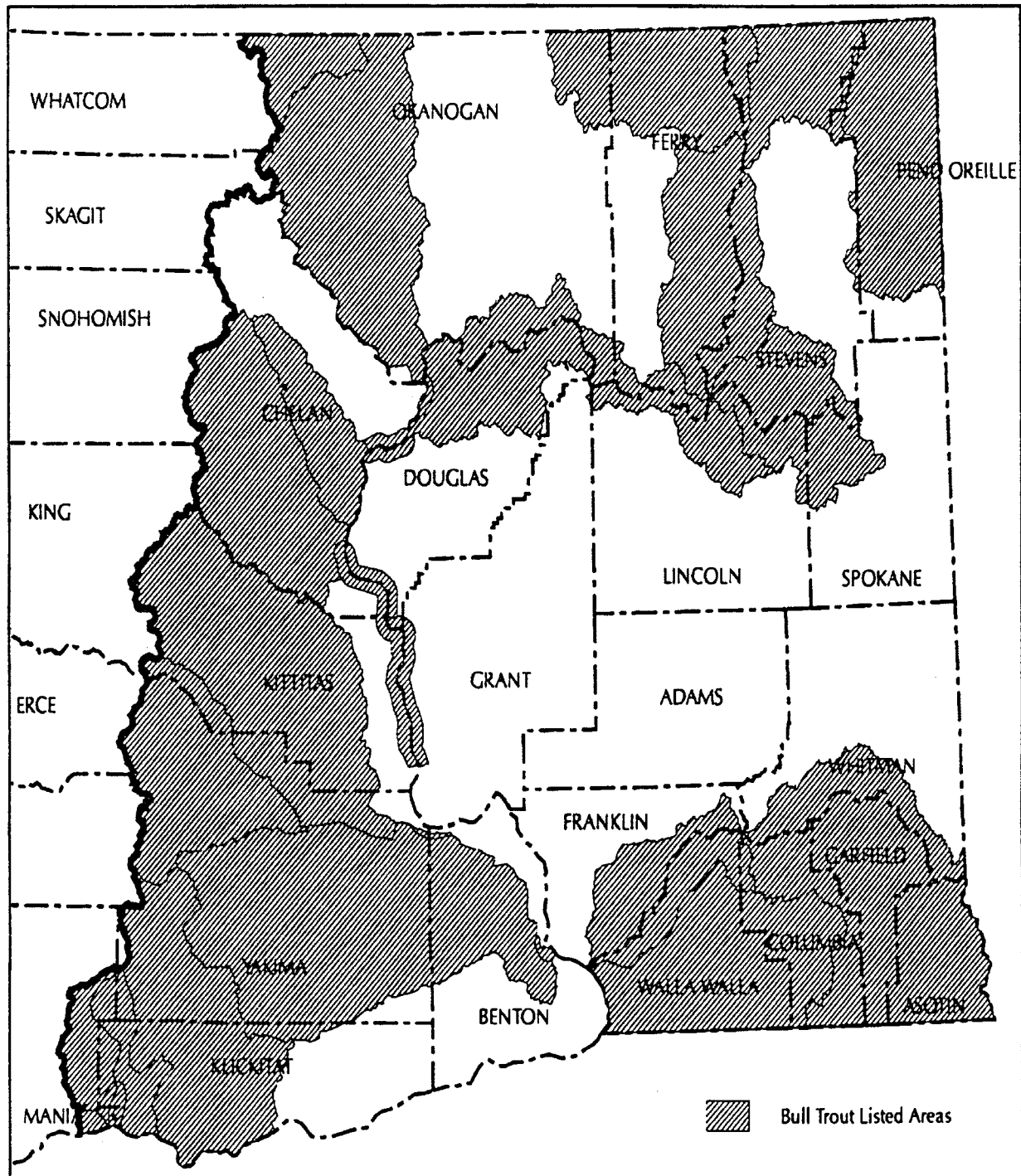
"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means tear-drop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local

governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"Drainage structure" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"Eastern Washington" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



"Eastern Washington timber habitat types" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

- Clearcuts;
- Seed tree harvests in which twenty or fewer trees per acre remain after harvest;
- Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;
- Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;
- Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;
- Partial cutting in which fewer than fifty trees per acre remain after harvest;
- Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and
- Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting

green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial in-stream structure that impedes the free passage of fish.

"Flood level - 100 year" means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;

- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;

- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than

15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Horizontal distance" means the distance between two points measured at a zero percent slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

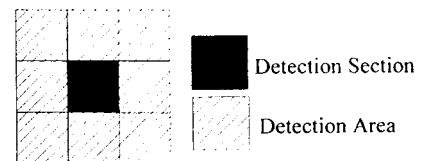
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local governmental entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means:

(1) Until (~~June 30, 2007~~) December 31, 2008, the location of northern spotted owls:

(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or

(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.

(2) After (~~June 30, 2007~~) December 31, 2008, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is

distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long con-

tinued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	Mixed conifer habitat type
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) **For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"**RMZ core zone**" means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"**RMZ inner zone**" means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"**RMZ outer zone**" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"**Road construction**" means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

"**Road maintenance**" means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:
 - Maintaining, replacing, and installing drainage structures;
 - Controlling road-side vegetation;
 - Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"**Rodenticide**" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"**Salvage**" means the removal of snags, down logs, windthrow, or dead and dying material.

"**Scarification**" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"**Sensitive sites**" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via

overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"**Shorelines of the state**" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"**Side casting**" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"**Site class**" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) **For Western Washington**

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) **For Eastern Washington**

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"Small forest landowner long-term application" means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.-035.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of

variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal

chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

WSR 07-22-040

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed October 30, 2007, 4:56 p.m.]

Continuance of WSR 07-21-104.

Preproposal statement of inquiry was filed as WSR 07-18-012.

Title of Rule and Other Identifying Information: Amend WAC 390-16-105 Mini campaign reporting—Eligibility, 390-16-111 Mini campaign reporting—Special fund raising events, and 390-16-125 Mini campaign reporting—Exceeding limitations.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on December 6, 2007, at 9:30 a.m.

Date of Intended Adoption: December 6, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by December 3, 2007.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the time of the public hearing from 10:30 a.m. to 9:30 a.m. on December 6, 2007.

Statutory Authority for Adoption: RCW 42.17.370 (1) and (8).

Statute Being Implemented: RCW 42.17.370(8).

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 rule amendments are designed to reflect changing economic conditions and provide consistency with 2006 legislative action amending RCW 42.17.405 as well as clarifying the process when applying to change from mini to full reporting.

Name of Proponent: Public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application [applicable] to the adoption of these rules.

October 30, 2007
Vicki Rippie
Executive Director

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the time of the public hearing from 10:30 a.m. to 9:30 a.m. on December 6, 2007.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.240 and 42.17.241.

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 rule amendments adjust dollar amounts in thresholds and code values for reporting of financial affairs based on changes in economic conditions.

Name of Proponent: Public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application [applicable] to the adoption of these rules.

October 30, 2007
Vicki Rippie
Executive Director

WSR 07-22-041

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed October 30, 2007, 4:56 p.m.]

Continuance of WSR 07-21-043.

Preproposal statement of inquiry was filed as WSR 07-17-181.

Title of Rule and Other Identifying Information: Amend WAC 390-24-010 Forms for statement of financial affairs, 390-24-020 Forms for amending statement of financial affairs, 390-24-202 Report of compensation from sales commissions, and 390-24-301 Changes in dollar amounts of reporting thresholds and code values.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on December 6, 2007, at 9:30 a.m.

Date of Intended Adoption: December 6, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by December 3, 2007.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 586-0544.

WSR 07-22-042

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed October 30, 2007, 4:56 p.m.]

Continuance of WSR 07-21-042.

Preproposal statement of inquiry was filed as WSR 07-16-001.

Title of Rule and Other Identifying Information: Amend WAC 390-05-400 Changes to dollar amounts as prescribed in RCW 42.17.690 and new rule WAC 390-05-225 relating to registered voter counts for the purposes of chapter 42.17 RCW.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on December 6, 2007, at 9:30 a.m.

Date of Intended Adoption: December 6, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by December 3, 2007.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the time of the public hearing from 10:30 a.m. to 9:30 a.m. on December 6, 2007.

Statutory Authority for Adoption: RCW 42.17.370(1) and 42.17.690.

Statute Being Implemented: RCW 42.17.640, 42.17-645, 42.17.030 and 42.17.405.

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 rule amendment is designed to conform to the provisions in RCW 42.17.690 requiring the commission, at the beginning of each even-numbered calendar year, to adjust dollar amounts in RCW 42.17.640 and 42.17.645 based on changes in economic conditions.

The new rule is designed to provide guidance to county auditors and provide uniformity in calculating the count of registered voters for the purposes under chapter 42.17 RCW.

Name of Proponent: Public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application [applicable] to the adoption of these rules.

October 30, 2007
Vicki Rippie
Executive Director

WSR 07-22-043
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed October 30, 2007, 4:57 p.m.]

Continuance of WSR 07-21-041.

Preproposal statement of inquiry was filed as WSR 07-17-074.

Title of Rule and Other Identifying Information: Amend WAC 390-16-050 Forms for contribution and expenditures of out-of-state political committees.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on December 6, 2007, at 9:30 a.m.

Date of Intended Adoption: December 6, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission, P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by December 3, 2007.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the time of the public hearing from 10:30 a.m. to 9:30 a.m. on December 6, 2007.

Statutory Authority for Adoption: RCW 42.17.370(1) and 42.17.093 (1)(g).

Statute Being Implemented: RCW 42.17.093.

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

Name of Proponent: Public disclosure commission (PDC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 application [applicable] to the adoption of these rules.

October 30, 2007
Vicki Rippie
Executive Director

WSR 07-22-048
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed October 31, 2007, 12:48 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 136-170-040 Combining of CRAB/county contracts. In those cases where a county plans to combine two or more adjacent RATA funded projects into a single construction contract, or prior to commencing construction should any of the projects be scheduled for completion by day labor, the county must make a formal written request to the county road administration board.

Hearing Location(s): 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, on January 17, 2008, at 2:00 p.m.

Date of Intended Adoption: January 17, 2008.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Olympia, WA 98504-0913, e-mail Karen@crab.wa.gov, fax (360) 586-0386, by January 10, 2008.

Assistance for Persons with Disabilities: Contact Karen Pendleton by January 13, 2008, TTY (800) 833-6382 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal would require counties to make a formal written request to the county road administration board to combine projects into a single project, assuring that the original prospectus work will be accomplished as originally proposed or as previously revised by the CRABoard, regardless of the applicable maximum project RATA contribution.

Statutory Authority for Adoption: Chapter 36.79 RCW.

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

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504, (360) 753-5989.

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.

Jay Weber
Executive Director

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-170-040 Combining of CRAB/county contracts. In those cases where a county (~~desires~~) plans to combine two or more adjacent RATA funded projects into a single construction contract, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by day labor, (~~may~~) must make a formal written request to the county road administration board to combine the projects into a single project, assuring that the original prospectus work will be accomplished as originally proposed or as previously revised by the CRABoard, regardless of the applicable maximum project RATA contribution. Upon receipt of a letter of request to combine, a revised CRAB/county contract will be prepared and sent to the county for its execution and return in the same manner as for the original contract(s). Projects shall be considered adjacent if they have a common terminus.

In those cases where a county plans to combine two or more adjacent projects in which one or more of the adjacent projects is not RATA funded, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by day labor, must notify the county road administration

board in writing of its plans to combine the projects into a single project, assuring that the work items assigned to the RATA funded section will remain distinct and separate through the bid documents and contract plans. Upon verification that the request is submitted in a timely manner, that the combined project will meet the conditions of the CRAB/county contract and prospectus requirements, and that RATA funded items of work will be sufficiently separated from other work, the CRAB director may grant the combination.

WSR 07-22-052

PROPOSED RULES COLUMBIA RIVER GORGE COMMISSION

[Filed November 1, 2007, 10:52 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Columbia River Gorge Commission Rules: 350-11 (Open Meetings); 350-12 (Public Records); 350-16 (Administrative Procedure).

Hearing Location(s): Hood River County Administration Building, 601 State Street, Hood River, OR, on February 12, 2008, at 9:00 a.m. (Note this is the beginning of the commission's regular meeting. The actual hearing time may be later.)

Date of Intended Adoption: February 12, 2008.

Submit Written Comments to: Jill Arens, Executive Director, P.O. Box 730, White Salmon, WA 98672, e-mail crgc@gorge.net, fax (509) 493-2229, by February 5, 2008.

Assistance for Persons with Disabilities: Contact Nancy Andring by January 28, 2008, (509) 493-3323.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed amendments to Commission Rules 350-11, 350-12, and 350-16 is to conform these rules to the more restrictive of Oregon's and Washington's statutes as required by the Scenic Area Act. These proposed amendments are necessary due to changes made during the 2007 legislative sessions. There are no anticipated effects to the public from these changes; the changes are procedural to the commission.

Reasons Supporting Proposal: The proposed amendments would bring the commission's rules into compliance with the more restrictive of the states' statutes.

Statutory Authority for Adoption: 16 U.S.C. 544c(b); RCW 43.97.015; ORS 196.150.

Statute Being Implemented: 16 U.S.C. 544b(c), 544d (h); RCW 43.97.015; ORS 196.150.

Rule is necessary because of federal law, 16 U.S.C. 544c(b).

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jill Arens, White Salmon, Washington, (509) 493-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed amendments do not add substantive regulations. The affected portions of Commission Rules 350-11, 350-12, and 350-16 govern internal commission procedures.

A cost-benefit analysis is not required under RCW 34.05.328. These proposed amendments are exempt pursuant to RCW 34.05.328 [(5)(b)](ii), (iii), and (v).

November 1, 2007
Nancy A. Andring
Rules Coordinator

Amendatory Section

350-11-003. Meetings of commission to be open to public; location of meetings

(1) All meetings of the commission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by 350-11-001 to 350-11-010. A member of the public shall not be required, as a condition of attending a meeting, to give his or her name, other information, complete a questionnaire or fulfill any other condition precedent.

(2) No quorum of the commission shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as otherwise provided by 350-11-001 to 350-11-010.

(3) The commission shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, sexual orientation or national origin is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by the commission if use of a place by a restricted membership organization is not the primary purpose of the place or its predominate use.

(4) Meetings of the commission shall be held within the geographic boundaries over which the commission has jurisdiction, or at the administrative headquarters of the commission or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographical boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5) Notwithstanding the requirements of section (4) above, committee meetings may be held in any location where the committee deems it useful.

(6) Meetings of the commission shall be held in locations that are accessible to the disabled.

(7) Upon request of a ~~hearing-impaired~~ person who is deaf or hard of hearing, the commission shall make a good faith effort to have an interpreter for ~~hearing-impaired~~ persons who are deaf or heard of hearing provided at a regularly scheduled meeting. The person requesting the interpreter shall provide the commission at least 48 hours' notice of the request, shall provide the name of the requester, sign language preference and any other relevant information the

commission may require. As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission, the Washington Aging and Adult Services Administration, or other state or local government or community service agency that maintains a list of qualified interpreters and arranging for the referral of one or more ~~such persons~~ qualified interpreters to provide interpreter services.

(8) It shall be considered discrimination on the basis of disability for commission to meet in a place inaccessible to ~~the disabled persons with disabilities~~, or upon request of a ~~hearing-impaired~~ person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for ~~hearing-impaired~~ persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in Commission Rule 350-11-008.

(9) Voting by the commission shall take place in public and each member's vote shall be recorded as it is cast. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

New Section

350-11-011 Regular Meetings to Include Time for Public Comment

(1) At all regular meetings of the Commission, the Commission shall provide time for public comment for issues not on the Commission's agenda, and an opportunity for Tribal Nations to address the Commission.

(2) The Commission may limit the time for public comment and opportunity for Tribal Nations to address the Commission in a manner that limits time for each speaker, or the number of speakers.

(3) The Commission may exclude comment that concerns matters likely to come before the Commission in a hearing where the Commission must disclose ex parte communications and comply with the Washington Appearance of Fairness doctrine. The presiding officer may exclude other comment that is inappropriate.

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.

Amendatory Section

350-12-007. Fulfilling requests.

(1) The Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Commission shall respond by (1) providing the record; (2) acknowledging that the Commission has received the request and providing a reasonable estimate of the time the Commission will require to respond and an estimate of the fees that the requester must pay as a condition of receiving the public records; or (3) denying the public record request. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third

persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the Commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Commission need not respond to the original request. Denials of requests must be accompanied by a written statement of the specific reasons for denial.

(2) The Commission shall make public records available on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure.

(3) The Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

Amendatory Section

350-12-008. Public records exempt from disclosure.

(1) The following public records are exempt from disclosure under 350-12-001 to 350-12-008 unless the public interest requires disclosure in the particular instance:

(a) Records of the commission pertaining to litigation to which the commission is a party if the complaint has been filed, or if the complaint has not been filed, if the commission shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purpose of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release;

(D) The identity of and biographical information concerning both complaining party and victim;

(E) The identity of the investigation and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance in apprehending fugitives from justice;

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information relating to the appraisal of real estate prior to its acquisition;

(f) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(g) Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complaint is resolved, or a final administrative determination is made;

(h) Investigatory information relating to any complaint filed relating to unfair labor practices;

(i) Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist activity or attraction; and

(j) A personnel discipline action, or materials or documents supporting that action.

(k) Sensitive fish, wildlife, and plant data obtained. Sensitive fish, wildlife, and plant data may be released to the following entities and their agents for fish, wildlife, plant, and land management purposes, or scientific research needs: Governments agencies, public utilities, and accredited colleges and universities. Sensitive fish, wildlife, and plant data may be released to tribal governments. Sensitive fish, wildlife, and plant data may also be released to the owner, lessee, or right-of-way or easement holder of private land to which the data pertains. The release of sensitive fish, wildlife, and plant data may be subject to a confidentiality agreement, except upon release of sensitive fish, wildlife, and plant data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish, wildlife, and plant data does not include data related to reports of predatory wildlife posted on the Washington Department of Fish and Wildlife's internet web site. Sensitive fish, wildlife, and plant data must meet at least one of the following criteria as applied by or created by the Gorge Commission. However, sensitive fish, wildlife and plant data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive fish, wildlife, and plant data includes:

(1) The nesting sites or specific locations of endangered, threatened or sensitive species listed in the Management Plan or otherwise designated by the appropriate agencies in Oregon and Washington;

(2) Radio frequencies used in or locational data generated by telemetry studies;

(3) Other location data that could compromise the viability of a specific fish, wildlife or plant population and where one or more of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable; ~~or~~

(C) There is a known demand to visit, take, or disturb; ~~and the species behavior or ecology renders it especially vulnerable the species~~; or

(D) The species has an extremely limited distribution and concentration.

(1) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(1) An individual;

(2) Buildings or other property; or

(3) Information processing, communication or telecommunication systems, including the information contained in the systems.

(2) The following public records are exempt from disclosure under 350-12-001 to 350-12-008:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the commission clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to the commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Any public records or information the disclosure of which is prohibited by federal or state law or regulations;

(e) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged;

(f) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(g) Information about review or approval of programs relating to the security of:

(1) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

(C) Hazardous substances as defined by Oregon or Washington state law;

(D) Petroleum products;

(E) Sewage; or

(F) Water;

(2) Telecommunications systems, including cellular, wireless or radio systems.

(3) Data transmissions by whatever means provided.

(h) Records of mediation communications that are privileged under the Uniform Mediation Act.

(i) Information gathered for the purpose of preparing a small business impact statement or an analysis of significant rules as required by the states' rulemaking requirements that can be identified to a particular business.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the commission shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

(a) A request described in subsection (1) of this section shall remain effective until the public body receives a written request for termination but no later than five years after the date that a public body receives the request.

(b) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(c) A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.

(5) Notwithstanding the exemptions in 350-12-008 (1) and (2), public records that are more than 25 years old shall be available for inspection

(6) Notwithstanding 350-12-001 through 350-12-008, the Commission shall not disclose records in violation of a user agreement or license that prohibits the Commission from disclosing such records. The Commission shall refer persons to the creator of the record if the Commission has obtained the records through agreement or license, or for which the Commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.

(7) Disclosure of information in violation of Rule 350-12-006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

Amendatory Section

350-16-009. Notice, Hearing and Record in Contested Cases; Informal Dispositions; Hearings Officer.

(1) In a contested case hearing, all parties shall be afforded an opportunity for hearing after notice of not less than 20 days, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, ~~or a statement of the time and place of the hearing with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;~~

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged, and identifying the issues to be considered at the hearing;

(e) A statement indicating whether and under what circumstances an order by default may be entered;

(f) A statement that a party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(g) A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues as allowed by the applicable rules under which the hearing is held.

(h) A statement indicating whether discovery is permitted and, if so, how discovery may be requested. A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter; and

(i) A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(j) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(k) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(l) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(m) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and

whether that person has the authority to make a final independent determination.

(n) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(p) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(q) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(r) A description of the appeal process from the determination or order of the agency.

(es) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(ft) The official file or other reference number and the name of the proceeding;

(gu) The name, official title, mailing address, and telephone number of the presiding officer, if known; and

(iv) Any other matters considered desirable by the agency.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) The commission may adopt rules of procedure governing participation in contested cases by person appearing as limited parties.

(5) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the commission. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the commission may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested. The commission shall serve a default order upon the defaulted party or the party's attorney, if any.

(7) Within seven days after service of a default order under subsection (6) of this section, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness form when received. The officer presiding at the hearing shall administer oaths or affirmatives to witnesses.

(9) The officer presiding at the hearing shall insure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case and the correct application of law to those facts.

(10) The record in a contested case shall include:

- (a) All pleadings, motions and intermediate rulings.
- (b) Evidence received or considered.
- (c) Stipulations.
- (d) A statement of matters officially noticed.
- (e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the commission or a hearings officer.

(11) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The commission may charge the party requesting transcription, unless the party files an appropriate affidavit of indigency.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-22-064
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 2, 2007, 8:32 a.m.]

Supplemental Notice to WSR 07-11-091.

Preproposal statement of inquiry was filed as WSR 07-06-051 and 07-11-098.

Title of Rule and Other Identifying Information: The department is amending WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on December 11, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 12, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRRULES.COORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 11, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 4,

2007, 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: The department is proposing to amend WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits? This amendment will provide provisions for budgeting income that is received less frequently than monthly (i.e. income received quarterly or annually) as preproposed in WSR 07-06-051. When the department was reviewing the rules we decided it was necessary to update the section to comply with the governor's plain talk initiative. This rewrite was reviewed utilizing usability testing. Concurrent to these changes, health and recovery services administration determined that a need existed to adjust the budgeting requirements for children's and pregnancy medical programs. These changes fall under provisions of chapter 5, Laws of 2007 (2SSB 5093), effective July 22, 2007. These changes were preproposed under WSR 07-11-098. All proposed changes were posted to the policy review page throughout the process. The department previously filed a proposed rule-making notice for this WAC section as WSR 07-11-091 and is repropounding the rules to include the budgeting requirement for children's and pregnancy medical programs.

Reasons Supporting Proposal: The changes are necessary to:

- Give provisions for budgeting income that is received less frequently than monthly on an averaging basis even in the month of application.
- Comply with governor's plain talk initiative.
- Comply with 2SSB 5093.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, and 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, Implementation and Enforcement: Bill Callahan, 1009 College S.E., Lacey, WA 98504, (360) 725-4619.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by determining how the department estimates a person's income.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules affect DSHS clients by determining how the department estimates a person's income. In addition, the pro-

posed amendments have been updated to comply with the governor's plain talk initiative.

November 1, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-16-109, filed 8/2/05, effective 10/1/05)

WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits? ~~((The department uses prospective budgeting to determine if your assistance unit (AU) is eligible and to calculate your benefits.))~~

(1) ~~We ((determine if your AU is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's income and expenses for that month))~~ decide if your assistance unit (AU) is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's gross monthly income and expenses. This is known as prospective budgeting.

(2) ~~We ((base this estimate on what can be reasonably expected based on your current, past and future circumstances))~~ use your current, past, and future circumstances for a representative estimate of your monthly income.

(3) ~~We ((determine if our estimate is reasonable by looking at documents, statements, and other verification))~~ may need proof of your circumstances to ensure our estimate is reasonable. This may include documents, statements from other people, or other proof as explained in WAC 388-490-0005.

(4) ~~We use two methods to estimate ((your AU's))~~ income:

(a) **Anticipating monthly income (AM):** ~~((We estimate the actual amount of income you expect))~~ With this method, we base the estimate on the actual income we expect your AU to receive in the month; and

(b) **Averaging income (CA):** ~~((We estimate your income based on adding the total income you expect to receive for a period of time and dividing))~~ With this method, we add the total income we expect your AU to receive for a period of time and divide by the number of months in the ((time)) period.

(5) ~~((When we use the anticipating monthly method, we estimate the actual amount of income your AU expects to receive in the month. Your benefits will vary based on the income that is expected for that month))~~ Anticipating monthly income: We must use the anticipating monthly method:

(a) For the month you apply for benefits unless:

(i) We are determining eligibility for children's medical programs as listed in WAC 388-505-0210 (3) through (6) or pregnancy medical as listed in WAC 388-462-0015. For children's and pregnancy medical we can use either method; or

(ii) You are paid less often than monthly (for example: you are paid quarterly or annually). If you are paid less often than monthly, we average your income for the month you apply. Section (6) explains how we average your income.

(b) When we estimate income for anyone in your AU, if you or anyone in your AU receive SSI-related medical benefits under chapter 388-475 WAC.

(c) When we must allocate income to someone who is receiving SSI-related medical benefits under chapter 388-475 WAC.

(d) When you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021. In this situation, we must use anticipating monthly (AM) for all your AU's income.

(e) To budget SSI or social security benefits even if we average other sources of income your AU receives.

(6) ~~((In general, you can choose which method we use to estimate your income. However, we **must** use the anticipating monthly method:~~

(a) ~~For the month you apply for benefits, any income your AU receives in that month. If we do not have to use the anticipating monthly method for any other reason, we may average this income source for the remaining months of your certification period.~~

(b) ~~For all your AU's income in the following circumstances:~~

(i) ~~If you receive SSI-related medical benefits under chapter 388-475 WAC; or~~

(ii) ~~If you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021, we must use the anticipating monthly method for the month your AU applied for benefits.~~

~~(e) For the income of any member of your AU who has income allocated to someone receiving SSI-related medical benefits under chapter 388-475 WAC;~~

~~(d) For the following sources of income to your AU:~~

~~(i) SSI; or~~

~~(ii) Social Security benefits))~~ Averaging income: When we average your income, we consider changes we expect for your AU's income. We determine a monthly amount of your income based on how often you are paid:

(a) If you are paid weekly, we multiply your expected income by 4.3;

(b) If you are paid every other week, we multiply your expected income by 2.15;

(c) In most cases if you receive your income other than weekly or every other week, we estimate your income over your certification period by:

(i) Adding the total income for representative period of time;

(ii) Dividing by the number of months in the timeframe; and

(iii) Using the result as a monthly average.

(d) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:

(i) Paid on an hourly or piecework basis; or

(ii) A migrant or seasonal farmworker under WAC 388-406-0021.

(7) ~~((When we use the averaging method, we take the expected changes in your AU's income into consideration so your benefits do not change as much:~~

~~(a) If you receive your income weekly or every other week, we convert this income to a monthly amount. If you are paid:~~

~~(i) Weekly, we multiply your expected pay by 4.3; or~~

~~(ii) Every other week, we multiply your expected pay by 2.15.~~

~~(b) In most cases if you receive your income other than weekly or every other week, we estimate your expected income over the certification period by:~~

~~(i) Adding the total income in a representative time period;~~

~~(ii) Dividing by the number of pay periods in the time frame; and~~

~~(iii) Determining the monthly average from this amount.~~

~~(e) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:~~

~~(i) Paid on an hourly or piecework basis; or~~

~~(ii) A migrant or seasonal farmworker under WAC 388-406-002+)) If we used the anticipating monthly income method for the month you applied for benefits, we may average your income for the rest of your certification period if we do not have to use this method for any other reason in section (5).~~

(8) If you report a change in your AU's income, and we expect the change to last ~~((for at least a month beyond the month you reported the change, we recalculate))~~ through the end of the next month after you reported it, we update the estimate of your AU's income based on this change.

(9) If your actual income is different than the income we estimated, we ~~((do not))~~ don't make you repay an overpayment under chapter 388-410 WAC or increase your benefits unless you meet one of the following conditions:

(a) You provided incomplete or false information; or

(b) We made an error in calculating your benefits.

WSR 07-22-066

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 2, 2007, 8:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-086.

Title of Rule and Other Identifying Information: WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on December 11, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 12, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRULES.COORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 11, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 4, 2007, 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: To update requirements for a mid-certification review to be considered complete for temporary assistance for needy families (TANF) and state family assistance (SFA).

Reasons Supporting Proposal: The changes are necessary to meet federal work verification requirements under Public Law 109-171 and the TANF interim final rules issued on June 29, 2006.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, Public Law 109-171, TANF Interim Final Rule published in the Federal Register - Volume 71, No. 125 on June 29, 2006.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by establishing eligibility rules to facilitate the department meeting federal reporting requirements of hours of participation. The rule impacts who must complete a mid-certification review and what is required for the department to consider the review as complete for purposes of determining ongoing eligibility.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules establish requirements for completing a mid-certification review in a manner that facilitates the department meeting federal requirements to verify actual hours of participation for households in the TANF program.

November 1, 2007

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-025 and 07-01-023, filed 11/29/06 and 12/8/06, effective 10/1/07)

WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits? (1) **A mid-certification review (MCR)** is a form we send you to ask about your current circum-

stances. We use the answers you give us to decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive cash assistance, family-related medical, or Basic Food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) You **do not** have to complete a mid-certification review for cash assistance if you:

(i) Only receive Refugee Cash Assistance as described under WAC 388-400-0030; or

(ii) Have a review period of six months or less.

(b) You **do not** have to complete a mid-certification review for Basic food if:

(i) Your assistance unit has a certification period of six months or less; or

(ii) All adults in your assistance unit are elderly or disabled and have no earned income.

(3) **When we send the review form:**

If you must complete a MCR...	We send your review form...
(a) For one program such as Basic Food or Family Medical.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(b) For two or more programs, and all programs have a 12-month certification or review period.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(c) For Basic Food and another program when either program has a certification or review period between six and twelve months.	In the fifth month of your Basic Food certification period when you receive Basic Food and another program. You must complete your review by the 10th day of month six of your Basic Food certification.

(4) If you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review in ~~((one))~~ one [one] of the following ways:

(a) **Complete the form and return it to us.** For us to count your mid-certification review as complete, you must take all of the steps below:

(i) ~~((Complete))~~ Complete [Complete] the review form, telling us about changes in your circumstances we ask about;

(ii) Sign and date the form;

(iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;

(iv) If you receive family medical benefits, give us proof of your income even if it has not changed; ~~((and))~~

(v) If you receive Temporary Assistance for Needy Families and you are working or self employed, you must give us proof of your income even if it has not changed; and

(vi) Mail or turn in the completed form and any required proof to us by the due date on the review.

(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:

(i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;

(ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;

(iii) If you receive family medical benefits, give us proof of your income even if it has not changed;

(iv) If you receive Temporary Assistance for Needy Families and you are working or self employed, you must give us proof of your income ~~((and the hours you work))~~ even if it has not changed; and

(v) Mail or turn in any required proof to us by the due date on the review.

(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you ten days notice before we change your benefits.

(6) If you do not complete your required mid-certification review, we stop your benefits at the end of the month the review was due.

(7) **Late reviews.** If you complete the mid-certification review after the last day of the month the review was due, we process the review as described below based on when we receive the review:

(a) **Mid-certification reviews you complete by the last day of the month after the month the review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the review.

(b) **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

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

WSR 07-22-067
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 [Filed November 2, 2007, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-116.

Title of Rule and Other Identifying Information: The department is amending WAC 388-310-1450 WorkFirst—WorkFirst pregnancy to employment and 388-310-0300 WorkFirst—Infant care exemptions for mandatory participants.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on December 11, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 12, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey WA 98503, e-mail DSHSRULES.COORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. by December 11, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 4, 2007, 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: These rule changes will allow the exempting of parents with an infant under age of one year from WorkFirst participation for a maximum of twelve months over the parent's lifetime. The only exception to the new rule is mandatory mental health and chemical dependency treatment if needed.

Reasons Supporting Proposal: DSHS is required to comply with chapter 289, Laws of 2007 (2SSB 6016) that went into effect July 22, 2007.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, and 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, Implementation and Enforcement: Aurea Figueroa, 1009 College S.E., Lacey, WA 98504, (360) 725-4623.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only affects DSHS clients by changing the exemption for having a child under twelve months of age.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

October 30, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-14-087, filed 6/28/02, effective 7/29/02)

WAC 388-310-0300 WorkFirst—Infant care exemptions for mandatory participants. (1) ~~((If I am a mandatory participant,))~~ When can I be exempted from participating in WorkFirst activities if I am a mandatory participant?

~~((a))~~ Either you or the other parent (living in the household) can claim an infant exemption from participating in WorkFirst activities ~~((during months that you are needed in the home to personally provide care for your child under four months of age.))~~ provided you:

(a) Have a child under one year of age;

~~(b) ((You or the other parent of your child, living in your household can claim a one-time exemption from full-time participation, for one child only, if that child is between the age of four months and up to twelve months old. This means the parent who claims this exemption will only be required to participate part-time, up to twenty hours in certain activities described in WAC 388-310-1450))~~ Choose to not fully participate in the WorkFirst program (see WAC 388-310-0400); and

(c) Have not used up your lifetime twelve-month infant exemption.

(2) ~~((Can I participate in WorkFirst while I am exempt))~~ If I choose my infant exemption, can I still be required to participate in the WorkFirst program?

You are required to participate up to twenty hours per week in mental health and/or chemical dependency treatment if:

(a) ~~((You may choose to participate in WorkFirst while you are exempt with a child under four months old. If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty. For a description of participation activities see WAC 388-310-1450.))~~ The comprehensive evaluation or assessment indicates a need; and

(b) ~~((You may choose to participate full time while you are taking your one-time/part-time exemption. If you decide later to stop participating full-time, and you still qualify for the part-time exemption, you will be put back into part-time exempt status with no financial penalty. For a description of participation activities see WAC 388-310-1450))~~ Services are available in your community.

(3) Can I volunteer to participate in WorkFirst while I have a child under one?

You may choose to fully participate in WorkFirst (see WAC 388-310-0400) while you have a child under one year of age. If you decide later to stop participating and you still qualify for an exemption, you will be put back into exempt status with no financial penalty provided you meet conditions (1) and (2) above.

(4) Does an infant exemption from participation affect my sixty-month time limit for receiving TANF or SFA benefits?

~~((An exemption from participation does not affect your sixty-month time limit for receiving TANF or SFA benefits (described in WAC 388-484-0005).))~~ Even if you are exempt from participation, each month you receive a TANF/SFA

grant counts toward your sixty-month limit (see WAC 388-484-0005).

AMENDATORY SECTION (Amending WSR 02-14-087, filed 6/28/02, effective 7/29/02)

WAC 388-310-1450 Pregnancy to employment. (1) How do I know if I am eligible to participate in pregnancy to employment?

If you are on TANF/SFA and are pregnant or have a child under the age of ~~((twelve months))~~ one year, you are a participant in the pregnancy to employment pathway.

(2) What services are provided to the pregnancy to employment pathway?

(a) The pregnancy to employment pathway provides you with services, when available in your community, to help you learn how to work, look for work, or prepare for work while still meeting your child's needs. You and your case manager or social worker will decide which variety of services you need such as:

- (i) Parenting education or parenting skills training;
- (ii) Reliable and affordable child care;
- (iii) Mental health treatment;
- (iv) Chemical dependency treatment;
- (v) Domestic violence services; or
- (vi) Employment services.

(b) The case manager or social worker will contact you every three months to offer you services if you are not required to participate and choose to claim the infant exemption.

(3) What am I required to do while I am in the pregnancy to employment pathway?

You ~~((will receive))~~ must participate in an assessment ~~((from))~~ with a DSHS social worker ~~((-))~~ and based on the results ~~((of the assessment))~~ you ~~((receive as a pregnancy to employment participant, you and))~~ will:

(a) Work with your case manager/social worker ((will)) to decide ((how you will be)) which required ((to participate and which)) activities best meet your needs. These activities ((you are required to do)) will depend on where you are in the pregnancy or the age of your child and will be added to your individual responsibility plan (IRP).

(b) Be required to participate in the activities identified in your IRP.

~~((3))~~ **(4) What am I required to do while I am pregnant?**

Based upon the results of your assessment, your participation:

(a) ((In the)) During your first and second trimester of pregnancy will be ((- Your participation is based upon the results of the assessment you receive and includes work, looking for work or a combination of pregnancy to employment services. You will be required to participate)) full-time ((during the first two trimesters of pregnancy)) work, looking for work, or preparing for work unless you have a good reason to participate fewer hours (see WAC 388-310-1600).

(b) ((In the)) During your third trimester of pregnancy will be ((- Your participation is voluntary and may include meeting your medical needs)) up to twenty hours per week in mental health and/or chemical dependency treatment if:

(i) The comprehensive evaluation or assessment indicates a need; and

(ii) Services are available in your community.

~~((4))~~ **(5) What am I required to do after my child is born?**

~~((You are exempt from participation))~~ After the birth of your child ((and until your child reaches the age of four months. You may)), you may choose to take the infant exemption (See WAC 388-310-0300) or volunteer to participate in WorkFirst activities ((while you are exempt)) to the fullest of your abilities (see WAC ((388-310-0300)) 388-310-0400).

~~((5))~~ **(6) (Do I have to participate full-time once my child reaches age four months?) What if I have used my twelve-month lifetime infant exemption?**

~~((Once your child reaches four months old, you are required to participate full-time unless you qualify for the one-time exemption from full-time participation. This exemption is called a part-time exemption and you can only receive it once for one child who is between four and up to twelve months old))~~ If you have another child after using all of infant exemption, you will be:

(a) Eligible for twelve-week postpartum deferral period to personally take care of an infant less than twelve weeks of age. During the twelve-week postpartum deferral period, you will be required to participate up to twenty hours per week in mental health and/or chemical dependency treatment if the comprehensive evaluation or assessment indicates a need and services are available in your community.

(b) Required (unless otherwise exempt or you have good reason to participate fewer hours) to participate full-time, once your child turns twelve-weeks old. Activities in which you are required to participate include one or more of the following:

- (i) Work;
- (ii) Looking for work; or
- (iii) Preparing for work by participating in a combination of activities based upon the results of your assessment.

~~((6))~~ **How do I qualify for the part-time exemption?**

Effective June 13, 2002, you can be exempt one-time only, from full-time participation, if you have a child age four months to twelve months old.)

~~((7))~~ **(7) (If I qualify for the part-time exemption, what will I be required to do?**

You will have to participate part-time for up to twenty hours per week (per state law) until your child is reaches twelve months old. During this time, you will be required, based upon the results of your assessment, to participate in one or more of the following:

- (a) Instruction or training to improve your parenting skills or child well-being (if available);
- (b) Preemployment or job readiness training;
- (c) High school completion or GED program;
- (d) Volunteer in a child care facility licensed under chapter 74.15 RCW. The child care facility has to agree to accept you as a volunteer; or
- (e) Volunteer to participate in job search or work activities full-time or part-time. If you change your mind about job search or work activities you will be required to participate

up to twenty hours in one of the required activities listed above.

~~(8)) ((What if I have used my one time part time exemption from full-time participation)) Will I be sanctioned if I refuse to participate?~~

~~(If you have used your one time, part-time exemption and you have another child, when that child is between four months and twelve months old, you will be required to participate full-time in one or more of the following activities:~~

~~(a) Work;~~

~~(b) Looking for work; or~~

~~(c) Preparing for work by participating in a combination of activities based upon the results of your assessment)) (a) You are required to participate in the WorkFirst program (see WAC 388-310-0200) subject to sanction (see WAC 388-310-1600) unless you have good reason and you:~~

~~(i) Are in your third trimester of pregnancy; or~~

~~(ii) Have not used up your twelve-month lifetime infant exemption and have a child under the age of one year; or~~

~~(iii) Have used up your twelve-month lifetime infant exemption and have a child under twelve weeks.~~

~~(b) You may be sanctioned if you stop participating in required mental health and/or chemical dependency treatment even if you are in your third trimester, claiming the infant exemption, or using a twelve-week postpartum deferral period.~~

~~((9) What services are provided in the pregnancy to employment?~~

~~This pathway provides you with services, as available within your community, to help you learn how to work while still meeting your child's needs. You and your case manager will decide which of the variety of services you need, such as help finding:~~

~~(a) Parenting classes;~~

~~(b) Safe and appropriate child care;~~

~~(c) Good health care for yourself and your child; and/or~~

~~(d) Employment services.~~

~~(e) If you are currently employed you will receive the assessment at your next individual responsibility plan review.~~

~~(10) What determines which services I will receive and what my participation will be?~~

~~(a) Your assessment results (see WAC 388-310-0700) determine the services, as available within your community, that you will receive;~~

~~(b) An individual responsibility plan will be developed jointly that reflects participation and services available to meet your needs and the needs of your child; and~~

~~(c) Follow up contact every three months to jointly reassess your needs and the services and activities you are participating in, until your child reaches age twelve months.~~

~~(11) Will I be sanctioned if I refuse to participate in pregnancy to employment pathway?~~

~~(a) If you are a pregnant woman in your third trimester of pregnancy or if you have an infant less than three months old you will not be sanctioned for not participating.~~

~~(b) If you are in the first two trimesters of your pregnancy or have a child four months of age or older, you are required to participate and are subject to the WorkFirst sanction rules (see WAC 388-310-1600).~~

~~(12) What if I have a child between the ages of four months and twelve months but I have a good reason not to participate?~~

~~If you have a good reason not to participate and you claim good cause (WAC 388-310-1600(3)), your needs will be assessed as soon as possible, but no later than ninety days from your request. A good cause determination will establish if you will be required to participate and the types of services that will best meet your needs.)~~

WSR 07-22-093

PROPOSED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed November 6, 2007, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-082.

Title of Rule and Other Identifying Information: Industrial insurance, WAC 296-20-1101 Hearing aids and masking devices.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501, on December 13, 2007, at 9:00 a.m.

Date of Intended Adoption: January 19, 2008.

Submit Written Comments to: Bob Mayer, Department of Labor and Industries, Tumwater, WA 98501, e-mail MAYR235@LNI.WA.GOV, fax (360) 902-4249, by December 18, 2007.

Assistance for Persons with Disabilities: Contact Bob Mayer by December 6, 2007, TTY (360) 902-5797 or fax (360) 902-4249.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will amend the above mentioned WACs to make the changes identified in this section.

The proposed revision will add language to the current rule regarding the current linear analog hearing aid replacement policy that became effective September 17, 2007. The purpose of this rule making is to ensure uniform compliance with the current linear analog hearing aid replacement policy.

Reasons Supporting Proposal: This proposal will illustrate the intent to ensure the current linear analog hearing aid replacement policy is complied with uniformly. The proposal also illustrates the efforts to improve the hearing capabilities of injured workers who have been issued linear analog hearing aids through their hearing loss claims.

Statutory Authority for Adoption: RCW 51.04.020, 51.36.080, 7.68.030, 7.68.080.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Bob Mayer, Tumwater, Washington, (360) 902-5021; Implementation and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules relate only to internal governmental operations that are not subject to violation by a nongovernment party, and per RCW 34.05.328 (5)(b)(ii) is exempt from the small business economic impact statement requirement.

A cost-benefit analysis is not required under RCW 34.05.328. These rules relate only to internal governmental operations that are not subject to violation by a nongovernment party, and per RCW 34.05.328 (5)(b)(ii) is exempt from the cost-benefit analysis requirement.

November 6, 2007
Judy Schurke
Director

AMENDATORY SECTION (Amending Order 80-29, filed 12/23/80, effective 3/1/81)

WAC 296-20-1101 Hearing aids and masking devices. The department or self-insurer is responsible for replacement or repair of hearing aids damaged or lost due to an industrial accident only to the extent of restoring the damaged item to its condition at time of the accident. If the hearing aid is repairable and the worker determines he prefers replacement, the department or self-insurer is responsible only to the extent of the cost to repair the original and the worker is responsible for the difference between repair and replacement costs.

When the department or self-insurer has accepted a hearing loss condition either as a result of industrial injury or occupational exposure, the department or self-insurer will furnish a hearing aid (hearing aids when bilateral loss is present) when prescribed or recommended by a physician.

The department or self-insurer will bear the cost of repairs or replacement due to normal wear and the cost of battery replacement for the life of the hearing aid.

If the worker has been issued a linear analog hearing aid and it becomes inoperable or if the worker is unable to hear, the department or self-insurer will replace the linear analog hearing aid with a nonlinear digital or nonlinear analog hearing aid in accordance with existing medical aid rules and fee schedules and at no cost to the worker even if the linear analog hearing aid is repairable.

In cases of accepted tinnitus, the department or self-insurer may provide masking devices under the same provisions as outlined for hearing aids due to hearing loss.

Provision of masking devices and hearing aids require prior authorization.

WSR 07-22-094
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed November 6, 2007, 9:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-085.

Title of Rule and Other Identifying Information: Payment of initial prescription drugs, amending WAC 296-20-01002, 296-20-124, 296-20-170 and 296-20-17001, and adding WAC 296-20-17004 for the purpose of complying with EHB 2105, chapter 134, Laws of 2007, which guarantees payment of initial prescription drugs for state fund claims regardless of claim acceptance.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501, on December 13, 2007, at 1:00 p.m.

Date of Intended Adoption: December 20, 2007.

Submit Written Comments to: Jaymie Mai, Department of Labor and Industries, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, e-mail maij235@lni.wa.gov, fax (360) 902-6315, by December 13, 2007.

Assistance for Persons with Disabilities: Contact Jaymie Mai, (360) 902-5799, maij235@lni.wa.gov, by December 7, 2007, TTY (360) 902-5797 or fax (360) 902-4249.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is needed to comply with EHB 2105, chapter 134, Laws of 2007, as follows:

- WAC 296-20-01002 defines new terms use [used] for the payment of initial prescription drugs. It defines "initial prescription drugs" and "initial visit."
- WAC 296-20-124 includes initial prescription drugs to the list of exception for payment on state fund rejected claims.
- WAC 296-20-170 allows pharmacies to bill the department for initial prescription drugs prior to claim acceptance after they have reviewed a copy of the claim for industrial injury or occupational disease.
- WAC 296-20-17001 includes initial prescription drugs to the list of exception for payment on state fund claims.
- WAC 296-20-17004 defines criteria for payment of initial prescription drugs. Payment will be in accordance to the department's fee schedule.

Reasons Supporting Proposal: This rule making is necessary to implement EHB 2105, chapter 134, Laws of 2007, which guarantees payment of initial prescription drugs for state fund claims regardless of claim acceptance.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, EHB 2105, chapter 134, Laws of 2007.

Statute Being Implemented: RCW 51.36.010 as amended by EHB 2105, chapter 134, Laws of 2007.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Jaymie Mai, 7273 Linderson Way S.W., Tumwater, WA, (360) 902-6792; Implementation: Gary Franklin, MD, MPH, medical director, (360) 902-5020; and Enforcement: Robert Malooly, assistant director for insurance services, (360) 902-4209.

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

exempt under RCW 19.85.025(3), referring to RCW 34.05.-310(4), namely RCW 34.05.310 (4)(b), (c), (d) and (e), because it adopts and implements EHB 2105, chapter 134, Laws of 2007, and otherwise clarifies language in the amended rules without changing its effects as a result of the change in law.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt under RCW 34.05.-328 (5)(b)(iii), (iv) and (v) because it adopts and implements EHB 2105, chapter 134, Laws of 2007, and otherwise clarifies language in the amended rules without changing its effects as a result of the change in law.

November 6, 2007
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-17-167, filed 8/22/07, effective 9/22/07)

WAC 296-20-01002 Definitions. Acceptance, accepted condition: Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a claimant's medical condition is the responsibility of the department or self-insurer. The condition being accepted must be specified by one or more diagnosis codes from the current edition of the International Classification of Diseases, Clinically Modified (ICD-CM).

Appointing authority: For the evidence-based prescription drug program of the participating agencies in the state purchased health care programs, appointing authority shall mean the following persons acting jointly: The administrator of the health care authority, the secretary of the department of social and health services, and the director of the department of labor and industries.

Attendant care: Those proper and necessary personal care services provided to maintain the worker in his or her residence. Refer to WAC 296-20-303 for more information.

Attending doctor report: This type of report may also be referred to as a "60 day" or "special" report. The following information must be included in this type of report. Also, additional information may be requested by the department as needed.

(1) The condition(s) diagnosed including ICD-9-CM codes and the objective and subjective findings.

(2) Their relationship, if any, to the industrial injury or exposure.

(3) Outline of proposed treatment program, its length, components, and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date should be included. The probability, if any, of permanent partial disability resulting from industrial conditions should be noted.

(4) If the worker has not returned to work, the attending doctor should indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.

(5) If the worker has not returned to work, a doctor's estimate of physical capacities should be included with the report. If further information regarding physical capacities is

needed or required, a performance-based physical capacities evaluation can be requested. Performance-based physical capacities evaluations should be conducted by a licensed occupational therapist or a licensed physical therapist. Performance-based physical capacities evaluations may also be conducted by other qualified professionals who provided performance-based physical capacities evaluations to the department prior to May 20, 1987, and who have received written approval to continue supplying this service based on formal department review of their qualifications.

Authorization: Notification by a qualified representative of the department or self-insurer that specific proper and necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer.

Average wholesale price (AWP): A pharmacy reimbursement formula by which the pharmacist is reimbursed for the cost of the product plus a mark-up. The AWP is an industry benchmark which is developed independently by companies that specifically monitor drug pricing.

Baseline price (BLP): Is derived by calculating the mean average for all NDC's (National Drug Code) in a specific product group, determining the standard deviation, and calculating a new mean average using all prices within one standard deviation of the original mean average. "Baseline price" is a drug pricing mechanism developed and updated by First Data Bank.

Bundled codes: When a bundled code is covered, payment for them is subsumed by the payment for the codes or services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient. This service is not separately payable because it is included in the payment for other services such as hospital visits.) Bundled codes and services are identified in the fee schedules.

By report: BR (by report) in the value column of the fee schedules indicates that the value of this service is to be determined by report (BR) because the service is too unusual, variable or new to be assigned a unit value. The report shall provide an adequate definition or description of the services or procedures that explain why the services or procedures (e.g., operative, medical, radiological, laboratory, pathology, or other similar service report) are too unusual, variable, or complex to be assigned a relative value unit, using any of the following as indicated:

- (1) Diagnosis;
- (2) Size, location and number of lesion(s) or procedure(s) where appropriate;
- (3) Surgical procedure(s) and supplementary procedure(s);
- (4) Whenever possible, list the nearest similar procedure by number according to the fee schedules;
- (5) Estimated follow-up;
- (6) Operative time;
- (7) Describe in detail any service rendered and billed using an "unlisted" procedure code.

The department or self-insurer may adjust BR procedures when such action is indicated.

Chart notes: This type of documentation may also be referred to as "office" or "progress" notes. Providers must

maintain charts and records in order to support and justify the services provided. "Chart" means a compendium of medical records on an individual patient. "Record" means dated reports supporting bills submitted to the department or self-insurer for medical services provided in an office, nursing facility, hospital, outpatient, emergency room, or other place of service. Records of service shall be entered in a chronological order by the practitioner who rendered the service. For reimbursement purposes, such records shall be legible, and shall include, but are not limited to:

- (1) Date(s) of service;
- (2) Patient's name and date of birth;
- (3) Claim number;
- (4) Name and title of the person performing the service;
- (5) Chief complaint or reason for each visit;
- (6) Pertinent medical history;
- (7) Pertinent findings on examination;
- (8) Medications and/or equipment/supplies prescribed or provided;
- (9) Description of treatment (when applicable);
- (10) Recommendations for additional treatments, procedures, or consultations;
- (11) X rays, tests, and results; and
- (12) Plan of treatment/care/outcome.

Consultation examination report: The following information must be included in this type of report. Additional information may be requested by the department as needed.

- (1) A detailed history to establish:
 - (a) The type and severity of the industrial injury or occupational disease.
 - (b) The patient's previous physical and mental health.
 - (c) Any social and emotional factors which may effect recovery.
- (2) A comparison history between history provided by attending doctor and injured worker, must be provided with exam.
- (3) A detailed physical examination concerning all systems affected by the industrial accident.
- (4) A general physical examination sufficient to demonstrate any preexisting impairments of function or concurrent condition.
- (5) A complete diagnosis of all pathological conditions including ICD-9-CM codes found to be listed:
 - (a) Due solely to injury.
 - (b) Preexisting condition aggravated by the injury and the extent of aggravation.
 - (c) Other medical conditions neither related to nor aggravated by the injury but which may retard recovery.
 - (d) Coexisting disease (arthritis, congenital deformities, heart disease, etc.).
- (6) Conclusions must include:
 - (a) Type of treatment recommended for each pathological condition and the probable duration of treatment.
 - (b) Expected degree of recovery from the industrial condition.
 - (c) Probability, if any, of permanent disability resulting from the industrial condition.
 - (d) Probability of returning to work.

(7) Reports of necessary, reasonable X-ray and laboratory studies to establish or confirm the diagnosis when indicated.

Doctor: For these rules, means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry.

Only those persons so licensed may sign report of accident forms and certify time loss compensation except as provided in WAC 296-20-01502, When can a physician assistant have sole signature on the report of accident or physician's initial report? and WAC 296-23-241, Can advanced registered nurse practitioners independently perform the functions of an attending physician?

Emergent hospital admission: Placement of the worker in an acute care hospital for treatment of a work related medical condition of an unforeseen or rapidly progressing nature which if not treated in an inpatient setting, is likely to jeopardize the workers health or treatment outcome.

Endorsing practitioner: A practitioner who has reviewed the preferred drug list and has notified the health care authority that he or she has agreed to allow therapeutic interchange of a preferred drug for any nonpreferred drug in a given therapeutic class.

Fatal: When the attending doctor has reason to believe a worker has died as a result of an industrial injury or exposure, the doctor should notify the nearest department service location or the self-insurer immediately. Often an autopsy is required by the department or self-insurer. If so, it will be authorized by the service location manager or the self-insurer. Benefits payable include burial stipend and monthly payments to the surviving spouse and/or dependents.

Fee schedules or maximum fee schedule(s): The fee schedules consist of, but are not limited to, the following:

- (a) Health Care Common Procedure Coding System Level I and II Codes, descriptions and modifiers that describe medical and other services, supplies and materials.
- (b) Codes, descriptions and modifiers developed by the department.
- (c) Relative value units (RVUs), calculated or assigned dollar values, percent-of-allowed-charges (POAC), or diagnostic related groups (DRGs), that set the maximum allowable fee for services rendered.
- (d) Billing instructions or policies relating to the submission of bills by providers and the payment of bills by the department or self-insurer.
- (e) Average wholesale price (AWP), baseline price (BLP), and policies related to the purchase of medications.

Health services provider or provider: For these rules means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. It includes, but is not limited to, hospitals, medical doctors, dentists, chiropractors, vocational rehabilitation counselors, osteopathic physicians, pharmacists, podiatrists, physical therapists, occupational therapists, massage therapists, psychologists, naturopathic physicians, and durable medical equipment dealers.

Home nursing: Those nursing services that are proper and necessary to maintain the worker in his or her residence.

These services must be provided through an agency licensed, certified or registered to provide home care, home health or hospice services. Refer to WAC 296-20-091 for more information.

Independent or separate procedure: Certain of the fee schedule's listed procedures are commonly carried out as an integral part of a total service, and as such do not warrant a separate charge. When such a procedure is carried out as a separate entity, not immediately related to other services, the indicated value for "independent procedure" is applicable.

Initial prescription drugs: Any drug prescribed for an alleged industrial injury or occupational disease during the initial visit.

Initial visit: The first visit to a healthcare provider during which the *Report of Industrial Injury or Occupational Disease* is completed and the worker files a claim for workers compensation.

Medical aid rules: The Washington Administrative Codes (WACs) that contain the administrative rules for medical and other services rendered to workers.

Modified work status: The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature. Workers should be urged to return to modified work as soon as reasonable as such work is frequently beneficial for body conditioning and regaining self confidence.

Under RCW 51.32.090, when the employer has modified work available for the worker, the employer must furnish the doctor and the worker with a statement describing the available work in terms that will enable the doctor to relate the physical activities of the job to the worker's physical limitations and capabilities. The doctor shall then determine whether the worker is physically able to perform the work described. The employer may not increase the physical requirements of the job without requesting the opinion of the doctor as to the worker's ability to perform such additional work. If after a trial period of reemployment the worker is unable to continue with such work, the worker's time loss compensation will be resumed upon certification by the attending doctor.

If the employer has no modified work available, the department should be notified immediately, so vocational assessment can be conducted to determine whether the worker will require assistance in returning to work.

Nonemergent (elective) hospital admission: Placement of the worker in an acute care hospital for medical treatment of an accepted condition which may be safely scheduled in advance without jeopardizing the worker's health or treatment outcome.

Physician: For these rules, means any person licensed to perform one or more of the following professions: Medicine and surgery; or osteopathic medicine and surgery.

Practitioner: For these rules, means any person defined as a "doctor" under these rules, or licensed to practice one or more of the following professions: Audiology; physical therapy; occupational therapy; pharmacy; prosthetics; orthotics; psychology; nursing; physician or osteopathic assistant; and massage therapy.

Preferred drug list: The list of drugs selected by the appointing authority to be used by applicable state agencies

as the basis for the purchase of drugs in state purchased health care programs.

Proper and necessary:

(1) The department or self-insurer pays for proper and necessary health care services that are related to the diagnosis and treatment of an accepted condition.

(2) Under the Industrial Insurance Act, "proper and necessary" refers to those health care services which are:

(a) Reflective of accepted standards of good practice, within the scope of practice of the provider's license or certification;

(b) Curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must be rehabilitative. Curative treatment produces permanent changes, which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes;

(c) Not delivered primarily for the convenience of the claimant, the claimant's attending doctor, or any other provider; and

(d) Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition.

(3) The department or self-insurer stops payment for health care services once a worker reaches a state of maximum medical improvement. Maximum medical improvement occurs when no fundamental or marked change in an accepted condition can be expected, with or without treatment. Maximum medical improvement may be present though there may be fluctuations in levels of pain and function. A worker's condition may have reached maximum medical improvement though it might be expected to improve or deteriorate with the passage of time. Once a worker's condition has reached maximum medical improvement, treatment that results only in temporary or transient changes is not proper and necessary. "Maximum medical improvement" is equivalent to "fixed and stable."

(4) In no case shall services which are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered proper and necessary. Services that are controversial, obsolete, investigational or experimental are presumed not to be proper and necessary, and shall be authorized only as provided in WAC 296-20-03002(6) and 296-20-02850.

Refill: The continuation of therapy with the same drug (including the renewal of a previous prescription or adjustments in dosage) when a prescription is for an antipsychotic, antidepressant, chemotherapy, antiretroviral or immunosuppressive drug, or for the refill of an immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

Regular work status: The injured worker is physically capable of returning to his/her regular work. It is the duty of the attending doctor to notify the worker and the department or self-insurer, as the case may be, of the specific date of release to return to regular work. Compensation will be terminated on the release date. Further treatment can be allowed

as requested by the attending doctor if the condition is not stationary and such treatment is needed and otherwise in order.

Temporary partial disability: Partial time loss compensation may be paid when the worker can return to work on a limited basis or return to a lesser paying job is necessitated by the accepted injury or condition. The worker must have a reduction in wages of more than five percent before consideration of partial time loss can be made. No partial time loss compensation can be paid after the worker's condition is stationary. **All time loss compensation must be certified by the attending doctor based on objective findings.**

Termination of treatment: When treatment is no longer required and/or the industrial condition is stabilized, a report indicating the date of stabilization should be submitted to the department or self-insurer. This is necessary to initiate closure of the industrial claim. The patient may require continued treatment for conditions not related to the industrial condition; however, financial responsibility for such care must be the patient's.

Therapeutic alternative: Drug products of different chemical structure within the same pharmacologic or therapeutic class and that are expected to have similar therapeutic effects and safety profiles when administered in therapeutically equivalent doses.

Therapeutic interchange: To dispense with the endorsing practitioner's authorization, a therapeutic alternative to the prescribed drug.

Total permanent disability: Loss of both legs or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful employment. When the attending doctor feels a worker may be totally and permanently disabled, the attending doctor should communicate this information immediately to the department or self-insurer. A vocational evaluation and an independent rating of disability may be arranged by the department prior to a determination as to total permanent disability. Coverage for treatment does not usually continue after the date an injured worker is placed on pension.

Total temporary disability: Full-time loss compensation will be paid when the worker is unable to return to any type of reasonably continuous gainful employment as a direct result of an accepted industrial injury or exposure.

Unusual or unlisted procedure: Value of unlisted services or procedures should be substantiated "by report" (BR).

Utilization review: The assessment of a claimant's medical care to assure that it is proper and necessary and of good quality. This assessment typically considers the appropriateness of the place of care, level of care, and the duration, frequency or quantity of services provided in relation to the accepted condition being treated.

AMENDATORY SECTION (Amending WSR 90-04-007, filed 1/26/90, effective 2/26/90)

WAC 296-20-124 Rejected and closed claims. (1) No payment will be made for treatment or medication on rejected claims (~~or for services rendered after the date of claim closure~~) except:

(a) Services which were carried out at the specific request of the department or the self-insurer;

(b) Examination or diagnostic services which served as a basis for the adjudication decision; or

(c) Initial prescription drugs provided during the initial visit for state fund claims.

(2) ~~((When the department or self-insurer has denied responsibility for an alleged injury or industrial condition the only services which will be paid are those which were carried out at the specific request of the department or the self-insurer and/or those examination or diagnostic services which served as a basis for the adjudication decision.))~~ No payment will be made for services rendered after the date of claim closure. Following the date of the order and notice of claim closure, the department or self-insurer will be responsible only for those services specifically requested or those examinations, and diagnostic services necessary to complete and file a reopening application.

(3) Periodic medical surveillance examinations will be covered by the department or self-insurer for workers with closed claims for asbestos-related disease, to include chest X-ray abnormalities, without the necessity of filing a reopening application when such examinations are recommended by accepted medical protocol.

(4) Replacement of prosthetics, orthotics, and special equipment can be provided on closed claims after prior authorization. See WAC 296-20-1102 for further information.

AMENDATORY SECTION (Amending WSR 03-21-069, filed 10/14/03, effective 12/1/03)

WAC 296-20-170 Pharmacy—Acceptance of rules and fees. (1) Acceptance and filling of a prescription for a worker entitled to benefits under the industrial insurance law, constitutes acceptance of the department's rules and fees.

(2) When there is questionable eligibility, (i.e., no claim number, prescription is for medication other than usually prescribed for industrial injury; or pharmacist has reason to believe claim is closed or rejected), the pharmacist may require the worker to pay for the prescription.

~~((In these cases,))~~ (a) The pharmacist must furnish the worker with a signed receipt and a nonnegotiable copy of the prescription including national drug code and quantity or a completed department pharmacy bill form signed in the appropriate areas verifying worker has paid for the prescribed item(s) in order for the worker to bill the department or self-insurer for reimbursement.

(b) The worker may not be charged more than the amount allowable by the department or self-insurer.

(c) The worker must submit such reimbursement request within one year of the date of service.

See WAC 296-20-020 for details on providing a refund.

(3) Pharmacies may bill the department for initial prescription drugs prior to claim acceptance upon the presentation to the pharmacy of a state fund identification card or a copy of the *Report of Industrial Injury or Occupational Disease*.

AMENDATORY SECTION (Amending Order 86-19, filed 2/28/86, effective 4/1/86)

WAC 296-20-17001 Allowance and payment for medication. (1) The department or self-insurer will pay for medications or supplies dispensed for the treatment of conditions resulting from an industrial injury and/or conditions which are retarding the recovery from the industrial injury, for which the department or self-insurer has accepted temporary responsibility.

(2) Approved generic are to be substituted for brand name pharmaceuticals in all cases unless the worker's condition will not tolerate a generic preparation and the prescribing physician indicates no substitution is permitted. A list of approved generics and their base cost will be published periodically by the department.

(3) Items not normally paid include: Syringes, injectables, heating pads, vibrators, personal appliances, oral nutritional supplements, anorexiant, and medications normally prescribed for systemic conditions. These items may be authorized to certain individuals in unusual circumstances; prior approval from the department or self-insurer is mandatory.

(4) Rental or purchase of medical equipment must be prior authorized by the department or self-insurer.

(5) No ~~((bills))~~ payment will be ~~((paid))~~ made for medication dispensed after the date of the order and notice of claim closure ~~((on an accepted claim; nor, on rejected claims; nor))~~ or rejection or for conditions unrelated to the industrial ~~((condition))~~ injury or occupational disease except for initial prescription drugs provided during the initial visit for state fund claims.

NEW SECTION

WAC 296-20-17004 Billing and payment for initial prescription drugs. (1) Pharmacies may bill the department for initial prescription drugs prior to claim acceptance upon the presentation to the pharmacy of a state fund identification card or a copy of the *Report of Industrial Injury or Occupational Disease* with a valid claim number.

(2) The department will pay pharmacies or reimburse the worker for initial prescription drugs provided during the initial visit except when the prescription is:

(a) A second or subsequent filling of the initial prescription drugs prescribed for the same industrial injury or occupational disease prior to claim acceptance; or

(b) Associated with a self-insurer claim.

(3) Payment for initial prescription drugs shall be in accordance with the department's fee schedule including, but not limited to screening for drug utilization review (DUR) criteria, the preferred drug list (PDL) provision and formulary status.

WSR 07-22-095
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed November 6, 2007, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-106.

Title of Rule and Other Identifying Information: WAC 415-02-350 What are cost of living adjustments (COLA) and how are they calculated?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA 98501, on December 11, 2007, at 10:00 a.m.

Date of Intended Adoption: December 13, 2007.

Submit Written Comments to: Sarah Monaly, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail sarahm@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on December 11, 2007.

Assistance for Persons with Disabilities: Contact Sarah Monaly by December 4, 2007, phone (360) 664-7291, e-mail sarahm@drs.wa.gov, TDD (360) 586-5450 or (866) 377-8895.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend rules to implement SB 5175 (2007), which modifies the eligibility requirements for retirees, beneficiaries, or eligible ex-spouses of either the public employees' retirement system (PERS) Plan 1 or Teachers' retirement system (TRS) Plan 1 who receive a cost of living adjustment (COLA). Prior to SB 5175, PERS Plan 1 and TRS Plan 1 retirees, beneficiaries, and eligible ex-spouses were eligible for a COLA if they were retired for one year and reached age 66 by July 1 of the year in which the COLA was given. Now, PERS Plan 1 and TRS Plan 1 retirees, beneficiaries, and eligible ex-spouses are eligible for a COLA if they are retired for one year by July 1 of the year in which they reach age 66. WAC 415-02-350 needs amending to reflect this change.

Reasons Supporting Proposal: SB 5175 took effect on July 1, 2007. The department needs to update its rules to assist plan members, retirees, employers and department staff.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.40.197 and 41.32.489.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah Monaly, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Cathy Cale, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7305.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

November 6, 2007
 Sarah Monaly
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-18-009, filed 8/24/06, effective 9/24/06)

WAC 415-02-350 What are cost-of-living adjustments (COLA) and how are they calculated? (1) What is a cost-of-living adjustment (COLA)? The value of a retiree's, beneficiary's, or ex-spouse's monthly allowance may change in the years after retirement because of inflation or other factors. A COLA automatically adjusts benefits based on the cost of living changes.

(2) What retirement plans include COLAs? With one exception, all retirement plans administered by the department provide one or more of the types of COLAs listed in subsection (3) of this section. The judges retirement fund (chapter 2.12 RCW) does not provide a COLA.

RETIREMENT SYSTEM	PLAN	COLA TYPE	STATUTE
JUDICIAL		Base	RCW 2.10.170
LEOFF	Plan 1	Base	RCW 41.26.240
LEOFF	Plan 2	Base	RCW 41.26.440
PSERS		Base	RCW 41.37.160
PERS	Plan 1	Uniform	RCW 41.40.197
PERS	Plan 1	Optional Auto	RCW 41.40.188 (1)(c)
PERS	Plan 2	Base	RCW 41.40.640
PERS	Plan 3	Base	RCW 41.40.840
SERS	Plans 2 and 3	Base	RCW 41.35.210
TRS	Plan 1	Uniform	RCW 41.32.489
TRS	Plan 1	Optional Auto	RCW 41.32.530 (1)(d)
TRS	Plan 2	Base	RCW 41.32.770
TRS	Plan 3	Base	RCW 41.32.845
WSPRS	Plans 1 and 2	Base	RCW 43.43.260

(3) What are the types of COLAs?

(a) Auto COLA

The auto COLA, if offered under your plan, is an option you may select at retirement. If you choose this option, your monthly retirement allowance will be actuarially reduced at retirement, and you will receive an automatic adjustment in your monthly retirement allowance each year for the rest of your life. The auto COLA has no age requirement and is limited to a maximum of ~~((3%-times))~~ three percent of your monthly allowance.

(b) Base COLA

The base COLA is applied in July (April for LEOFF Plan 1) of each year and adjusts the benefit based on the

change in the ~~((CPI))~~ Consumer Price Index for the Seattle area. Base COLAs are limited to a maximum of ~~((3%-times))~~ three percent of the monthly allowance for all affected plans except LEOFF Plan 1. ~~((They are))~~ During a calendar year, the base COLA is payable to:

(i) Retirees~~((, beneficiaries, and ex-spouses))~~ who have been retired for at least one year ~~((before))~~ by July 1st of each year (April 1st for LEOFF Plan 1); and

(ii) Beneficiaries or eligible ex-spouses who receive benefit payments from an account that, by July 1st, has paid a monthly benefit for at least one year (April 1st for LEOFF Plan 1).

(c) Uniform COLA

The uniform COLA is an annual adjustment to the benefit, based on years of service. The annual adjustment for the uniform COLA is independent from any other COLA. During a calendar year, it is payable to:

~~((i))~~ (i) Retirees, beneficiaries, or ex-spouses age 66 or older who have been retired for at least one year by July 1st of each year; and

~~((ii))~~ (ii) Retirees who, by July 1st, have received a retirement benefit for at least one year and who, by December 31st, will have reached age sixty-six or older;

(ii) Beneficiaries and eligible ex-spouses who receive benefit payments from an account that, by July 1st, has paid a monthly benefit for at least one year and who, by December 31st, will have reached age sixty-six or older; and

(iii) Retirees, beneficiaries, or eligible ex-spouses of any age whose retirement benefit is calculated under the minimum formula.

(4) Who is responsible for determining the amount of the COLA? The office of the state actuary (OSA) bases the percentages of the COLAs on the Consumer Price Index. The Index is based on wages earned by urban wage earners and clerical workers in the Seattle-Tacoma-Bremerton, Washington area. OSA provides this information to the department annually.

WSR 07-22-101
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
 [Filed November 6, 2007, 11:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-12-019.

Title of Rule and Other Identifying Information: Chapter 415-106 WAC, Public safety employees' retirement system.

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA 98501, on December 19, 2007, at 10:00 a.m.

Date of Intended Adoption: December 21, 2007.

Submit Written Comments to: Sarah Monaly, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail sarahm@drs.wa.

gov, fax (360) 753-3166, by 5:00 p.m. on December 19, 2007.

Assistance for Persons with Disabilities: Contact Sarah Monaly by December 10, 2007, phone (360) 664-7291, e-mail sarahm@drs.wa.gov, TDD (360) 586-5450 or (866) 377-8895.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to adopt a new WAC chapter to implement chapter 41.37 RCW, Washington public safety employees' retirement system (PSERS). PSERS is a retirement system for public employees whose jobs contain a high degree of physical risk to their own personal safety.

Reasons Supporting Proposal: Chapter 41.37 RCW took effect on July 1, 2006. The department needs to implement rules for this new retirement system to assist plan members, retirees, employers and department staff.

Statutory Authority for Adoption: RCW 41.50.050(5) and for WAC 415-106-600 is RCW 41.37.170 and 41.50.050(5).

Statute Being Implemented: For WAC 415-106-010 is chapter 41.37 RCW; for WAC 415-106-050, 415-106-060, 415-106-070, 415-106-290 and 415-106-295 is chapter 41.37 RCW and IRS regulations; for WAC 415-106-080 is chapters 41.37, 41.45, and 41.50 RCW; for WAC 415-106-100 is RCW 10.93.020, 41.04.270, 41.37.010 (4) and (5), 41.37.020; for WAC 415-106-105 is RCW 41.37.010(4); for WAC 415-106-110 is chapters 41.37 and 41.45 RCW and RCW 41.40.113; for WAC 415-106-200 is chapter 41.37 RCW; for WAC 415-106-205, 415-106-210, 415-106-215, 415-106-220, 415-106-225, 415-106-230, 415-106-235, 415-106-240, 415-106-245, 415-106-250, 415-106-255, 415-106-275, 415-106-285 and 415-106-315 is RCW 41.37.010(6); for WAC 415-106-260, 415-106-265 and 415-106-280 is RCW 41.37.260; for WAC 415-106-270 is RCW 27.04.100, 41.04.650 through 41.04.670, 41.37.010(6), 41.37.060, 72.01.045 and 72.09.240; for WAC 415-106-300 is RCW 41.37.010(6) and IRS regulations; for WAC 415-106-330 is RCW 41.50.150 and IRS regulations; for WAC 415-106-400 and 415-106-401 is RCW 41.37.020(2); for WAC 415-106-405 is RCW 41.37.020(2) and 41.37.210; for WAC 415-106-500 is RCW 41.37.010(4), 41.37.090(3), 41.37.100, 41.37.200, 41.37.230, 41.50.165 and chapter 41.54 RCW; for WAC 415-106-600 is RCW 41.37.050, 41.37.170, 41.37.210, 41.37.230 and 41.50.790; for WAC 415-106-610 is RCW 41.37.170 and 41.50.790; for WAC 415-106-620 is RCW 41.37.190; for WAC 415-106-700 is RCW 41.37.050, 41.50.130, chapters 41.32, 41.35 and 41.40 RCW; for WAC 415-106-710 is RCW 41.37.050, 41.37.180 and 41.37.190; and for WAC 415-106-900 is RCW 41.37.250.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah Monaly, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Cathy Cale, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7305.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

November 6, 2007

Sarah Monaly

Rules Coordinator

Chapter 415-106 WAC

PUBLIC SAFETY EMPLOYEES' RETIREMENT SYSTEM

DEFINITIONS

NEW SECTION

WAC 415-106-010 Definitions. The definitions in RCW 41.37.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.37 RCW are defined in this chapter.

(1) **AFC** means average final compensation as defined in RCW 41.37.010(14).

(2) **Employer** means the state or local government entities as defined in RCW 41.37.010(4) employing members eligible for PSERS.

(3) **Full-time employee** means an employee who is regularly scheduled to provide at least one hundred sixty hours of compensated service for an employer each calendar month.

(4) **LEOFF** means the law enforcement officers' and fire fighters' retirement system.

(5) **PERS** means the public employees' retirement system.

(6) **PSERS** means the public safety employees' retirement system.

(7) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.37.010(6).

(8) **SERS** means the school employees' retirement system.

(9) **TRS** means the teachers' retirement system.

(10) **WSPRS** means the Washington state patrol retirement system.

(11) **County corrections department** means any subsection or unit of a county employing correctional employees.

(12) **City corrections department** means any subsection or unit of a city employing correctional employees.

ADMINISTRATION

NEW SECTION

WAC 415-106-050 How does the department comply with Internal Revenue Code distribution rules? (1) This section applies only to the public safety employees' retirement system (PSERS).

(2) All benefits paid from the PSERS retirement plan shall be distributed in accordance with the requirements of IRC section 401 (a)(9) and the regulations under that section. In order to meet these requirements, the retirement plan shall be administered in accordance with the following provisions:

(a) Distribution of a member's benefit must begin by the later of the April 1 of the year following the calendar year in which a member attains age seventy and one-half or the April 1 of the year following the calendar year in which the member retires;

(b) The member's entire benefit must be distributed over the member's life or the lives of the member and a designated beneficiary;

(c) The life expectancy of a member or the member's spouse or beneficiary may not be recalculated after the benefits commence;

(d) If a member dies before the distribution of the member's benefits has begun, distribution of the member's entire interest must be distributed in accordance to IRC section 401 (a)(9) and the regulations implementing that section. Distributions must occur over the life expectancy of the designated beneficiary and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died;

(e) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of the Federal Internal Revenue Code; and

(f) If a member dies after the distribution of the member's benefits has begun, the remaining portion of the member's interest will be distributed at least as rapidly as under the method of distribution being used for the member as of the date of the member's death. Death benefits must be distributed in accordance with IRC section 409 (a)(9) and the regulations implementing that section.

(3) A distributee may elect to have eligible rollover distributions paid in a direct rollover to an eligible retirement plan the distributee specifies, pursuant to IRC section 401 (a)(31).

(a) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(i) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(ii) Any distribution to the extent such distribution is required under IRC section 401 (a)(9);

(iii) The portion of any distribution that is not includible in gross income; and

(iv) Any other distribution that is reasonably expected to total less than two hundred dollars during the year.

(b) A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, effective for taxable years beginning prior to January 1, 2007, this portion may be paid

only to an individual retirement account or annuity described in IRC section 408 (a) or (b), or to a qualified defined contribution plan described in IRC section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Provided, however, effective for taxable years beginning after December 31, 2006, this portion may be paid only to:

(i) An individual retirement account or annuity described in IRC section 408 (a) or (b);

(ii) A qualified defined contribution plan described in IRC section 401(a);

(iii) A qualified plan described in IRC section 403(a);

(iv) A qualified defined benefit plan described in IRC section 401(a); or

(v) An annuity contract described in IRC section 403(b), and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(c) An eligible retirement plan for a distributee is:

(i) An individual retirement account described in IRC section 408(a);

(ii) An individual retirement annuity described in IRC section 408(b);

(iii) An annuity plan described in IRC section 403(a);

(iv) A qualified trust described in IRC section 401(a), that accepts the distributee's eligible rollover distribution;

(v) An annuity contract described in IRC section 403(b);

(vi) An eligible plan under IRC section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan; or

(vii) Effective January 1, 2008, an eligible retirement plan shall also mean a Roth IRA described in IRC section 408A.

(d) The definition of eligible retirement plan in (c) of this subsection shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in IRC section 414(p).

(e) A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the code, are distributees with regard to the interest of the spouse or former spouse.

(f) A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(g) Effective for distributions after December 31, 2006, if, with respect to any distribution from the account of a deceased PSERS member, a direct trustee-to-trustee transfer is made to an individual retirement plan (an individual retirement account or annuity described in IRC section 408 (a) or (b)) established to receive distributions for the designated

beneficiary of the deceased PSERS member, and the designated beneficiary is not the surviving spouse, then:

(i) The transfer shall be treated as an eligible rollover distribution;

(ii) The individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of IRC 408 (d)(3)(C)); and

(iii) The distribution requirements of IRC section 401 (a)(9)(B) (other than clause (iv) thereof), as clarified by IRS Notice 2007-7 for this purpose, shall apply to the individual retirement plan.

To the extent provided in federal regulations, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.

NEW SECTION

WAC 415-106-060 What are the IRS limitations on maximum benefits and maximum contributions? (1) This section applies only to the public safety employees' retirement system (PSERS). Subject to the provisions of this section, benefits paid from, and employee contributions made to, the plan shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under IRC section 415.

(2) A participant may not receive an annual benefit that exceeds the dollar amount specified in IRC section 415 (b)(1)(A), subject to the applicable adjustments in IRC section 415. For purposes of applying IRC 415(b) when a participant retires before age sixty-two or after age sixty-five, the determination as to whether the benefit satisfies IRC section 415(b) limitations is made by comparing the equivalent annual benefit, determined in Step 1, (a) of this subsection, with the age-adjusted dollar limit, determined in Step 2, (b) of this subsection. The plan will satisfy IRC section 415(b) limitations only if the equivalent annual benefit determined in Step 1 is less than the age-adjusted dollar limit determined in Step 2.

(a) **Step 1:** Under IRC 415 (b)(2)(B), determine the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the plan benefit. In general, IRC 415 (b)(2)(E)(i) and (v) require that the equivalent annual benefit be the greater of (a)(i) or (ii) of this subsection. This step applies only to a benefit that is required to be converted to a straight life annuity under IRC section 415 (b)(2)(B), for example, a qualified joint and survivor annuity.

(i) The equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial equivalence for the particular form of benefit payable (plan rate and plan mortality table, or plan tabular factor, respectively).

(ii) The equivalent annual benefit computed using a five percent interest rate assumption and the applicable mortality table.

(b) **Step 2:** Under IRC 415 (b)(2)(C) or (D), determine the IRC 415(b) dollar limitation that applies at the age the benefit is payable (age-adjusted dollar limit).

(i) If the age at which the benefit is payable is less than sixty-two, the age-adjusted dollar limit is determined by reducing the dollar limit on an actuarially equivalent basis. In general, IRC 415 (b)(2)(E)(i) and (v) require that the age-adjusted dollar amount be the lesser of (b)(i)(A) or (B) of this subsection.

(A) The equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan.

(B) The amount computed using five percent interest and the applicable mortality table described in the Federal Internal Revenue Service's (IRS) Revenue Ruling 2001-62. (This is used only to the extent described in Q&A 6 of Revenue Ruling 98-1. Q&A 6 states that for purposes of adjusting any limitation under IRC 415 (b)(2)(C) or (D), if forfeiture does not occur upon death, the mortality decrement may be ignored prior to age sixty-two and must be ignored after the Federal Social Security Retirement Age.)

(ii) If the age at which the benefit is payable is greater than age sixty-five, the age-adjusted dollar limit is determined by increasing the IRC section 415(b) dollar limitation on an actuarially equivalent basis. In general, IRC 415 (b)(2)(E)(i) and (v) require that the increased age-adjusted dollar limit be the lesser of (b)(ii)(A) or (B) of this subsection.

(A) The equivalent amount computed using the plan rate and plan mortality table (or plan tabular factor) used for actuarial equivalence for early retirement benefits under the plan.

(B) The equivalent amount computed using five percent interest and the applicable mortality table (used to the extent described in Q&A 6, as described in the prior paragraph).

The dollar limit will be reduced proportionally for less than ten years of participation. For example, if you have five years of service the IRC section 415(b) limit is reduced to 5/10 (fifty percent) of the limit.

(3) The maximum annual addition that may be contributed or allocated to a participant's account for any limitation year may not exceed the lesser of:

(a) Forty thousand dollars, which limit shall be adjusted for increases in the cost-of-living under IRC section 415(d); or

(b) One hundred percent of the member's compensation, within the meaning of IRC section 415 (c)(3), for the limitation year.

(4) Notwithstanding any other provision of law to the contrary, the department may modify a request by a participant to make a contribution to the retirement plan if the amount of the contributions would exceed the limits under IRC section 415(c) or 415(n).

(5) The definition of compensation, earnable compensation or other similar term when used for purposes of determining compliance with IRC section 415 includes the amount of any elective deferral, as defined in IRC section 402 (g)(3), or any contribution which is made or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of IRC sections 125, 132 (f)(4), or 457, but excludes member contributions picked under IRC section 414 (h)(2).

(6) The annual compensation taken into account in calculating retiree benefits under this system must not exceed

the limits imposed by IRC section 401 (a)(17) for qualified trusts. This limitation shall be adjusted for cost of living increases in accordance with IRC section 401 (a)(17)(B).

NEW SECTION

WAC 415-106-070 Assets for exclusive benefit of members and beneficiaries. No assets of the public safety employees' retirement system may be used for or diverted to a purpose other than the exclusive benefit of the members and their beneficiaries at any time prior to the satisfaction of all liabilities with respect to members and their beneficiaries.

NEW SECTION

WAC 415-106-080 Actuarial tables, schedules, and factors. See chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating optional retirement allowances for PSERS members.

MEMBERSHIP

NEW SECTION

WAC 415-106-100 Am I eligible for PSERS membership? On or after July 1, 2006, you are eligible for PSERS membership according to the provisions in this section.

(1) Subject to the exceptions in subsection (2) of this section, you will be a PSERS member on the date you become employed in a full-time position for an employer as defined in WAC 415-106-010, provided one or more of the following applies:

(a) The position requires completion of a certified criminal justice training course and you are authorized by your employer to arrest, conduct criminal investigations, enforce the criminal laws of the state of Washington, and carry a firearm as part of the job.

(b) Your primary responsibility is to ensure the custody and security of incarcerated or probationary individuals.

(c) You are a limited authority Washington peace officer, as defined in RCW 10.93.020.

(d) Your primary responsibility is to supervise members eligible under this section.

(2) You are exempt from PSERS membership if:

(a) One or more of the exemptions in RCW 41.37.020 apply to you;

(b) You are a retirement system retiree, estopped from membership under RCW 41.04.270;

(c) You are, or have been, a PERS Plan 1 member; or

(d) You were a PERS Plan 2 or 3 member on July 1, 2006, and are not required to join PSERS membership according to WAC 415-106-110.

NEW SECTION

WAC 415-106-105 May I join PSERS if my duties qualify for PSERS membership, but my employer is not specifically listed in WAC 415-106-010(2)? You do not qualify for membership unless your department or agency is specifically listed in WAC 415-106-010(2), even if your

employer employs one or more elected or appointed officials who are PSERS members.

NEW SECTION

WAC 415-106-110 If I am a member of PERS, may I change my membership to PSERS? You may have the right to change your retirement system membership from PERS to PSERS according to the requirements in this section.

(1) You may change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 prior to July 1, 2006; and

(b) On July 1, 2006, you meet the requirements for membership in WAC 415-106-100.

(2) If you meet the conditions in subsection (1) of this section and wish to change membership from PERS to PSERS, you must submit a properly completed election form to your employer during the election period that begins on July 1, 2006, and ends on September 30, 2006.

(3) Your change in membership is prospective only.

(a) You become a member of PSERS on the election date shown on your election form.

(b) You will become a dual member of PSERS and PERS. All service credit and compensation previously reported in PERS will remain in PERS. Your retirement benefits will be governed by the dual member "portability" provisions in chapters 41.54 RCW and 415-113 WAC.

(4) If you meet the conditions in subsection (1) of this section and do not change membership to PSERS on or before September 30, 2006, you may not become a member of PSERS while you continue employment with the same employer. However, if you terminate your employment with the employer with whom you were employed on July 1, 2006, and become employed in a PSERS eligible position with another employer after July 1, 2006, you will be mandated into PSERS membership.

REPORTABLE COMPENSATION

NEW SECTION

WAC 415-106-200 Purpose and scope of reportable compensation rules. WAC 415-106-205 through 415-106-330 codify the department's interpretation of statutes and administrative practice regarding classification of payments received by members. The department applies these rules to all payments.

NEW SECTION

WAC 415-106-205 What is reportable compensation? Reportable compensation is subject to retirement system contributions and is used in the calculation of your retirement benefit.

(1) The department determines whether payments you receive are reportable compensation based on the nature of the payment, not the name of the payment. The department considers the reason for the payment and whether the reason

brings the payment within the statutory definition of "compensation earnable" in RCW 41.37.010(6). It must:

(a) Be paid to you by an employer as a salary or wage for services you provided; or

(b) Qualify as reportable compensation under chapter 41.37 RCW or this chapter.

(2) Your employer must report all of your reportable compensation to the department. Your employer must report compensation for the month in which it was earned. Compensation is earned when the service is provided, rather than when payment is made.

Example: Bill is paid in July for work performed during June. The employer must report his compensation to the department as "June earnings."

NEW SECTION

WAC 415-106-210 What types of payments are considered reportable compensation? The following table indicates whether certain types of payments are reportable compensation under PSERS, and provides a cross-reference to the applicable WAC.

Type of Payment	PSERS Reportable Compensation?
Annual leave cash outs	No - WAC 415-106-255
Assault pay (state employees)	Yes - WAC 415-106-270
Base rate	Yes - WAC 415-106-215
Cafeteria plans	Yes - WAC 415-106-290
Deferred wages	Yes - WAC 415-106-300
Disability insurance payments	No - WAC 415-106-275
Disability: Salary imputed while on duty-disability leave	Yes - WAC 415-106-270
Employer provided vehicle	No - WAC 415-106-325
Employer taxes/contributions	No - WAC 415-106-300
Fringe benefits, including insurance	No - WAC 415-106-295
Illegal payments	No - WAC 415-106-305
Legislative leave	Yes - WAC 415-106-285
Longevity/education attainment pay	Yes - WAC 415-106-215
Nonmoney compensation	No - WAC 415-106-315
Optional payments	No - WAC 415-106-310
Overtime payments	Yes - WAC 415-106-220
Performance pay	Yes - WAC 415-106-230
Paid leave	Yes - WAC 415-106-260
Reimbursements	No - WAC 415-106-320
Reinstatement payments	Yes - WAC 415-106-240
Retirement or termination bonus	No - WAC 415-106-235
Retroactive salary increase	Yes - WAC 415-106-245
Severance pay	No - WAC 415-106-250
Shared leave (state employees)	Yes - WAC 415-106-270

Type of Payment	PSERS Reportable Compensation?
Sick leave cash outs	No - WAC 415-106-255
Standby pay	Yes - WAC 415-106-225
Time off with pay	Yes - WAC 415-106-255
Union leave ¹	Yes - WAC 415-106-265
Unpaid leave ²	Yes - WAC 415-106-280
Vehicle allowances	No - WAC 415-106-330

¹Only specific types of union leave are reportable. See WAC 415-106-265.

²Only the unpaid leave specified in WAC 415-106-280(2) will be used in the calculation of your AFC.

NEW SECTION

WAC 415-106-215 Are salary increases based on longevity or educational attainment considered reportable compensation? Most employees receive a base rate of salary or wages expressed as an hourly or monthly rate of pay. This payment is for services you provide and qualifies as reportable compensation. Your rate of salary may be based in part on longevity or educational attainment.

(1) A member who receives a salary increase based upon longevity or educational attainment receives a higher salary without working more hours. The higher salary indicates a higher level of service due to greater experience or more education.

(2) Simply attaching the label "longevity" to a payment does not guarantee that it will be reportable compensation. If a payment described as a longevity payment is actually based upon some other criteria, such as retirement or notification of intent to retire, the payment may not be reportable compensation.

NEW SECTION

WAC 415-106-220 Are overtime payments reportable compensation? Overtime is additional pay you earn for working time in excess of your regularly scheduled shift, and is reportable compensation. Some examples of overtime are:

(1) **Additional pay for working on a holiday.** If you receive an extra payment for working on a scheduled holiday, the payment is overtime. Your employer may make the additional payment when the holiday occurs or in a lump sum at some other time.

Example: Bill works on Christmas day. He is given the option of taking another day off with pay or receiving an extra day's pay. If he opts for the extra pay, the payment is overtime and is reportable compensation. If he takes another day off in lieu of the extra pay, it is paid leave and also qualifies as reportable compensation.

(2) **Callback pay.** If your employer offers you a special rate of pay for returning to work when called after the end of your regular shift, it is overtime.

(3) **Court pay.** If you receive an additional payment for appearing in court or performing other duties outside your regularly scheduled shift, it is overtime.

NEW SECTION

WAC 415-106-225 Is standby pay reportable compensation? Standby means you are required by your employer to be prepared to report immediately for work if the need arises, although the need may not arise. According to RCW 41.37.010 (6)(b)(vi):

(1) The pay you receive for being on standby qualifies as reportable compensation; however

(2) The time you spend on standby is not counted toward service credit and is not reported to the department by your employer.

NEW SECTION

WAC 415-106-230 Is performance pay reportable compensation? Performance pay for meeting certain performance goals is reportable compensation because it is paid for services provided. Employers must document the dates over which the performance pay is earned, and provide that information if requested by the department.

Example: An employer offers each employee in a work group an additional \$100 if the work group has no work-related accidents during the upcoming year. Remaining accident free is a performance goal. Therefore the payment will be for services provided and will qualify as reportable compensation.

NEW SECTION

WAC 415-106-235 Is a retirement bonus or incentive reportable compensation? A payment made as a bonus or incentive to retire is not a payment for services provided, and is not reportable compensation.

Example: A collective bargaining agreement authorizes a city to pay employees a higher salary during the last two years of employment if the employee gives written notice of intent to retire or terminate. Because the payment is in exchange for the agreement to retire or terminate and not for services, the payment is not reportable compensation.

NEW SECTION

WAC 415-106-240 Are payments for reinstatement or payment instead of reinstatement reportable compensation? (1) Payments you receive upon reinstatement or instead of reinstatement are reportable compensation to the extent they are equivalent to the salary you would have earned by working in your position. RCW 41.37.010 (6)(b)(i) defines these payments as reportable compensation even though they are not payments for services you provided to your employer. The payment will be prorated over the

entire period you were suspended, terminated, or otherwise absent from work.

(2) For purposes of this section, "reinstatement" means that you are entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law.

NEW SECTION

WAC 415-106-245 Are retroactive salary increases reportable compensation? A retroactive salary increase occurs when your rate of pay is increased and made retroactive to a prior date. You receive a lump sum payment to cover the increase earned during the earlier period.

(1) To qualify as reportable compensation under this section, the retroactive salary increase must be made pursuant to:

(a) An order or conciliation agreement of a court or administrative agency charged with enforcing federal, state, or local statutes, ordinances, or regulations protecting employment rights;

(b) A bona fide settlement of a claim before a court or administrative agency for a retroactive salary increase;

(c) A collective bargaining agreement; or

(d) Action by a personnel resources board which expressly states the payments are retroactive.

(2) Your employer must report compensation for the month in which it was earned.

NEW SECTION

WAC 415-106-250 Is severance pay reportable compensation? Severance pay, whether or not it is earned over time, is not reportable compensation. See RCW 41.37.010 (6)(a).

NEW SECTION

WAC 415-106-255 Is sick leave or vacation leave, whether used or cashed out, reportable compensation?

(1) **Sick and annual leave (used).** Most PSERS members earn a certain number of sick leave and annual leave hours per month. These leave hours are earned by providing service during the month in which the leave accrues. The payment you receive when you use an earned leave day is reportable compensation.

(2) **Sick and annual leave cash outs.** Under RCW 41.37.010 (6)(a), sick and annual leave cash outs are not reportable compensation.

NEW SECTION

WAC 415-106-260 Is paid leave, which is not earned over time, reportable compensation? To the extent authorized by RCW 41.37.260, payment you receive from your employer while on an authorized paid leave of absence is reportable compensation provided that:

(1) The payment does not exceed the salary for the position from which you are on leave; and

(2) The payment is received from the employer, not from a third party. Except as provided in WAC 415-106-265, if you receive the payment from your employer, but your employer is reimbursed for the payment by a third party, the payment is not reportable compensation.

NEW SECTION

WAC 415-106-265 Is the pay I receive from my employer when I am on union leave reportable compensation? If you take an authorized leave of absence to serve as an elected official of a labor organization and you receive payment from your employer during your leave, the payment may be reportable compensation even if the union reimburses your employer. To qualify as reportable compensation, the payment must meet the specific conditions of RCW 41.37.260(2).

NEW SECTION

WAC 415-106-270 Is compensation for periods of absence due to sickness or injury reportable compensation? Compensation you receive for periods of absence due to sickness or injury, which is not covered by earned sick leave, qualifies as reportable compensation only as authorized by RCW 41.37.010(6) and this section.

(1) **Assault pay** qualifies as reportable compensation to the extent authorized by RCW 27.04.100, 72.01.045, and 72.09.240.

(2) **Duty disability.** You may make contributions and receive up to twelve consecutive months of service credit for periods of disability covered by Title 51 RCW or similar federal workers' compensation program as provided in RCW 41.37.060. In this case, the compensation you would have received but for the disability qualifies as reportable compensation to the extent authorized by RCW 41.37.060.

(3) **Shared leave.**

(a) If you are a state employee, as defined in RCW 41.04.655, the compensation you receive due to participation in a leave-sharing program qualifies as reportable compensation to the extent authorized by RCW 41.04.650 through 41.04.670.

(b) If you are not a state employee, shared leave payments are not specifically authorized by RCW 41.37.010(6) and do not qualify as reportable compensation.

NEW SECTION

WAC 415-106-275 Are disability insurance or workers' compensation payments reportable compensation?

(1) Disability insurance payments are not reportable compensation, whether the payments come directly from your employer or from an insurance company.

(2) Workers' compensation payments are not reportable compensation.

Example: Susan, an employee on unpaid disability leave, submits her workers' compensation payments to her employer. The employer then issues Susan a check for the same amount through the payroll system. Even though the payment may have the

appearance of compensation from the employer, it is not a payment for services provided and is not reportable compensation.

(3) See WAC 415-106-270 for information about service credit and imputed compensation for periods of duty disability.

NEW SECTION

WAC 415-106-280 Will the compensation that is imputed to periods of unpaid leave be used in the calculation of my AFC? (1) Authorized unpaid leave. If you establish service credit under RCW 41.37.260 for periods of unpaid leave, the compensation imputed to the period of time you are on leave will not be included in your AFC. See WAC 415-02-175.

(2) **Military leave.** If you purchase service credit for a period of interruptive military service and that period falls in your AFC period, federal law entitles you to have the salary you would have earned during that time period used in the calculation of your AFC.

NEW SECTION

WAC 415-106-285 Is the pay I receive while on legislative leave reportable compensation? If you take leave without pay from an eligible PSERS position to serve in the legislature, you may elect to participate in PSERS as a legislator.

For any year in which you serve in the legislature, you may choose that your reportable compensation be either:

(1) The reportable compensation you would have earned had you not served in the legislature; or

(2) The compensation you actually received for nonlegislative public employment and the legislative service combined.

If you choose the option in subsection (1) of this section, you must pay the additional employer and employee contributions to the extent the compensation reported is higher than it would have been under subsection (2) of this section.

NEW SECTION

WAC 415-106-290 Is compensation applied toward cafeteria plans reportable compensation? Compensation you receive and apply toward a benefit plan under Internal Revenue Code (IRC) section 125 is reportable compensation if you have an absolute right to receive cash or deferred cash payments instead of participating in the plan. If there is no cash option, the value of participating in the plan is not reportable compensation. See WAC 415-106-295.

NEW SECTION

WAC 415-106-295 Are fringe benefits reportable compensation? Fringe benefits provided by an employer are not a salary or wage, and are not reportable compensation. Fringe benefits include, but are not limited to:

(1) Employer retirement contributions;

(2) Any type of insurance such as medical, dental or life insurance; and any employer contribution to meet the premium or charge for the insurance; and

(3) Any employer payments into a private fund to provide health or welfare benefits for you or your dependents, with the exception of compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-106-290.

NEW SECTION

WAC 415-106-300 Are payroll deductions reportable compensation? Amounts withheld from your salary or wages are reportable compensation. Examples include:

(1) Your member contributions to PSERS. Your employer's contributions are a fringe benefit and are not reportable compensation. See WAC 415-106-295.

(2) Amounts withheld for federal income tax purposes; and

(3) Other authorized voluntary deductions, such as deferred compensation or IRC section 457 plan contributions.

NEW SECTION

WAC 415-106-305 Are payments, which are outside my employer's legal authority, reportable compensation? Payments made by an employer that go beyond the employer's legal authority are not reportable.

NEW SECTION

WAC 415-106-310 Are optional payments reportable compensation? If you receive an additional payment only on the condition of taking an action other than providing service to your employer, the payment is not reportable compensation.

Example: An employer offers to make a contribution to Joe's deferred compensation plan only if Joe agrees to have a portion of his salary deferred. Because Joe does not have a right to receive the contribution based solely on providing service, the payment is not reportable compensation.

NEW SECTION

WAC 415-106-315 Are nonmoney payments from my employer reportable compensation? Nonmoney compensation is compensation legally provided to you in a form other than money. Examples include: Living quarters, food, board, equipment, clothing, laundry, transportation, fuel and utilities. The value of nonmoney maintenance compensation you receive from your employer is not reportable compensation.

NEW SECTION

WAC 415-106-320 Are reimbursements for business expenses reportable compensation? Reimbursements are not reportable compensation. Typical reimbursement payments include mileage reimbursements for use of a private

car on employer business, or meal and lodging reimbursements for business trips.

NEW SECTION

WAC 415-106-325 Vehicles—Is the value of my use of an employer's vehicle reportable compensation? The value of an employer-provided vehicle is not reportable compensation.

NEW SECTION

WAC 415-106-330 Are vehicle allowances reportable compensation? (1)(a) A vehicle allowance is not reportable compensation if it is received in lieu of expenses you incur or expect to incur in using your own vehicle for business purposes.

(b) A vehicle allowance qualifies as reportable compensation to the extent that it exceeds your actual expenses. For instance, if you receive both a vehicle allowance and separate reimbursements for vehicle expenses each time you use a privately owned vehicle for business purposes, the vehicle allowance is reportable compensation.

(2) To prove that your vehicle allowance exceeded your actual expenses, your employer must maintain ongoing monthly records, documenting:

(a) The dates, if any, on which you used a privately owned vehicle in performing services for your employer;

(b) The miles you drove the vehicle on each of these trips;

(c) Your itinerary for each of these trips; and

(d) The amount of the allowance less the actual expenses, using IRS methodology. Under the IRS methodology, your actual expenses are the miles you drove multiplied by the IRS rate.

(i) The miles you drove are the number of miles you drove a privately owned vehicle for business purposes during the month.

(ii) "IRS rate" means the Internal Revenue Service mileage rate for use by taxpayers computing the value of the use of a vehicle.

(3) If a vehicle allowance exceeds actual expenses, your employer must report the excess, calculated in subsection (2)(d) of this section.

(4) If any part of a vehicle allowance is included in the calculation of your retirement allowance, your employer will be billed for excess compensation under RCW 41.50.150.

ELECTED AND APPOINTED OFFICIALS

NEW SECTION

WAC 415-106-400 If I establish PSERS membership and now hold a state elective position, may I continue to accrue service credit in PSERS? If you are an active PSERS member and are elected or appointed by the governor to a state elective position, you have the option to continue as a contributing member of PSERS, as limited by the requirements in this section.

(1) You must submit a written application directly to the department.

(2) If you submit your application before your service in a state elective position starts:

(a) Your employee contributions will be deducted from your compensation for your elective service.

(b) Except as provided in WAC 415-106-285, your employer(s) will pay the required employer contributions.

(3) If you submit your application mid-term (after your service in a state elective position has started):

(a) You and your employer will begin making contributions according to subsection (2) of this section.

(b) You must establish service credit for the prior portion of your current term by paying the employee contributions plus interest. Your employer must pay the required employer contributions plus interest.

(4) If you submit your application after your service in a state elective position has been completed, you must pay the required employee and employer contributions for the service credit with interest as determined by the department. Your former employer, at its discretion, may pay the required employer contributions plus interest.

(5) If you work in a PSERS eligible position at the same time you accrue service credit in a state elective position:

(a) Employee contributions will be deducted from your compensation for your service in the PSERS position and in the state elective position; and

(b) Both employers will make employer contributions.

(6) You will earn one service credit month for each calendar month during which you provide service in a state elective position. If you provide concurrent service in a PSERS eligible position, you will not receive additional service credit for that service.

(7) Once you start to accrue service credit in PSERS for a state elective position you must remain an active PSERS member until:

(a) You separate from all eligible public employment. You are not separated from eligible public employment if:

(i) You are reelected or reappointed to a successive term or terms of office; or

(ii) You resign from your state elective position and later resume service in the same state elective position during the same term.

(b) You retire from PSERS, whether or not you continue to serve in your elective position. See WAC 415-106-405.

(8) A state elective position is any position held by any person:

(a) Elected or appointed to a statewide office; or

(b) Elected or appointed as a member of the legislature.

NEW SECTION

WAC 415-106-401 If I hold a state elective position before establishing PSERS membership, may I establish service credit for my prior service in the state elective position? If you held a state elective position before you established PSERS membership, you have the option to establish service credit for the time you served in the state elective position as limited by the following requirements:

(1) You must be an active PSERS member at the time you submit your application.

(2) The term of office must have begun on or after July 1, 2006.

(3) You must submit a written application directly to the department.

(4) You must pay the required employee and employer contributions for the service credit with interest as determined by the department. Your former employer, at its discretion, may pay the employer contributions plus interest.

(5) You must establish service credit for a full term of office. You may not establish service for only a portion of your term in office. However, if you served multiple terms, you are not required to establish service credit for all of the terms served.

NEW SECTION

WAC 415-106-405 May I retire from PSERS while holding a state elective position? (1) If you are holding a state elective position and accruing PSERS service credit for your service in that position, you may retire from PSERS and continue to work in your elective position provided:

(a) You are eligible to retire under RCW 41.37.210;

(b) You submit a written statement to the department, waiving the right to earn PSERS service credit for any future period of service in a state elective position; and

(c) Your compensation in the state elective position is fifteen thousand dollars or less per year, adjusted annually for inflation by the director. See subsection (2) of this section.

(2) The compensation threshold in subsection (1)(c) of this section is adjusted on April 1 of each year, based on the average consumer price index for Seattle for the previous calendar year. Effective April 2006, the threshold is \$21,551. You may contact the department for the threshold in effect for subsequent years.

DISABILITY BENEFITS

NEW SECTION

WAC 415-106-500 PSERS disability benefits. This section covers disability benefits provided for in RCW 41.37.230. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on-the-job or off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) Am I eligible for disability benefits? You are eligible for disability benefits if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other PSERS position for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) If eligible, what will I receive as a monthly disability allowance?

(a) If you have at least ten years of service credit in PSERS, you will receive a monthly allowance equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age **sixty**. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

(b) If you have less than ten years of service credit, you will receive a monthly allowance¹ equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age **sixty-five**. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

¹You may choose to receive a lump sum payment instead of a monthly allowance if your initial monthly allowance will be less than fifty dollars. See RCW 41.37.200.

See WAC 415-02-320 for early retirement factors and examples.

(3) How do I apply?

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete and sign the application. If you are married, your spouse must sign consent to the benefit option you select. You, and your spouse if you are married, must have your signatures notarized.

(ii) **Part 2:** Employer's statement and report. Your employer must complete and sign Part 2, and return it directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return it directly to the department. You are responsible for all medical expenses related to your application for benefits. A copy of your job description must be provided to the physician at time of examination.

(b) When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(4) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(5) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, you should request a benefit estimate from the department, as there may be a difference in the dollar amount of your monthly allowance.

(6) **Once my application is approved, when will my monthly allowance begin?**

(a) Your disability allowance will accrue from the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from PSERS employment.

(i) If you are continuing to perform the duties of your position or another PSERS position, you may reapply for disability benefits according to subsection (3) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(7) What are my options if my application is denied?

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a PSERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(8) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(9) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.37.090(3) or contact the department.

(10) **Am I eligible for disability benefits if my disability is the result of my criminal conduct?** No. See RCW 41.37.100.

(11) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law. See chapters 41.54 RCW and 415-113 WAC. You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(12) **How long will I continue to receive a monthly disability allowance?** You may receive a monthly allow-

ance throughout your lifetime, subject to the provisions of subsection (13) of this section.

(13) Is it possible to lose my monthly disability allowance after I begin receiving it?

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive a disability allowance if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.37.010(4), at a comparable compensation.

(b) If you return to employment and reenter PSERS membership, your benefits will cease.

(14) If I take my disability benefit in a lump sum and return to work, may I restore my service credit? Yes, you may restore your service credit if you take a lump sum benefit and return to PSERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165 and 41.37.200.

RETIREMENT

NEW SECTION

WAC 415-106-600 What are my retirement benefit options? Upon retirement for service under RCW 41.37.210 or retirement for disability under RCW 41.37.230, you must choose to have your retirement allowance paid to you by one of the options described in this section.

(1) Which option will pay my beneficiary a monthly allowance after my death? Options described in subsection (2)(b) through (d) of this section include a survivor feature. The person you name at the time of retirement to receive a monthly allowance after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly allowance for the duration of his or her life. Your monthly retirement allowance will be actuarially reduced to offset the cost of the survivor feature. The factors used to determine the amount of the reduction are in WAC 415-02-380.

(2) What are my benefit options?

(a) Option one: Standard allowance (no survivor feature). The department will pay you a monthly retirement allowance throughout your lifetime. Your monthly retirement allowance will cease upon your death.

(b) Option two: Joint and whole allowance. The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance

equal to the gross monthly retirement allowance you were receiving.

(c) Option three: Joint and one-half allowance. The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to one-half of the gross monthly retirement allowance you were receiving.

(d) Option four: Joint and two-thirds allowance. The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to two-thirds (66.667%) of the gross monthly retirement allowance you were receiving.

(3) Do I need my spouse's consent on the option I choose? If you are married, you must provide your spouse's notarized signature indicating consent to the retirement option you select. If you do not provide spousal consent, the department will pay you a monthly retirement allowance based on option three (joint and one-half allowance) and record your spouse as the survivor beneficiary as required by RCW 41.37.170(2). If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) Can a dissolution order require that a former spouse be designated as a survivor beneficiary? Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) What happens if I choose a benefit option with a survivor feature and my survivor beneficiary dies before I do? Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will accrue from the first day of the month following the death. Your increased monthly allowance will be:

(a) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus

(b) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.

Example: John retires from PSERS in 2006. John chooses a benefit option with a survivor feature and names Beatrice, his daughter, as his survivor beneficiary. As a result, John's monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in 2011. John's monthly allowance will increase to \$2,191.05, which equals the amount he would have received had he chosen the standard allowance option, plus the COLAs he has received (based on his prior monthly allowance).

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	\$ Increase
2006	2,000.00	1,750.00		0.00
2007		1,750.00	.02	35.00

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	\$ Increase
2008		1,785.00	.03	53.55
2009		1,838.55	.025	45.96
2010		1,884.51	.03	56.54
2011	2,000.00	1,941.05	—	—
			Total COLAs	191.05
Original Option One Monthly Allowance		+ Total COLAs = New Monthly Allowance		
\$2000		+ \$191.05 = \$2,191.05		

(6) May I change my benefit option after retirement?

Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.37.050(3).

(b) **Postretirement marriage option.** If you select the standard allowance option at the time of retirement and marry after retirement, you may select a benefit option with a survivor feature and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor feature and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard allowance. You may exercise this option one time only.

(7) Who will receive the balance of my accumulated contributions, if any, after my death?

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement allowance paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.

NEW SECTION

WAC 415-106-610 How do I apply for retirement benefits? You should apply for retirement benefits at least thirty days before your intended retirement date by submitting to the department:

(1) A completed, signed and notarized retirement application, including:

(a) Your selection of one of the benefit options described in WAC 415-106-600.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's notarized signature indicating consent to the retirement option you selected.

(i) If you are married and you do not provide spousal consent, the department will pay you a monthly retirement allowance based on WAC 415-106-600 (2)(c), option three (joint and one-half allowance) and record your spouse as the survivor beneficiary as required by RCW 41.37.170 (2)(a).

(ii) Spousal consent is not required if a dissolution decree designating your survivor beneficiary under RCW 41.50.790 was filed with the department at least thirty days prior to your retirement date.

(2) Evidence of your birth date, such as a photocopy of your certified birth certificate, passport, naturalization certificate, certificate of armed services record U.S. DD 214, or other documentation acceptable to the department.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date.

NEW SECTION

WAC 415-106-620 How does the department calculate my retirement allowance? (1) When you apply for retirement, you will first receive a provisional retirement allowance.

(a) The department will calculate the provisional allowance based on:

(i) The data for service credit and reportable compensation in the department's system at the time it is calculated; and

(ii) Projections of your salary for periods that have not yet been reported by your employer.

(b) The department will pay you the provisional allowance until your actual retirement allowance has been calculated.

(2) To compute your actual allowance, the department must receive a final compensation report from your employer. The department may also require any of the following from your employer:

(a) Earnings history.

- (b) Copies of your employment contract(s).
- (c) Copies of your employer's compensation policies.

(3) The department will make a final calculation of your actual retirement allowance by making a final determination of your service credit and AFC and by applying the correct formula to these values. Your actual retirement allowance may be higher or lower than your provisional allowance.

(4) If the amount of your actual allowance is different from your provisional allowance, the department will make the necessary adjustments.

(a) If you were underpaid, the department will pay you a lump sum payment equal to the difference of the total provisional payments you received and the total you would have received based on your actual allowance.

(b) If you were overpaid, the department will recover the overpayment either through a lump sum payment, monthly installment payments, or through an actuarial reduction of your actual allowance.

POSTRETIREMENT EMPLOYMENT

NEW SECTION

WAC 415-106-700 As a PSERS retiree, how will my retirement allowance be affected if I return to employment? (1) You may work as many hours as you choose and continue to receive your retirement allowance if:

- (a) You return to work as an employee for a private employer;
- (b) You return to work as a bona fide independent contractor as defined in WAC 415-02-110;
- (c) Your only employment is as an elected official of a city or town and you are not a PERS member;
- (d) You work in an ineligible position; or
- (e) You are a retiree returning as an active member of a higher education retirement plan.

(2) If you return to work in a **PERS, SERS, or TRS Plan 2 or 3 eligible position**, your retirement allowance will be affected as follows:

(a) If you return to work within thirty consecutive calendar days from your accrual date (effective retirement date):

(i) Your monthly retirement allowance will be reduced by five and one-half percent for every eight hours you work during that month. This reduction will be applied each month until you remain absent from such employment for thirty calendar days.

(ii) The reduction provided in (a)(i) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any reduction over one hundred percent will be applied to the allowance you are eligible to receive in subsequent months. See RCW 41.37.050(1).

(b) If you return to work after thirty consecutive calendar days have elapsed, you may work for eight hundred sixty-seven hours each calendar year before your retirement allowance is suspended.

(3) If you return to work in an eligible **PSERS position**, your retirement allowance will be affected as follows:

(a) If you return to an eligible PSERS position and elect to reenter membership, your retirement allowance will be suspended. If you make this election, your retirement allow-

ance will be recalculated pursuant to WAC 415-106-710 when you reetire.

(b) If you return to an eligible PSERS position within thirty consecutive days of your accrual date (effective retirement date) and do not reenter membership, your monthly retirement allowance will be reduced by five and one-half percent for every eight hours you work during that month. This reduction will be applied each month until you remain absent from such employment for thirty calendar days. The reduction will accrue for a maximum of one hundred sixty hours per month. Any reduction over one hundred percent will be applied to the allowance you are eligible to receive in subsequent months. See RCW 41.37.050(1).

(c) If you return to an eligible PSERS position after thirty consecutive days of your accrual date (effective retirement date) and do not reenter membership, your retirement allowance will be suspended.

(4) What hours are counted toward the limits?

(a) Hours that count toward the limits are:

(i) All compensated hours that you work in an eligible position for any employer whose retirement plan is administered by the department;

(ii) Used earned sick leave and vacation days;

(iii) Paid holidays; and

(iv) Compensatory time, whether you use the time or cash it out.

(b) **Not counted toward the hour limits:** Unused sick and vacation leave you cash out.

(5) What happens if I work over the annual hour limit? The department will:

(a) Suspend your retirement allowance on the day following the day you exceed the limit, and prorate your payment for that month.

(b) Restart your retirement allowance the next calendar year or the day after you terminate all employment identified in subsection (2) of this section, whichever occurs first.

(c) Recover any overpayments made to you for the month(s) in which you exceeded the hour limit and received a retirement allowance. See RCW 41.50.130.

NEW SECTION

WAC 415-106-710 How does the department calculate my retirement allowance if I reenter PSERS membership and then reetire? If you return to work in an eligible PSERS position, you have the option of reentering membership. If you reenter membership, your retirement allowance will be calculated according to this section when you reetire.

(1) If you previously retired before age sixty, the department will:

(a) Calculate your retirement allowance pursuant to RCW 41.37.190 using:

(i) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(ii) Any increase in your AFC resulting from your reentry into membership; and

(b) Actuarially reduce your retirement allowance:

- (i) Based on the present value of the retirement allowance payments you received during your initial retirement;
- (ii) To account for any lump sum payment you took at the time of your previous retirement, plus interest, unless you choose to repay the entire amount before you rereire;
- (iii) To reflect the difference in the number of years between your current age and the attainment of age sixty, if you are not yet age sixty; and
- (iv) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-106-600.

(2) If you previously retired at or after age sixty, the department will:

- (a) Calculate your retirement allowance pursuant to RCW 41.37.190 using:
 - (i) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and
 - (ii) Any increase in your AFC resulting from your reentry into membership; and
 - (b) Actuarially reduce your retirement allowance:
 - (i) To account for any lump sum payment you took at the time of your previous retirement, plus interest, unless you choose to repay the entire amount before you rereire; and
 - (ii) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-106-600.
- (3) Under no circumstances will you receive a retirement allowance creditable to a month during which you earned service credit.

NEW SECTION

WAC 415-106-900 How do I designate a beneficiary, and who will receive a distribution if I die before retirement? (1) You may designate or change a beneficiary by submitting a *beneficiary designation form* to the department. Your designation will become effective upon the department's receipt of the form, only if it is completed properly and signed by you and a witness.

(2) You may name one or more of the following as a beneficiary or beneficiaries:

- (a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.
- (b) Your estate.
- (c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not in existence at the time of your death, or is not created under your last will, the designation will be invalid. Before making distribution to any trust, the department must receive:

- (i) A copy of the entire trust document;
 - (ii) The name, address, telephone number of the current trustee; and
 - (iii) The tax identification number.
- (3) You may name contingent beneficiaries in addition to primary beneficiaries.
- (4) You may change your beneficiary designation at any time.

(5) A change in marital status may invalidate your prior designation.

(6) Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.) Distribution is governed by RCW 41.37.250.

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.37.250(2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

- (a) Your accumulated contributions; or
- (b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

EXAMPLE ONE.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

Result

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW 41.37.250.

EXAMPLE TWO.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

Result

Because John has created no trust, Barbara, personally, will not be a beneficiary.

EXAMPLE THREE.

Facts

When she became a PSERS member, Joan named her mother as her beneficiary. Joan later married, but did not file a new beneficiary form before she died with eleven years of service.

Result

Unless required to do otherwise by a court order, the department will comply with RCW 41.37.250(2) and pay Joan's surviving spouse either a retirement allowance or lump sum. In this case, Joan's mother will not receive a distribution.

EXAMPLE FOUR.

Facts

John is a PSERS member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 41.37.250(2). However, Mary died the following week before requesting a distribution from the department.

Result

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eligible and opt to receive a monthly benefit, share and share alike, until each child reaches the age of majority.

conomic impact statement is not required because the rule and the proposed amendments do not impose any requirements or burdens that are not already specifically required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The content/values set in this rule are explicitly and specifically dictated by statute. Such rules are not subject to RCW 34.05.328.

November 6, 2007

Alan R. Lynn

Rules Coordinator

**WSR 07-22-103
PROPOSED RULES
DEPARTMENT OF REVENUE**

[Filed November 6, 2007, 2:31 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values—2008.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 11, 2007, at 10:00 a.m.

Date of Intended Adoption: December 18, 2007.

Submit Written Comments to: Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127, by December 11, 2007.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7499.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.140 requires that forest land values be adjusted annually by a statutory formula contained in RCW 84.33.140(3). The proposed rule adjusts the table of forest land values in Washington as required by statute. County assessors will use these published land values for property tax purposes in 2008.

Reasons Supporting Proposal: RCW 84.33.140 requires that the values provided in this rule be adjusted each year.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.140.

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

Name of Proponent: Washington state department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business eco-

AMENDATORY SECTION (Amending WSR 07-02-038, filed 12/26/06, effective 1/1/07)

WAC 458-40-540 Forest land values—((2007)) 2008. The forest land values, per acre, for each grade of forest land for the ((2007)) 2008 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2007)) 2008 VALUES ROUNDED
1	1	\$((201)) 205
	2	((199)) 203
	3	((188)) 191
	4	((136)) 138
2	1	((169)) 172
	2	((164)) 167
	3	((157)) 160
	4	((113)) 115
3	1	((133)) 135
	2	((129)) 131
	3	((128)) 130
	4	((97)) 99
4	1	((101)) 103
	2	((98)) 100
	3	((97)) 99
	4	((75)) 76
5	1	((74)) 75
	2	((67)) 68
	3	((66)) 67
	4	((45)) 46
6	1	((37)) 38
	2	((34)) 35
	3	((34)) 35
	4	((32)) 33
7	1	17
	2	17
	3	16
	4	16
8		1

WSR 07-22-104
PROPOSED RULES
DEPARTMENT OF REVENUE
 [Filed November 6, 2007, 2:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-18-036.

Title of Rule and Other Identifying Information: WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on December 11, 2007, at 10:00 a.m.

Date of Intended Adoption: December 18, 2007.

Submit Written Comments to: Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127, by December 11, 2007.

Assistance for Persons with Disabilities: Contact Sandy Davis at (360) 725-7499, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. This valuation is for the 1st half of 2008 stumpage value adoption (WAC 458-40-660).

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Washington state department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. 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 Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127, by December 11, 2007. The proposed rule is a significant legislative rule as defined by RCW 34.05.328.

November 6, 2007
 Alan R. Lynn
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-14-095, filed 6/29/07, effective 7/1/07)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduction. This rule provides stumpage value tables and stumpage

value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((July)) January 1 through ((December 31, 2007)) June 30, 2008:

((TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1
 July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$518	\$511	\$504	\$497	\$490
		2	453	446	439	432	425
		3	448	441	434	427	420
		4	448	441	434	427	420
Western-Redcedar ⁽²⁾	RC	1	715	708	701	694	687
Western-Hemlock ⁽³⁾	WH	1	316	309	302	295	288
		2	305	298	291	284	277
		3	298	291	284	277	270
		4	298	291	284	277	270
Red-Alder	RA	1	544	537	530	523	516
		2	510	503	496	489	482
Black-Cottonwood	BC	1	72	65	58	51	44
Other-Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles & Piles	DFL	1	753	746	739	732	725
Western-Redcedar Poles	RCL	1	1224	1217	1210	1203	1196
Chipwood ⁽⁴⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle-Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF-Christmas-Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Alaska-Cedar.

⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.

⁽⁴⁾ Stumpage value per ton.

⁽⁵⁾ Stumpage value per cord.

⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$518	\$511	\$504	\$497	\$490
		2	458	451	444	437	430
		3	458	451	444	437	430
		4	458	451	444	437	430
Western Redcedar ⁽²⁾	RC	1	715	708	701	694	687
Western Hemlock ⁽³⁾	WH	1	316	309	302	295	288
		2	316	309	302	295	288
		3	315	308	301	294	287
		4	315	308	301	294	287
Red Alder	RA	1	544	537	530	523	516
		2	510	503	496	489	482
Black Cottonwood	BC	1	72	65	58	51	44
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles & Piles	DFL	1	753	746	739	732	725
Western Redcedar Poles	RCL	1	1224	1217	1210	1203	1196
Chipwood ⁽⁴⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska Cedar.
⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$518	\$511	\$504	\$497	\$490
		2	493	486	479	472	465
		3	479	472	465	458	451
		4	464	457	450	443	436
Western Redcedar ⁽³⁾	RC	1	715	708	701	694	687
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	316	309	302	295	288
		2	316	309	302	295	288
		3	313	306	299	292	285
		4	313	306	299	292	285
Red Alder	RA	1	544	537	530	523	516
		2	510	503	496	489	482
Black Cottonwood	BC	1	72	65	58	51	44
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles & Piles	DFL	1	753	746	739	732	725
Western Redcedar Poles	RCL	1	1224	1217	1210	1203	1196
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$575	\$568
		2	498	491	484	477	470
		3	479	472	465	458	451
		4	461	454	447	440	433
Lodgepole Pine	LP	1	264	257	250	243	236
Ponderosa Pine	PP	1	296	289	282	275	268
		2	208	201	194	187	180
Western Redcedar ⁽²⁾	RC	1	715	708	701	694	687
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	345	338	331	324	317
		2	345	338	331	324	317
		3	345	338	331	324	317
		4	345	338	331	324	317
Red Alder	RA	1	544	537	530	523	516
		2	510	503	496	489	482
Black Cottonwood	BC	1	72	65	58	51	44
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles & Piles	DFL	1	753	746	739	732	725
Western Redcedar Poles	RCL	1	1224	1217	1210	1203	1196
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽⁴⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$528	\$521
		2	467	460	453	446	439
		3	467	460	453	446	439
		4	390	383	376	369	362
Lodgepole Pine	LP	1	264	257	250	243	236
Ponderosa Pine	PP	1	296	289	282	275	268
		2	208	201	194	187	180
Western Redcedar ⁽²⁾	RC	1	715	708	701	694	687
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	316	309	302	295	288
		2	307	300	293	286	279
		3	293	286	279	272	265
		4	217	210	203	196	189
Red Alder	RA	1	544	537	530	523	516
		2	510	503	496	489	482
Black Cottonwood	BC	1	72	65	58	51	44
Other Hardwood	OH	1	165	158	151	144	137
Douglas-Fir Poles & Piles	DFL	1	753	746	739	732	725
Western Redcedar Poles	RCL	1	1224	1217	1210	1203	1196
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽⁴⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$349	\$342	\$335	\$328	\$321
Lodgepole Pine	LP	1	264	257	250	243	236
Ponderosa Pine	PP	1	296	289	282	275	268
		2	208	201	194	187	180
Western Redcedar ⁽³⁾	RC	1	504	497	490	483	476
True Firs and Spruce ⁽⁴⁾	WH	1	259	252	245	238	231
Western White Pine	WP	1	256	249	242	235	228
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	632	625	618	611	604
Small Logs ⁽⁵⁾	SML	1	33	32	31	30	29
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.

⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$349	\$342	\$335	\$328	\$321
Lodgepole Pine	LP	1	264	257	250	243	236
Ponderosa Pine	PP	1	296	289	282	275	268
		2	208	201	194	187	180
Western Redcedar ⁽³⁾	RC	1	504	497	490	483	476
True Firs and Spruce ⁽⁴⁾	WH	1	259	252	245	238	231
Western White Pine	WP	1	256	249	242	235	228
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	632	625	618	611	604
Small Logs ⁽⁵⁾	SML	1	33	32	31	30	29
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.

⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10**
July 1 through December 31, 2007

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$561	\$554	\$547	\$540	\$533
		2	484	477	470	463	456
		3	465	458	451	444	437
		4	447	440	433	426	419
Lodgepole Pine	LP	1	264	257	250	243	236
Ponderosa Pine	PP	1	296	289	282	275	268
		2	208	201	194	187	180
Western Redcedar ⁽²⁾	RC	1	701	694	687	680	673
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	331	324	317	310	303
		2	331	324	317	310	303
		3	331	324	317	310	303
		4	331	324	317	310	303
Red Alder	RA	1	530	523	516	509	502
		2	496	489	482	475	468
Black Cottonwood	BC	1	58	51	44	37	30
Other Hardwood	OH	1	151	144	137	130	123
Douglas-Fir Poles & Piles	DFL	1	739	732	725	718	711
Western Redcedar Poles	RCL	1	1210	1203	1196	1189	1182
Chipwood ⁽⁵⁾	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.)

**TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$481	\$474	\$467	\$460	\$453
		2	413	406	399	392	385
		3	400	393	386	379	372
		4	350	343	336	329	322
Western Redcedar ⁽²⁾	RC	1	736	729	722	715	708
Western Hemlock ⁽³⁾	WH	1	300	293	286	279	272
		2	300	293	286	279	272
		3	295	288	281	274	267
		4	295	288	281	274	267
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood ⁽⁴⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska-Cedar.
⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$562	\$555	\$548	\$541	\$534
		2	428	421	414	407	400
		3	427	420	413	406	399
		4	398	391	384	377	370
Western Redcedar ⁽²⁾	RC	1	736	729	722	715	708
Western Hemlock ⁽³⁾	WH	1	346	339	332	325	318
		2	346	339	332	325	318
		3	312	305	298	291	284
		4	312	305	298	291	284
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood ⁽⁴⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska-Cedar.
⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$461	\$454	\$447	\$440	\$433
		2	444	437	430	423	416
		3	443	436	429	422	415
		4	371	364	357	350	343
Western Redcedar ⁽³⁾	RC	1	736	729	722	715	708
Western Hemlock ⁽⁴⁾	WH	1	346	339	332	325	318
		2	346	339	332	325	318
		3	288	281	274	267	260
		4	274	267	260	253	246
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4
 January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$589	\$582	\$575	\$568	\$561
		2	462	455	448	441	434
		3	443	436	429	422	415
		4	327	320	313	306	299
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western Redcedar ⁽³⁾	RC	1	736	729	722	715	708
Western Hemlock ⁽⁴⁾	WH	1	338	331	324	317	310
		2	338	331	324	317	310
		3	338	331	324	317	310
		4	338	331	324	317	310
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska-Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5
 January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$616	\$609	\$602	\$595	\$588
		2	444	437	430	423	416
		3	374	367	360	353	346
		4	371	364	357	350	343
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western Redcedar ⁽³⁾	RC	1	736	729	722	715	708
Western Hemlock ⁽⁴⁾	WH	1	290	283	276	269	262
		2	290	283	276	269	262
		3	290	283	276	269	262
		4	290	283	276	269	262
Red Alder	RA	1	719	712	705	698	691
		2	647	640	633	626	619
Black Cottonwood	BC	1	57	50	43	36	29
Other Hardwood	OH	1	181	174	167	160	153
Douglas-Fir Poles & Piles	DFL	1	774	767	760	753	746
Western Redcedar Poles	RCL	1	1384	1377	1370	1363	1356
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska-Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$296	\$289	\$282	\$275	\$268
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western Redcedar ⁽³⁾	RC	1	596	589	582	575	568
True Firs and Spruce ⁽⁴⁾	WH	1	230	223	216	209	202
Western White Pine	WP	1	252	245	238	231	224
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	632	625	618	611	604
Small Logs ⁽⁵⁾	SML	1	32	31	30	29	28
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

**TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7**
January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$296	\$289	\$282	\$275	\$268
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western Redcedar ⁽³⁾	RC	1	596	589	582	575	568
True Firs and Spruce ⁽⁴⁾	WH	1	230	223	216	209	202
Western White Pine	WP	1	252	245	238	231	224
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	632	625	618	611	604
Small Logs ⁽⁵⁾	SML	1	32	31	30	29	28
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
⁽⁹⁾ Stumpage value per lineal foot.

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
⁽⁹⁾ Stumpage value per lineal foot.

TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10
 January 1 through June 30, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$575	\$568	\$561	\$554	\$547
		2	448	441	434	427	420
		3	429	422	415	408	401
		4	313	306	299	292	285
Lodgepole Pine	LP	1	238	231	224	217	210
Ponderosa Pine	PP	1	285	278	271	264	257
		2	198	191	184	177	170
Western Redcedar ⁽³⁾	RC	1	722	715	708	701	694
Western Hemlock ⁽⁴⁾	WH	1	324	317	310	303	296
		2	324	317	310	303	296
		3	324	317	310	303	296
		4	324	317	310	303	296
Red Alder	RA	1	705	698	691	684	677
		2	633	626	619	612	605
Black Cottonwood	BC	1	43	36	29	22	15
Other Hardwood	OH	1	167	160	153	146	139
Douglas-Fir Poles & Piles	DFL	1	760	753	746	739	732
Western Redcedar Poles	RCL	1	1370	1363	1356	1349	1342
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber**—Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber**—Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((July)) January 1 through ((December 31, 2007)) June 30, 2008:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
 ((July)) January 1 through ((December 31, 2007)) June 30, 2008

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	- \$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	- \$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	- \$30.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	- \$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
(July) January 1 through ((December 31, 2007)) June 30, 2008**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	- \$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	- \$20.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	- \$30.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	\$0.00
Class 2:	SVA 7	\$0.00

Note: The adjustment will not be allowed on special forest products.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

**WSR 07-22-110
PROPOSED RULES
STATE TOXICOLOGIST
[Filed November 6, 2007, 4:45 p.m.]**

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-014.

Title of Rule and Other Identifying Information: Administration of breath alcohol screening test.

Hearing Location(s): Washington State Toxicology Laboratory, 2203 Airport Way South, Seattle, WA 98134, on December 13, 2007, at 9:00 a.m.

Date of Intended Adoption: January 15, 2008.

Submit Written Comments to: Barry K. Logan PhD, Washington State Toxicology Laboratory, 2203 Airport Way South, Seattle, WA 98134, e-mail barry.logan@wsp.wa.gov, fax (206) 262-6018, by December 13, 2007.

Assistance for Persons with Disabilities: Contact Kitty Jacobs, kitty.jacobs@wsp.wa.gov, by December 13, 2007, TTY (206) 262-6000.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, the Alco-Sensor III is the only breath alcohol screening device approved for use in the state of Washington, however, this device is no longer being manufactured. An alternative device, the Alco-Sensor FST has been assessed by the Washington state patrol impaired driving section, and has been found to be an appropriate replacement. This rule making would add the Alco-Sensor FST to the list of approved breath test screening devices. It also clarifies the purpose for which the screening devices are approved, and the steps that must be followed to complete a valid test.

Reasons Supporting Proposal: Development of minimum standards and monitoring of compliance is necessary to ensure accurate measurements in impaired driving investigations.

Statutory Authority for Adoption: RCW 46.61.506.

Statute Being Implemented: RCW 46.61.506, 46.20.-308.

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

Name of Proponent: Barry K. Logan PhD, DABFT, Washington state toxicologist, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Barry K. Logan PhD, DABFT, Washington State Toxicology Laboratory, 2203 Airport Way South, Seattle, WA 98134, (206) 262-6000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No identifiable small business impact. Affects regulation of government law enforcement agencies only.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempted under RCW 34.05.328 (5)(a)(i).

November 6, 2007

Barry K. Logan PhD, DABFT
State Toxicologist

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-010 Approval of devices. The following preliminary breath test (PBT) instruments are approved for use in the state of Washington as breath alcohol screening devices, subject to the requirements outlined in the following sections:

Alcosensor III (Intoximeters, St. Louis, MO).

Alcosensor FST (Intoximeters, St. Louis, MO).

Any other instruments ~~((on))~~ approved by the National Highway Traffic Safety Administration (NHTSA) ~~((approved products list))~~ will be considered for approval in Washington state on application to the state toxicologist, pro-

viding that a suitable program for maintenance, certification and operator training is also established and approved.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-020 Use of test results. The devices described in WAC 448-15-010 are approved for use in ~~((aiding police officers to form))~~ establishing probable cause that a subject has ~~((committed an offense involving the consumption of))~~ consumed alcohol. ~~((The test results, when))~~ For purposes of this section, valid results are considered those obtained from following the approved protocol, by a trained operator using an approved device which has been ~~((maintained and))~~ certified according to the rules described below ~~((, and carried out according to the approved test protocol.))~~ Valid results will show to a reasonable degree of scientific certainty, the test subject's breath alcohol concentration. ~~((The))~~ Valid results are ~~((therefore))~~ suitable to ~~((show whether an officer has))~~ assist in establishing probable cause to place a person under arrest for alcohol related offenses. These results may not be used on their own for determining, beyond a reasonable doubt, that a person's breath alcohol concentration exceeds a proscribed level such as anticipated under the 'per se' statutes for intoxication.

This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute (RCW 46.20.308).

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-030 Test protocol. ~~((After advising the subject that this is a voluntary test, and that it is not an alternative to an evidential breath alcohol test as described in chapter 448-13 WAC, the operator shall determine by observation or inquiry, that the subject has not consumed any alcohol in the fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the subject responds that they have not consumed any alcohol in the last fifteen minutes, the officer may offer the subject the opportunity to provide a breath sample into the PBT. If the subject consents, the operator will check the temperature of the device to ensure that it is within the normal operating range.))~~ The operator must perform the test according to the policies and procedures approved by the state toxicologist. The operator will ~~((then press the "read" button to obtain a sample of ambient air, and ensure that this results in a reading of 0.003 or less. The subject will be asked to exhale into the device. The device will be activated towards the end of the subject's exhalation, to capture a portion of end expiratory breath for analysis))~~ perform the following test protocol:

(1) The operator shall determine by observation or inquiry, that the subject has not consumed any alcohol in the fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the subject responds that they have not consumed any alcohol in the last fifteen min-

utes, the officer may offer the subject the opportunity to provide a breath sample into the PBT.

(2) Ensure a blank test result is obtained.

(3) Have the subject exhale into the mouthpiece with a full and continuous exhalation.

(4) Observe the results.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-040 Certification. Any PBT used as described in the preceding sections, must be certified at least ~~((every six months))~~ annually. In order to certify a PBT as accurate, the ~~((testing shall include at a minimum, a blank test of room air which must give a result of less than 0.005g/210L, and a test of a certified dry gas alcohol standard. The instrument must accurately measure the reference value within ± 0.010g/210L. A record of certification must be kept by the person responsible for calibration))~~ certifying agency must follow a protocol approved by the state toxicologist. Certification of PBTs can be performed by persons certified by the state toxicologist as PBT technicians, or by factory authorized representatives, provided that the protocol for certification approved by the state toxicologist is followed.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-050 PBT operators. Persons certified as ~~((DataMaster))~~ evidential breath test instrument operators as described in chapter 448-16 WAC ~~((448-13-150, who received their certification or recertification after September 1, 1998,))~~ shall be trained and authorized to perform the tests described herein on the PBT, for the purposes outlined in this section.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-060 PBT technicians. Persons trained according to ~~((approved))~~ outlines ~~((prepared))~~ approved by the state toxicologist, in the proper procedures for certifying PBT~~((s))~~ instruments shall be certified as PBT technicians. Their responsibilities will include performing periodic certification and maintaining records on such certification. Wallet sized permits shall be issued to persons so qualified. The certification received on successful completion of the training must be renewed every three years. Persons certified as ~~((DataMaster))~~ evidential breath test instrument technicians as described in chapter 448-16 WAC ~~((448-13-170))~~ are also certified to perform all the duties of PBT technicians.

WSR 07-22-112

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed November 7, 2007, 10:20 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: New section WAC 246-856-030 Delegation of authority to initiate investigations, this proposed rule describes the types of cases or complaints where the board delegates its authority to a department case management team to initiate investigations against persons and entities regulated by chapters 18.64 and 18.64A RCW.

Hearing Location(s): Department of Health, Center Point Corporate Park, 20435 72nd Avenue South, Conference Room 1, Kent, WA 98032, on December 13, 2007, at 9:15 a.m.

Date of Intended Adoption: December 13, 2007.

Submit Written Comments to: Doreen Beebe, Program Manager, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 586-4359, by December 10, 2007.

Assistance for Persons with Disabilities: Contact Doreen Beebe by December 10, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A 2005 court of appeals decision, *Client A v. Yoshinaka*, 128 Wn. App. 833, 116 P.3d 1081, stated that the decision to investigate a complaint could only be made by the disciplinary authority unless otherwise stated in rule. The court decision would require a rule not merely a policy enacted by the board.

The proposed rule will delegate the decision to investigate specific types of complaints to the department's case management team while maintaining board oversight. The purpose of the rule is to protect public health and safety by allowing cases to move more quickly from the assessment into the investigative phase of the disciplinary process and to avoid unnecessary delays in starting high profile investigations.

Reasons Supporting Proposal: The board of pharmacy has clearly delegated the authority to department of health staff to initiate investigations when it adopted a 2003 written policy. This delegation will help to move cases more quickly through the disciplinary process and lighten the workload for board members. The proposed rule will reinstate the ability for a case management team to make the decision to start an investigation.

Statutory Authority for Adoption: RCW 18.64.005 and 18.130.050.

Statute Being Implemented: RCW 18.130.080.

Rule is necessary because of state court decision, *Client A v. Yoshinaka*, 128 Wn. App. 833, 116 P.3d 1081 (2005).

Name of Proponent: Board of pharmacy, department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Doreen E. Beebe, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4834.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule relates to internal governmental operations that are not subject to violation by a non-government party. The rule is exempt from a small business economic impact statement under RCW 19.85.025, which does not apply to rules adopted under RCW 34.05.310 (4)(b).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule relates to internal governmental operations that are not subject to violation by a nongovernment party. The rule is exempt from a cost-benefit analysis required under RCW 34.05.328 (5)(b)(ii).

November 6, 2007

Lisa Salmi
for Doreen Beebe
Program Manager

NEW SECTION

WAC 246-856-030 Delegation of authority to initiate investigations. (1) The board delegates to a department of health case management team the authority to initiate an investigation when the board or the department receives information, by means of a complaint or otherwise, that a licensee may have engaged in unprofessional conduct or may be unable to practice with reasonable skill and safety by reason of a mental or physical condition for the following categories of complaints:

- (a) Improper dispensing, including medication errors, unauthorized prescription refills and unauthorized drug product substitution;
- (b) Failure to provide patient counseling;
- (c) Record or inventory discrepancies;
- (d) Diversion or impairment;
- (e) Obtaining drugs by fraud;
- (f) Compounding or manufacturing violations;
- (g) Pharmacy inspection violations;
- (h) Criminal convictions;
- (i) Misrepresentation or fraud in any aspect of the conduct of the business or profession;
- (j) Theft;
- (k) Failure to comply with a board order or monitoring contract;
- (l) Sexual misconduct;
- (m) Failure to deliver a lawfully prescribed drug or device.

(2) All complaints other than those listed under subsection (1) of this section will be reviewed by the board, which will decide whether to authorize the initiation of an investigation.

(3) The case management team must include, at a minimum, the executive director or his or her designee, a pharmacist investigator, and a staff attorney.

WSR 07-22-113

PROPOSED RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed November 7, 2007, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 00-03-072.

Title of Rule and Other Identifying Information: WAC 246-841-400 Standards of practice and competencies of nursing assistants, 246-841-410 Purpose of review and approval of certified nursing assistant training programs, 246-841-420 Requirements for nursing assistant education and training program approval, 246-841-430 Denial of approval or withdrawal of approval for programs for which the board is the approving authority, 246-841-440 Reinstatement of approval, 246-841-450 Appeal of board decisions, 246-841-460 Closing of an approved nursing assistant training program, 246-841-470 Program directors and instructors in approved training programs, 246-841-480 Students (trainees) in approved training programs, 246-841-490 Core curriculum in approved training programs, 246-841-500 Physical resources for approved education programs, and 246-841-510 Administrative procedures for approved nursing assistant training programs.

Hearing Location(s): Comfort Inn of Tumwater, 1620 74th Avenue S.W., Tumwater, WA 98501, on December 13, 2007, at 9:00 a.m.

Date of Intended Adoption: December 13, 2007.

Submit Written Comments to: Kendra Pitzler, P.O. Box 47864, Olympia, WA 98504-7864, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4723, by December 6, 2007.

Assistance for Persons with Disabilities: Contact Kendra Pitzler by November 29, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Nursing assistant programs are reviewed by the department of social and health services (DSHS) and the department of health (DOH). Currently, there are two sets of requirements which are not consistent. Some language is outdated and ambiguous. The proposal addresses this by adding language to match that of the federal government (42 C.F.R. 483.152), updating language that required programs to keep files for thirty-five years and defining current rules for clarity and to allow more flexibility. In addition, the proposal addresses quality by assuring minimum standards for education, training and qualifications of the trainers are met.

Reasons Supporting Proposal: This proposal reduces confusion by merging some of the federal requirements with the state requirements. It also eliminates confusion and allows flexibility by clearly defining what is already in law or rule. Elimination of burdensome requirements make it easier to comply with the rules. In addition, the proposed requirements to assure programs, program directors and instructors meet specific standards better assure the quality of these programs.

Statutory Authority for Adoption: RCW 18.88A.060(1) and 18.88A.030(5).

Statute Being Implemented: RCW 18.88A.060(1).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kendra Pitzler, Department of Health, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4723.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Per RCW 19.85.030 (1)(a) the proposed rules do not impose more than minor costs on businesses in the industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kendra Pitzler, Department of Health, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4723, fax (360) 236-4738, e-mail kendra.pitzler@doh.wa.gov.

November 7, 2007

Dr. Judith Personett, EdD, RN, Chair
Nursing Care Quality Assurance Commission

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

WAC 246-841-400 Standards of practice and competencies (~~(of)~~ for nursing assistants. (~~The following standards are supported by statements of the competencies that a nursing assistant must hold to meet the standard to be certified to practice in the state of Washington. The~~) Competencies and standards of practice are statements of skills and knowledge, and are written as descriptions of observable, measurable behaviors (which can be observed and measured). All competencies are performed (~~as per RCW 18.88A.030,~~) under the direction and supervision of a licensed (~~(f)registered~~(~~g~~)) nurse or licensed practical nurse as required by RCW 18.88A.030. (~~The level or depth of accomplishment of any given competency is as appropriate to the "assisting" role of basic nursing care under supervision of the licensed nurse.~~) The following competencies are considered standards of practice for both nursing assistant-certified and nursing assistant-registered:

(1) **Basic technical skills.** (~~The~~) A nursing assistant demonstrates basic technical skills which facilitate(~~s~~) an optimal level of functioning for (~~the~~) client or resident, recognizing individual, cultural, and religious diversity. (~~Competencies~~) A nursing assistant:

(a) Demonstrates proficiency in cardiopulmonary resuscitation (CPR) and can perform CPR independently.

(b) Takes and records vital signs.

(c) Measures and records height and weight.

(d) Measures and records fluid and food intake and output (~~of client~~).

(e) Recognizes (~~and reports abnormal signs and symptoms of common diseases and conditions~~) normal body functions, deviations from normal body functions and the importance of reporting deviations in a timely manner to a supervising nurse.

(f) (~~Demonstrates sensitivity to~~) Recognizes, responds to and reports client's or resident's emotional, social, cultural and mental health needs.

(g) (~~Makes observations of~~) Recognizes, responds to and reports problems in client's or resident's environment to ensure safety and comfort of client.

(h) Participates in care planning and nursing reporting process.

(2) **Personal care skills.** (~~The~~) A nursing assistant demonstrates basic personal care skills. (~~Competencies~~) A nursing assistant:

(a) Assists client or resident with bathing, (~~mouth~~) oral care, and skin care.

(b) Assists client or resident with grooming and dressing.

(c) Provides toileting assistance to client or resident.

(d) Assists client or resident with eating and hydration.

(e) (~~Utilizes~~) Uses proper oral feeding techniques.

(3) **Mental health and social service needs.** (~~The~~) A nursing assistant demonstrates the ability to identify (~~the~~) psychosocial (~~characteristics~~) needs of all clients (~~including persons with mental retardation, mental illness, dementia, Alzheimer's disease, and related disorders.~~ Competencies:

(a) Modifies his/her own behavior in response to the client's behavior.

(b) Identifies adaptations necessary to accommodate the aging process.

(c) Provides training in, and the opportunity for, self care according to clients' capabilities.

(d) Demonstrates skills supporting client's personal choices.

(e) Identifies ways to use the client's family as a source of emotional support for the patient) or residents based upon awareness of the developmental and age specific processes. A nursing assistant:

(~~(4)~~) (a) Addresses individual behavioral needs of the client or resident.

(b) Knows the developmental tasks associated with the developmental and age specific processes.

(c) Allows the client or resident to make personal choices, but provides and reinforces behaviors consistent with the client's or resident's dignity.

(d) Is sensitive and supportive and responds to the emotional needs of the clients or residents and their sources of emotional support.

(4) **Care of cognitively impaired residents.** A nursing assistant demonstrates basic care of cognitively impaired clients or residents. A nursing assistant:

(a) Uses techniques for addressing the unique needs and behaviors of individuals with cognitive impairment including Alzheimer's, dementia, delirium, developmental disabilities, mental illnesses and other conditions.

(b) Communicates with cognitively impaired clients or residents in a manner appropriate to their needs.

(c) Demonstrates sensitivity to the behavior of cognitively impaired clients or residents.

(d) Appropriately responds to the behavior of cognitively impaired clients or residents.

(5) **Basic restorative services.** The nursing assistant incorporates principles and skills (~~of restorative nursing~~) in

providing ~~((nursing))~~ restorative care. ~~((Competencies))~~ A nursing assistant:

(a) Demonstrates knowledge and skill in using assistive devices in ambulation, transferring, eating, and dressing.

(b) Demonstrates knowledge and skill in the maintenance of range of motion.

(c) Demonstrates proper techniques for turning ~~(+)~~ and positioning a client or resident in a bed and chair.

(d) Demonstrates proper techniques for transferring and ambulating client or resident.

(e) Demonstrates knowledge about methods for meeting the elimination needs of clients or residents.

(f) Demonstrates knowledge and skill for the use and care ~~((and use))~~ of prosthetic devices by client or resident.

~~((5))~~ (g) Uses basic restorative services by training the client or resident in self care according to the client's or resident's capabilities.

(6) Client ~~((s'))~~ or resident rights and promotion of ~~((clients'))~~ independence. ~~((The))~~ A nursing assistant demonstrates behavior which maintains and respects client ~~((s'))~~ or resident rights and promotes ~~((clients'))~~ independence, regardless of race, religion, life-style, sexual preference, disease process, or ability to pay. ~~((Competencies))~~ A nursing assistant:

(a) Recognizes that ~~((the))~~ client or resident has the right to participate in decisions about his ~~(+)~~ or her care.

(b) Recognizes and respects ~~((the))~~ clients' or residents' need for privacy and ~~((maintenance of))~~ confidentiality.

(c) Promotes and respects the client ~~((s))~~ or resident right to make personal choices to accommodate their needs.

(d) Reports client ~~((s))~~ or resident concerns.

(e) Provides assistance to client or resident in getting to and participating in activities.

~~((f))~~ ~~((Provides care of client's personal possessions:~~

~~((g))~~ ~~((Provides care which maintains the client free from abuse, mistreatment or neglect; and reports any instances to appropriate facility staff.~~

~~((h))~~ ~~((Maintains the client's environment and care through appropriate nursing assistant behavior so as to minimize the need for physical and chemical restraints.~~

~~((6))~~ Respects the property of client or resident and employer and does not take equipment, material, property or medications for his, her or other's use or benefit. A nursing assistant may not solicit, accept or borrow money, material or property from client or resident for his, her or other's use or benefit.

(g) Promotes client or resident right to be free from abuse, mistreatment, and neglect.

(h) Intervenes appropriately on the client's or resident's behalf when abuse, mistreatment or neglect is observed.

(i) Complies with mandatory reporting requirements by reporting to the department of health and the department of social and health services instances of neglect, abuse, exploitation or abandonment.

(j) Participates in the plan of care with regard to the use of restraints in accordance with current professional standards.

(7) Communication and interpersonal skills. ~~((The))~~ A nursing assistant uses communication and interpersonal

skills effectively ~~((in order))~~ to function as a member of the nursing team. ~~((Competencies))~~ A nursing assistant:

(a) Reads, writes, speaks, and understands English at the level necessary for performing duties of the nursing assistant.

(b) Listens and responds to verbal and nonverbal communication in an appropriate manner.

(c) Recognizes how ~~((one's))~~ his or her own behavior influences client's or resident's behavior and ~~((know))~~ uses resources for obtaining assistance in understanding the client's or resident's behavior.

~~((d))~~ ~~((Makes adjustments for))~~ Adjusts his or her own behavior to accommodate client's or resident's physical or mental limitations.

(e) Uses terminology accepted in the health care ~~((facility))~~ setting to record and report observations and pertinent information.

(f) Appropriately records and reports observations, actions, and information accurately and in a timely manner.

(g) ~~((Demonstrates ability))~~ Is able to explain policies and procedures before and during care of the client or resident.

~~((7))~~ **(8) Infection control.** ~~((The))~~ A nursing assistant uses ~~((procedures and techniques))~~ standard and transmission based precautions to prevent the spread of microorganisms. ~~((Competencies))~~ A nursing assistant:

(a) Uses principles of medical asepsis and demonstrates infection control techniques and ~~((universal))~~ standard and transmission based precautions.

(b) Explains how disease causing microorganisms are spread ~~((-lists ways that HIV and Hepatitis B can spread from one person to another)).~~

~~((c))~~ Is knowledgeable regarding transmission of blood-borne pathogens.

~~((e))~~ ~~((d))~~ Demonstrates knowledge of cleaning agents and methods which destroy microorganisms on surfaces.

~~((8))~~ **(9) Safety ~~((+))~~ and emergency procedures.** ~~((The))~~ A nursing assistant demonstrates the ability to identify and implement safety ~~((+))~~ and emergency procedures. ~~((Competencies))~~ A nursing assistant:

(a) Provides an environment with adequate ventilation, warmth, light, and quiet ~~((measures)).~~

~~((b))~~ ~~((Uses measures that promote comfort, rest, and sleep.~~

~~((e))~~ Promotes a clean, orderly, and safe environment ~~((and))~~ including equipment for ~~((the))~~ a client or resident.

~~((4))~~ ~~((c))~~ Identifies and utilizes measures for accident prevention.

~~((e))~~ ~~((Identifies and))~~ ~~((d))~~ Demonstrates principles of good body mechanics for self and client or resident, using the safest and most efficient methods to lift and move clients, residents, or heavy items.

~~((4))~~ ~~((e))~~ Demonstrates proper use of protective devices in care of clients or residents.

~~((g))~~ ~~((f))~~ Demonstrates knowledge ~~((of))~~ and follows fire and disaster procedures.

~~((4))~~ ~~((h))~~ Identifies and demonstrates principles of health and sanitation in ~~((the service of))~~ food service.

~~((4))~~ ~~((h))~~ Demonstrates the proper use and storage of cleaning agents and other potentially hazardous materials.

~~((9))~~ (10) Rules and regulations knowledge. ~~((The))~~ A nursing assistant demonstrates knowledge of and ~~((is responsive to))~~ can explain the practical implications of the laws and regulations which affect ~~((his/her))~~ nursing assistant practice including but not limited to: ~~((Client abuse and neglect, client complaint procedures.))~~

(a) Mandatory reporting procedures related to client or resident abuse, neglect, abandonment, and exploitation.

(b) Scope of practice.

(c) Workers right to know ~~((, and)).~~

(d) The Uniform Disciplinary Act.

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

WAC 246-841-410 Purpose of the review and approval of ~~((certified))~~ nursing assistant-certified training programs. ~~((The (board of) nursing care quality assurance commission (commission) approve((s curriculum in)) nursing assistant ((education))-certified training programs ((qualifying for admission to examination for certification for the following purposes)). The commission reviews and approves training programs to:~~

~~((1))~~ (1) Assure preparation for safe practice as a nursing assistant-certified by ~~((setting minimum standards for education))~~ requiring nursing assistant-certified programs meet minimum standards.

~~((2))~~ (2) Provide guidance for ~~((the))~~ development of new nursing assistant-certified training programs.

~~((3))~~ (3) Facilitate ~~((the))~~ career mobility of nursing assistants-certified ~~((in articulating))~~ into nursing educational programs in other levels of nursing.

~~((4))~~ (4) Identify training standards and achieved competencies of nursing assistants-certified in the state of Washington for the purpose of interstate communications and endorsements.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

WAC 246-841-420 Requirements for approval of nursing assistant ~~((education and))-certified training programs ((approval)).~~ ~~((Those institutions or facilities seeking approval to offer a program of training which qualifies graduates to apply for certification, in addition to other agency program approval requirements.))~~ To qualify as a nursing assistant-certified training program, an institution or facility must:

~~((1))~~ (1) Submit a completed application ~~((/ guidelines))~~ packet ~~((from))~~ provided by the department of health ~~((, professional licensing)).~~ The packet will include forms and instructions ~~((for the program))~~ to submit the following:

(a) Program objectives.

(b) Curriculum content outline.

(c) Qualifications of program director and additional instructional staff.

(d) ~~((Agency))~~ Contractual agreements ~~((as appropriate))~~ related to providing this training. For any program that uses another facility to provide clinical training, this includes an affiliation agreement between the training program and the

facility. The affiliation agreement must describe how the program will provide clinical experience in the facility. The agreement must specify the rights and responsibilities of both parties, students and clients or residents.

~~((e))~~ (e) Sample lesson plan for one unit.

~~((f))~~ (f) Skills checklist.

~~((g))~~ (g) Description of ~~((physical resources))~~ classroom facilities.

~~((h))~~ (h) Statement of assurance of compliance with administrative guidelines.

~~((2))~~ If a program currently in existence as an approved program on the date of implementation of this code, submit the completed application, including all forms, fees, and assurances as specified, within sixty days of the effective date of the code for review for reapproval of the program.

~~((3))~~ If a program not currently holding approval status, submit the completed application packet and fees as instructed, with all forms and assurances as specified, sixty days prior to the anticipated start date of the first class offered by the institution.

~~((4))~~ Declaration of compliance with administrative guidelines signed by the program director.

(i) Verification that the program director has completed a course on adult instruction as required by WAC 246-841-470(3) or has one year of experience in the past three years teaching adults. Acceptable experience does not include in-service education or patient teaching. A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(j) Verification that the nursing assistant-certified training program or school is approved to operate in the state of Washington by:

(i) The state board for community and technical colleges;

(ii) The superintendent of public instruction; or

(iii) The workforce training and education coordinating board.

(2) Agree to on-site survey of the training program, as requested by the ~~((board, on a date mutually agreed upon by the institution and the board))~~ commission. This on-site ~~((visit))~~ will be coordinated with other on-site review requirements when possible.

~~((5))~~ Provide review and update of program information ~~((3))~~ Participate in the renewal process every two years ~~((, or as requested by the board or educational agency)).~~ Failure to renew results in automatic withdrawal of approval of the program.

~~((6))~~ (4) Comply with any ~~((future))~~ changes in ~~((education))~~ training standards and guidelines in order to maintain approved status.

~~((7))~~ (5) Notify the ~~((board))~~ commission and ~~((education))~~ any other approving agency of any changes in overall curriculum plan or major curriculum content changes prior to implementation.

~~((8))~~ (6) Notify the ~~((board))~~ commission and ~~((education))~~ any other approving agency of changes in program director or instructors.

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

WAC 246-841-430 Denial ~~((of approval))~~ or withdrawal of approval for nursing assistant-certified training programs ~~((for which the board is the approving authority))~~. (1) ~~((The board may deny approval to new programs))~~ When ~~((#))~~ the commission determines that a nursing assistant-certified training program fails ~~((substantially))~~ to meet the standards for training as contained in ~~((WAC 246-841-470 through 246-841-510. All such board actions shall be in accordance with the Washington Administrative Procedure Act and/or the administrative rules and regulations of the board.~~

(2) The board may withdraw approval from existing programs when it determines that a nursing education program fails substantially to meet the standards for nursing assistant training as contained in WAC 246-841-470 through 246-841-510. All such actions shall be effected in accordance with the Administrative Procedure Act and/or the administrative rules and regulations of the board)) this chapter, the commission may:

- (a) Deny approval to a new program; or
- (b) Withdraw approval from existing programs.

(2) The commission may conduct a review or site visit to investigate:

- (a) Complaints relating to violations of this chapter.
- (b) Failure to notify the commission of any changes in the overall curriculum plan or major content changes prior to implementation.
- (c) Failure to notify the commission of changes in program director or instructor.
- (d) Providing false or misleading information to students or the public concerning the nursing assistant-certified training program.
- (e) Failure to secure or retain a qualified program director resulting in substandard supervision and teaching of students.
- (f) Failure to maintain an average passing rate of eighty percent on the state-approved examination. If a program:

(i) Fails to maintain an average passing rate of eighty percent of first time test takers for two consecutive years, the commission will require the program to assess the problem and submit a plan of correction.

(ii) Fails to maintain an average passing rate of eighty percent of first time test takers for three consecutive years, the program must complete an assessment of possible problem areas within six months and the commission may conduct an evaluation visit. The commission may offer technical assistance.

(iii) Fails to maintain an average passing rate of eighty percent of first time test takers for four out of five consecutive years, the commission may place the program on conditional approval and require an evaluation visit.

(3) Commission approval is automatically terminated if the program does not renew.

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

WAC 246-841-440 ~~((Reinstatement of approval))~~ How does a nursing assistant training program whose approval has been withdrawn become reinstated? (1) ~~((The board))~~ the commission may consider reinstatement ~~((of withdrawn approval))~~ of a nursing assistant-certified training program upon submission of satisfactory evidence that the program meets the standards of nursing assistant training ~~((WAC 246-841-470 through 246-841-510))~~ as contained in this chapter.

(2) A program that is automatically terminated for failure to participate in the renewal process may be immediately reinstated upon meeting all conditions for a new application approval.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

WAC 246-841-450 Appeal ~~((of board decisions))~~ rights of a nursing assistant-certified training program when the commission has denied or withdrawn approval. ~~((A nursing assistant training program deeming itself aggrieved by a decision of the board affecting its approval status shall have the right to appeal the board's decision in accordance with the provisions of chapter 18.88 RCW and the Administrative Procedure Act, chapter 34.05 RCW.))~~ A nursing assistant-certified training program that has been denied or had approval withdrawn shall have the right to a hearing to appeal the commission's decision according to the provisions of chapter 18.88A RCW and chapter 34.05 RCW, the Administrative Procedure Act, Parts IV and V.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

WAC 246-841-460 ~~((Closing))~~ Closure of an approved nursing assistant-certified training program. When ~~((a governing institution decides to close a program))~~ an approved nursing assistant-certified training program closes, it shall notify the ~~((board))~~ commission in writing, stating the reason and the date of intended closing.

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

WAC 246-841-470 Program directors and instructors in approved nursing assistant-certified training programs. (1) The program director ~~((will be))~~ must hold a current license in good standing as a registered nurse ~~((licensed))~~ (RN) in the state of Washington.

(2) ~~((The program director will meet the minimum qualifications for instructors as required by the superintendent of public instruction in chapter 180-77 WAC or the state board for community college education in chapter 131-16 WAC.))~~ The commission may deny or withdraw a program director's approval if there is or has been any action taken against the director's health care license or any license held by the director which allows him or her to work with vulnerable populations.

(3) The program director ~~((will))~~ must complete a ~~((“train-the-trainer” program approved by the state))~~ training course on adult instruction or have demonstrated ~~((competence to teach adults as defined by the state))~~ that he or she has one year experience teaching adults.

(a) Acceptable experience does not include in-service education or patient teaching.

(b) The training course on adult instruction must provide instruction in:

(i) Understanding the adult learner.

(ii) Techniques for teaching adults.

(iii) Classroom methods for teaching adults.

(iv) Audio visual techniques for teaching adults.

(c) A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(4) The program director will have a minimum of three years of experience as an RN, of which at least one year will be in direct patient care.

(5) The program director must meet the requirements for additional staff under subsection (7)(b) of this section if the program director will also be acting as an instructor.

(6) Program director responsibilities:

(a) Develop and implement a curriculum which meets as a minimum the requirements of WAC 246-841-490. The program director is responsible for all classroom and clinical training content and instruction.

(b) Assure compliance with and assume responsibility for ~~((all regulations as stipulated in))~~ meeting the requirements of WAC ((246-841-480)) 246-841-490 through 246-841-510.

(c) ~~((Directly supervise each course offering.))~~ Assure that all student clinical experience is directly supervised. Direct supervision means that an approved program director or instructor is observing students performing tasks.

(d) Assure that the clinical instructor has no concurrent duties during the time he or she is instructing students.

(e) Create and maintain an environment conducive to teaching and learning.

~~((f))~~ (f) Select and supervise all other instructors involved in the course, ((to include)) including clinical instructors and guest lecturers.

~~((g))~~ (g) Assure that students are not asked to, nor allowed to, perform any clinical skill with patients or clients until first demonstrating the skill satisfactorily to an instructor in a practice setting.

~~((h))~~ (h) Assure evaluation of ((competency of)) knowledge and skills of students before ((issuance of verification of)) verifying completion of the course.

~~((i))~~ (i) Assure that students receive a verification of completion when requirements of the course have been satisfactorily met.

~~((6))~~ Additional instructional staff:

~~((a))~~ (7) The program director may select instructional staff to assist in the teaching of the course((-teaching)).

(a) Instructional staff must teach in their area of expertise.

(b) ~~((A))~~ Instructional staff must have a minimum of one year experience within the past three years in caring for the elderly ((and/)) or chronically ill of any age or both.

~~((A guest lecturer, or individual with expertise in a specific course unit may be utilized for the teaching of that unit, following the program director's review of the currency of the content.))~~

(c) All instructional staff must ~~((be, where applicable, currently licensed, registered, and/or certified in their field in the state of Washington))~~ hold a current Washington state license to practice as a registered or licensed practical nurse. The commission may deny or withdraw an instructor's approval if there is or has been any action taken against a health care license or any license held by the applicant which allows him or her to work with vulnerable populations.

(d) Instructional staff may assist the program director in development of ~~((curriculum))~~ curricula, teaching modalities, and evaluation ~~((but)).~~ The instructor will ((in all cases)) be under the supervision of the program director at all times.

(e) A guest lecturer, or individual with expertise in a specific course unit may be used in the classroom setting for teaching without commission approval, following the program director's review of the currency of content. The guest lecturer, where applicable, must hold a license, certificate or registration in good standing in their field of expertise.

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

WAC 246-841-490 Core curriculum in approved nursing assistant-certified training programs. (1) The curriculum ((will)) must be competency based((-that is)). It must be composed of learning objectives and activities that will lead to ((the attainment of)) knowledge and skills required for the graduate to demonstrate mastery of the core competencies ((CNAs must hold, as per)) as provided in WAC 246-841-400.

(2) The program director will determine the amount of time required in the curriculum to achieve the objectives ~~((as above)).~~ The time designated ~~((will be expected to))~~ may vary with characteristics of the learners and teaching((-)) or learning variables. ((In no case will the hours be less than)) There must be a minimum of eighty-five hours total, ((comprised of no less than)) with a minimum of thirty-five hours of classroom training and ((no less than)) a minimum of fifty hours of clinical training.

(a) Of the thirty-five hours of classroom training, ~~((no less than))~~ a minimum of seven hours must be in AIDS education ((and training, in the subject areas of: Epidemiology, pathophysiology, infection control guidelines, testing and counseling, legal and ethical issues, medical records, clinical manifestations and diagnosis, treatment and disease management, and psychosocial and special group issues)) as required by chapter 246-12 WAC, Part 8.

(b) Of the fifty hours of clinical training, at least forty clinical hours must be in the practice setting.

(c) Training to orient the student to the health care facility and facility policies and procedures are not to be included in the minimum hours above.

(3) Each unit of the core curriculum will have:

(a) Behavioral objectives, ~~((that is))~~ which are statements of specific observable actions and behaviors that the learner is to perform or exhibit.

(b) An outline of information the learner will need to know in order to meet the objectives.

(c) Learning activities ~~((that is,))~~ such as lecture, discussion, readings, film, or clinical practice ~~((, etc.) that are)~~ designed to enable the student to achieve the stated objectives.

(4) Clinical teaching in a ~~((given))~~ competency area ~~((will be))~~ is closely correlated with classroom teaching ~~((:))~~ to ~~((facilitate the integration of))~~ integrate knowledge with manual skills.

(a) Students must wear name tags clearly identifying them as students when interacting with patients, clients or residents, and families.

(b) An identified instructor(s) will supervise clinical teaching ~~((/))~~ or learning at all times. At no time will the ratio of students to instructor exceed ten students to one instructor in the clinical setting.

(5) The curriculum ~~((will))~~ must include evaluation processes to ~~((assure))~~ assess mastery of competencies. ~~((Written and oral tests and clinical practical demonstrations are common methods.))~~ Students ~~((will not be asked to, nor allowed to.))~~ cannot perform any clinical skill on ~~((patients or))~~ clients or residents until first demonstrating the skill satisfactorily to an instructor in the practice setting.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

WAC 246-841-500 Physical resources ~~((for))~~ required for approved ~~((education))~~ nursing assistant-certified training programs. (1) Classroom facilities must provide adequate space, lighting, comfort, and privacy for effective teaching and learning.

(2) Adequate classroom resources, such as ~~((chalkboard, AV materials, written materials, etc., with which to accomplish program objectives))~~ white board or other writing device, audio visual materials, and written materials must be available.

(3) ~~((Adequate resources must also be provided for teaching and practice of clinical skills and procedures, before implementation of such skills with patients or residents.))~~ Appropriate equipment must be provided for teaching and practicing clinical skills and procedures before implementing the skills with clients or residents.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

WAC 246-841-510 Administrative procedures for approved nursing assistant-certified training programs.

(1) ~~((A student))~~ The program must establish and maintain a file ~~((will be established and maintained))~~ for each student enrolled ~~((which includes)).~~ The file must include:

(a) Dates attended ~~((, evaluation)).~~

(b) Test ~~((/))~~ results ~~((:)).~~

(c) A skills evaluation checklist with dates of skills testing and signature of ~~((evaluator, and))~~ instructor.

(d) Documentation of successful completion of the course, or ~~((other))~~ documentation of the course outcome.

(2) Each student file ~~((will))~~ must be maintained by the ~~((institution))~~ program for a period of ~~((thirty))~~ five years,

and copies of documents made available to students who request them.

~~((2))~~ (3) Verification of successful completion of the course of training will be provided to the ~~((board of nursing))~~ commission on forms provided by the ~~((board))~~ commission.

~~((3))~~ (4) For those programs based in a health care facility: ~~((Training evaluation and verification of successful completion of the course, including mastery of the required knowledge and skills, will be determined by the program director separately from other employee/employer issues. Verification of completion will not be withheld from a student who has successfully met the requirements of the course.))~~

(4) ~~Programs which are not sponsored by a health care facility, must submit with their application for approval an affiliation agreement between the educational institution and the health care facility which will provide the program access to the experience needed for clinical teaching. This agreement must specify the rights and responsibilities of both parties, students and clients.~~

(5) ~~Failure to adhere to administrative requirements for programs may result in withdrawal of approval status by the board.))~~ Verification of program completion and the application for state testing will not be withheld from a student who has successfully met the requirements of the program. Successful completion will be determined by the training program director separately from other employer issues.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-841-480

Students (trainees) in approved training programs.

WSR 07-22-114

PROPOSED RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed November 7, 2007, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-15-072.

Title of Rule and Other Identifying Information: Chapter 415-10 WAC, Purchase of service credit after statutory deadline RCW 41.50.165; chapter 415-104 WAC, Law enforcement officers' and fire fighters' retirement system; chapter 415-113 WAC, Portability of public employment benefits; and chapter 415-115 WAC, Assessment of an additional administrative fee.

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA 98501, on December 19, 2007, at 10:00 a.m.

Date of Intended Adoption: December 21, 2007.

Submit Written Comments to: Sarah Monaly, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail sarahm@drs.wa.

gov, fax (360) 753-3166, by 5:00 p.m. on December 19, 2007.

Assistance for Persons with Disabilities: Contact Sarah Monaly by December 10, 2007, phone (360) 664-7291, e-mail sarahm@drs.wa.gov, TDD (360) 586-5450 or (866) 377-8895.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 415-10-020, 415-10-030, 415-104-111, 415-113-030, 415-113-041, 415-113-042, 415-113-065, 415-113-090, 415-115-020 and 415-115-090, to include reference to the Washington public safety employees' retirement system (PSERS).

Reasons Supporting Proposal: Chapter 41.37 RCW took effect on July 1, 2006. The department needs to update its rules to reflect the implementation of this new retirement system to assist plan members, retirees, employers and agency staff.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: For WAC 415-10-020, 415-10-030, 415-104-111, 415-113-030, 415-113-041, 415-115-020 and 415-115-090 is chapter 41.37 RCW; for WAC 415-113-042 is RCW 41.37.240; for WAC 415-113-065 is RCW 41.37.010(6); and for WAC 415-113-090 is RCW 41.37.210(3).

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah Monaly, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Cathy Cale, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7305.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named department in RCW 34.05.328.

November 7, 2007

Sarah Monaly

Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-15-006, filed 7/3/03, effective 8/3/03)

WAC 415-10-020 Definitions. As used in this chapter:

(1) **Average earnings** means:

(a) In PERS Plan 1, TRS Plan 1 or WSPRS Plan 1: The average of your two highest consecutive years of compensation as of the date of your service credit purchase.

(b) In Plan 2 or Plan 3: The average of your five highest consecutive years of compensation as of the date of your service credit purchase.

(c) In PSERS: The average of your five highest consecutive years of compensation as of the date of your service credit purchase.

(d) In LEOFF Plan 1: The basic salary attached to your position at the date of your service credit purchase.

(2) **Factors** means the actuarial cost factors calculated by the state actuary and adopted by the department that are used in the formulas for calculating the cost of a service credit purchase. See WAC 415-02-370 for additional information about the service credit purchase factors.

(3) **LEOFF** means the law enforcement officers' and fire fighters' retirement system established under chapter 41.26 RCW.

(4) **PERS** means the public employees' retirement system established under chapter 41.40 RCW.

(5) **PSERS** means the public safety employees' retirement system established under chapter 41.37 RCW.

(6) **SERS** means the school employees' retirement system established under chapter 41.35 RCW.

~~((6))~~ (7) **Service credit being purchased** means the number of service credit months or service credit years you are purchasing.

~~((7))~~ (8) **TRS** means the teachers' retirement system established under chapter 41.32 RCW.

~~((8))~~ (9) **WSPRS** means the Washington state patrol retirement system established under chapter 43.43 RCW.

~~((9))~~ (10) **Years of earlier retirement** equals the number of years or fractions of years you will be able to retire earlier as a result of your purchase of service credit.

~~((10))~~ (11) **Years of service** equals the total anticipated years of service you will have accrued at retirement, including the additional service credit you purchase under this section.

AMENDATORY SECTION (Amending WSR 03-15-006, filed 7/3/03, effective 8/3/03)

WAC 415-10-030 Calculation of cost to purchase service credit in certain plans. If you are a member of LEOFF Plan 1 or 2, PERS Plan 2 or 3, PSERS, TRS Plan 2 or 3, or SERS Plan 2 or 3, the department will calculate the actuarial value of the service credit you purchase under RCW 41.50-165(2) using the following formula:

Service Credit Purchase Cost =

Average Earnings x Service Credit Being Purchased x Factor 1

This represents the cost of the additional retirement allowance you will receive by including the additional service credit from your purchase into your retirement benefit calculation.

Example: Purchase of additional service credit.

Ron is an active PERS Plan 2 member who currently has 18 years of service. Ron turned age 61 last month. His average earnings are \$50,000. Ron would like to purchase 3 years of service that he previously withdrew but did not restore before the deadline.

The department will first determine Ron's normal retirement age to identify the appropriate factor from the Factor 1 tableⁱ to use in the formula for calculating the service credit purchase cost. Normal retirement age (NRA) is the earliest age at which a member will be eligible to retire with unreduced benefits under the requirements of his or her system and plan. Ron's NRA will come when he is age 65 and has 21 years of serviceⁱⁱ. Since he is currently age 61, Ron is 4 years

(48 months) to normal retirement age. So, the department will use the factor 0.2016 from the Factor 1 table, which is factor for 48 months to NRA under PERS Plan 2.

The department will then calculate the cost of purchasing the service credit using the Service Credit Purchase Cost formula:

$$\text{Cost} = \text{Average Earnings} \times \text{Service Credit Being Purchased} \times \text{Factor 1}$$

The cost of Ron's purchase would be calculated as follows:

$$\text{Cost} = \$50,000 \times 3 \text{ (years purchased)} \times 0.2016 \text{ (48 months to NRA)} = \$30,240$$

Ron's total cost to purchase 3 years of service credit is \$30,240.

Footnotes to section:

¹See WAC 415-02-370.

²Ron would first qualify under the PERS Plan 2 eligibility rule of being age 65 or older with at least 5 years of service.

AMENDATORY SECTION (Amending WSR 06-03-096, filed 1/17/06, effective 2/17/06)

WAC 415-104-111 How is my LEOFF Plan 2 retirement allowance affected if I return to work after retirement? This rule applies to you if you are a LEOFF 2 retiree who returns to work in an eligible LEOFF, public employees' retirement system (PERS), public safety employees' retirement system (PSERS), school employees' retirement system (SERS), or teachers' retirement system (TRS) position.

(1) **If you return to employment in a LEOFF eligible position, you must reenter membership and your retirement allowance will stop.** When you separate from service, the department will calculate your retirement allowance according to this subsection.

(a) If you previously retired before age fifty-three, the department will:

(i) Calculate your retirement allowance pursuant to RCW 41.26.420 using:

(A) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(B) Any increase in your final average salary resulting from your reentry into membership; and

(ii) Actuarially reduce your retirement allowance:

(A) Based on the present value of the retirement allowance payments you received during your initial retirement;

(B) To reflect the difference in the number of years between your current age and the attainment of age fifty-three, if you are not yet fifty-three; and

(C) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-104-215.

(b) If you previously retired at or after age fifty-three, the department will:

(i) Calculate your retirement allowance pursuant to RCW 41.26.420 using:

(A) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(B) Any increase in your final average salary resulting from your reentry into membership; and

(ii) Actuarially reduce your retirement allowance to offset the cost of your benefit option if it includes a survivor feature. See WAC 415-104-215.

(c) Under no circumstances will you receive a retirement allowance creditable to a month during which you earned service credit.

(2) **If you enter employment in a PERS, PSERS, SERS, or TRS (~~or SERS~~) eligible position**, you have two options:

(a) You may choose not to become a member of the PERS, PSERS, SERS, or TRS (~~or SERS~~) retirement system and continue to receive your monthly LEOFF Plan 2 retirement allowance; or

(b) You may choose to become a member of the PERS, PSERS, SERS, or TRS (~~or SERS~~) retirement system. Your LEOFF retirement allowance will be suspended while you earn service credit and make contributions toward another retirement benefit. When you leave the PERS, PSERS, SERS, or TRS eligible position, you will resume receiving your LEOFF retirement allowance, along with retroactive payments for the time you were employed. You may choose to have your retroactive payments in a lump sum or actuarially computed into your LEOFF Plan 2 retirement allowance.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-113-030 Definitions for purposes of chapter 415-113 WAC. (1) All definitions in RCW 41.54.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.54 RCW are defined in this chapter.

(2) **Average compensation** means the compensation used by a particular retirement system to calculate a dual member's service retirement allowance. The actual meaning of the term varies depending upon the retirement system. With respect to each dual member system, "average compensation" means:

(a) **First class city retirement systems:** Final compensation as defined in RCW 41.28.010;

(b) **LEOFF Plan 2:** Final average salary as defined in RCW 41.26.030 (12)(b);

(c) **PERS:** Average final compensation as defined in RCW 41.40.010(17);

(d) **PSERS:** Average final compensation as defined in RCW 41.37.010(14);

(e) **SERS:** Average final compensation as defined in RCW 41.35.010(14);

((~~e~~)) (f) **Statewide cities retirement systems:** Final compensation as defined in 41.44.030(14).

((~~f~~)) (g) **TRS:**

(i) Plan 1: Average earnable compensation as defined in RCW 41.32.497 and 41.32.498;

(ii) Plans 2 and 3: Average final compensation as defined in RCW 41.32.010(30); and

((~~g~~)) (h) **WSPRS:** Average final salary as defined in RCW 43.43.120(15).

(3) **Dual member system** refers to the state and city retirement systems admitted to participate under chapter 41.54 RCW. These systems include:

(a) First class city retirement systems of Seattle, Tacoma and Spokane;

(b) Law enforcement officers' and fire fighters' retirement system (LEOFF) Plan 2;

(c) Public employees' retirement system (PERS) Plans 1, 2 and 3;

(d) Public safety employees' retirement system (PSERS);

(e) School employees' retirement system (SERS) Plans 2 and 3;

~~((e))~~ (f) Statewide cities employees' retirement system (SCERS);

~~((f))~~ (g) Teachers' retirement system (TRS) Plans 1, 2 and 3; and

~~((g))~~ (h) Washington state patrol retirement system (WSPRS) Plans 1 and 2.

(4) **First class city retirement systems** means the retirement systems for the non-LEOFF member employees of the cities of Seattle, Spokane and Tacoma authorized by chapter 41.28 RCW.

(5) **Member participant.**

(a) For all dual member systems administered by the department other than TRS Plan 1, "member participant" means a person who is employed for compensation in a dual member system qualifying position and is admitted into the membership of the system.

(b) For TRS Plan 1, "member participant" includes persons meeting the definition of (a) of this subsection and also includes members who are not employed for compensation but have accumulated contributions standing to their credit with TRS.

(c) This definition may not apply to first class city systems. See RCW 41.54.061 and WAC 415-113-005. If you have a question, you should contact the appropriate first class city system.

(6) **Multiple system benefit** means retirement allowances from two or more dual member systems calculated under chapter 41.54 RCW.

(7) **Multiple system participant** means a person who is a participant in two or more dual member systems.

(8) **Multiple system retiree** means a person who chooses to retire under the provisions of chapter 41.54 RCW.

(9)(a) **Nonmember participant** means a person who is no longer employed in a dual member system qualifying position but has not withdrawn his or her accumulated employee contributions.

(b) This definition does not apply to TRS Plan 1. A TRS Plan 1 member who meets the criteria of (a) of this subsection is a member participant.

(c) This subsection applies only to the retirement systems listed in RCW 41.50.030.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-113-041 Am I a dual member? You must meet all of the following criteria to be a dual member:

(1) **You must be a participating member of a dual member system.** You must be a current member participant in at least one of the systems listed in WAC 415-113-030 to be a dual member. You may have established dual member status if you are or were a member participant in one of those systems on or after:

(a) July 1, 1988, for current or former members of all plans of PERS, SERS, TRS, SCERS or WSPRS;

(b) July 25, 1993, for current or former members of LEOFF Plan 2; ~~((e))~~

(c) January 1, 1994, for current or former members of a first class city retirement system; or

(d) July 1, 2006, for current or former members of PSERS.

(2) **You must also be a former or current member of at least one other system listed in WAC 415-113-030.**

(3) **You must not have been retired for service from a retirement system.** You are not a dual member if you have ever been retired for service from any retirement system administered by the department of retirement systems or a first class city retirement system.

(4) If you are receiving a disability retirement allowance or disability leave benefits from a dual member system or LEOFF Plan 1, you cannot be a dual member.

(a) If you have received a lump sum disability benefit from PERS Plan 2 or 3, PSERS, SERS Plan 2 or 3, TRS Plan 2 or 3 or LEOFF Plan 2, you are in receipt of a disability benefit unless the department has found that you are no longer disabled.

(b) You are not receiving a disability retirement allowance or disability leave benefits if you:

(i) Previously received disability benefits and the department has subsequently found that you are no longer disabled, and has terminated your disability benefit; or

(ii) Retired for disability from service from WSPRS Plan 1 or 2.

Example 1: A former PERS Plan 1 member who has never been retired and becomes a member participant in TRS Plan 2 through employment with a TRS employer becomes a dual member.

(5) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Dual member" - RCW 41.54.010(4).

(b) "Dual member system" - WAC 415-113-030.

(c) "Member participant" - WAC 415-113-030.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-113-042 What can terminate my status as a dual member? (1) **If you terminate your status as a participating member, you also terminate your status as a dual member.** If you are no longer a member participant in any dual member system, you are no longer a dual member. If you later become a member of a dual member system, you again become a dual member.

Example 2: Upon separation from TRS Plan 2 eligible employment, the person in Example 1 (see

WAC 415-113-041) is no longer a member of TRS Plan 2 nor a dual member.

(2) If you retire, you are no longer a dual member.

When you retire from any or all dual member systems, you are no longer a dual member except for the purpose of receiving a deferred retirement allowance under RCW 41.54.030(3) and WAC 415-113-070.

(3) If you terminate dual membership, you may still be eligible to receive a multiple system benefit if otherwise eligible. The accrual date of your retirement allowance will vary depending upon the provisions of the particular system. You can find the accrual dates of different dual member systems in the following provisions:

- (a) **LEOFF 2:** RCW 41.26.490;
- (b) **PERS 1:** RCW 41.40.193;
- (c) **PERS 2:** RCW 41.40.680;
- (d) **PERS 3:** RCW 41.40.801;
- (e) **PSERS:** RCW 41.37.240;
- (f) **SERS 2((~~g~~)):** RCW 41.35.450;
- ((~~g~~)) (g) **SERS 3:** RCW 41.35.640;
- ((~~g~~)) (h) **TRS 1:** WAC 415-112-520;
- ((~~h~~)) (i) **TRS 2:** RCW 41.32.795;
- ((~~h~~)) (j) **TRS 3:** RCW 41.32.855.

(4) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Dual member" - RCW 41.54.010(4), WAC 415-113-041.
- (b) "Dual member system" - WAC 415-113-030.
- (c) "Member participant" - WAC 415-113-030.
- (d) "Multiple system benefit" - WAC 415-113-030.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-113-065 Can I substitute salary from one system to another? (1) You can substitute base salary between systems.

(a) If you choose to retire with a multiple system benefit, you may substitute your base salary under one dual member system for your includable compensation in a second dual member system for purposes of computing a retirement allowance from the second system. Using the substituted salary, the department will compute your average compensation under each system's own requirements.

Example 6: At retirement, Sandy is a member participant in PERS Plan 2 and has prior creditable service in TRS Plan 1. She earned her highest compensation during her PERS Plan 2 service. Sandy's PERS Plan 2 retirement allowance will be based on her PERS Plan 2 average compensation. For purposes of computing her TRS average compensation and retirement allowance, Sandy may substitute her PERS Plan 2 base salary earned over two consecutive fiscal years for her earnable compensation in TRS.

Example 7: At retirement, Pat is a member participant in TRS Plan 1 and has prior creditable service in PERS Plan 1. He earned his highest compensation during his membership in TRS Plan 1 and

received a sick-leave cashout. Pat may substitute his base salary earned while a member in TRS Plan 1 for his PERS Plan 1 compensation earnable. However, because Pat may substitute only his base salary from TRS Plan 1 for his compensation earnable in PERS, his PERS average compensation will not include the cashout payments from his TRS employer.

(b) If you do not have sufficient service credit months in one dual member system to complete an average compensation period under that system, the department will substitute the appropriate number of months of base salary from another system to complete the average compensation period.

Example 8: Tim has creditable service in TRS Plan 1 and PERS Plan 2. He retires at age sixty-five after accruing twenty-four months of service in PERS Plan 2. Under PERS Plan 2, a member's average compensation period is the member's highest consecutive sixty-month period of compensation. To compute Tim's PERS Plan 2 retirement allowance, the department will substitute his highest consecutive thirty-six service credit months of TRS base salary to complete the PERS sixty-month average compensation period.

(2) Adjusted full-time salary is not base salary. A multiple system retiree's adjusted full-time salary under RCW 41.32.345 shall not constitute base salary for purposes of computing the retiree's multiple system benefit.

(3) Includable compensation defined. For purposes of this chapter, "includable compensation" means:

- (a) Earnable compensation under TRS Plan 1, 2 or 3 as defined in RCW 41.32.010(10);
- (b) Compensation earnable under PERS Plan 1, 2 or 3 as defined in RCW 41.40.010(8);
- (c) Compensation earnable under PSERS as defined in RCW 41.37.010(6);
- (d) Basic salary under LEOFF Plan 2 as defined in RCW 41.26.030 (13)(b);
- ((~~d~~)) (e) Monthly salary under WSPRS Plan 1 or 2 as defined in RCW 43.43.120(23); and
- ((~~e~~)) (f) Compensation earnable under SERS Plan 2 or 3 as defined in RCW 41.35.010(6).

(4) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Average compensation" - WAC 415-113-030.
- (b) "Base salary" - RCW 41.54.010(1).
- (c) "Dual member system" - WAC 415-113-030.
- (d) "Member participant" - WAC 415-113-030.
- (e) "Multiple system benefit" - WAC 415-113-030.
- (f) "Multiple system retiree" - WAC 415-113-030.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-113-090 What is the maximum retirement benefit that I may receive under chapter 41.54 RCW? (1) Your multiple system benefit may not exceed the highest maximum benefit which you would be permitted to receive

under any one of the dual member systems from which you are retiring if all of your service had been provided in one system. See RCW 41.54.070.

(2) **The department will compute your maximum multiple system benefit in the following order:**

(a) **Calculate the maximum benefit you could receive under each system.** The department will compute your maximum benefit according to the benefit limitation provisions of each system as if you had earned your total career service and compensation in that system. In computing your maximum benefit under each system, the department will:

(i) Apply the provisions of each system governing the calculation of your average compensation in that system; and

(ii) Assume you earned all of your career service with your last employer for purposes of determining any limitations on the inclusion of leave cashouts in your average compensation.

Example 18: A multiple system retiree retires from TRS Plan 1 state employment with prior creditable PERS Plan 1 service. His PERS employer pays him an accrued sick leave cashout at termination. Because a sick leave cashout from a state agency employer is not includable as TRS earnable compensation, the department will not include the cashout in the retiree's average compensation for purposes of computing either his PERS Plan 1 or TRS Plan 1 maximum benefit.

Example 19: A multiple system retiree retires from PERS Plan 1 local government employment and receives a sick leave cashout. Because a sick leave cashout from a local government employer may be included as earnable compensation, the department will include the sick leave cashout to compute the retiree's maximum benefits under both PERS Plan 1 and TRS Plan 1.

(b) **Determine your retirement allowances from each system.** After computing your maximum benefit, the department will determine the retirement allowances to which you are entitled from each system under chapter 41.54 RCW before making any reduction under RCW 41.54.070. If applicable, the department will then reduce the amount of your retirement allowances provided by either of the dual member systems for:

(i) Your status as a nonmember participant of WSPRS Plan 1 or 2 pursuant to RCW 43.43.280(2); or

(ii) Your choice to retire early (~~from a Plan 2 system~~) under RCW 41.40.630 (2) or (3), 41.40.820 (2) or (3), 41.37.210(3), 41.35.420 (2) or (3), 41.35.680 (2) or (3), 41.32.765 (2) or (3), ~~((41.35.420(2)))~~ 41.32.875 (2) or (3), and 41.26.430 (2) (~~or Plan 3 system under RCW 41.32.875(2), 41.35.680(2), and 41.40.820(2))~~) or (3).

(c) **Compute your total multiple system benefit.** Upon computing your retirement allowances from each system and making any applicable reductions under (b) of this subsection, the department will add the systems' allowances to compute your total multiple system benefit.

(d) **Compare your total multiple system benefit with your maximum benefit and, if necessary, proportionately reduce your retirement allowances.** The department will then compare your total multiple system benefit with your maximum benefit calculated in (a) of this subsection. If your total multiple system benefit exceeds your maximum benefit, the department will proportionately reduce your retirement allowances provided by each system as follows:

(i) Calculate what proportion your total multiple system benefit is provided by each system separately; and

(ii) Proportionately reduce the benefit provided by each system to account for the excess of your total multiple system benefit over your maximum benefit.

Example 20: A person with twenty-nine years of prior service in TRS Plan 1 and one year of subsequent service in PERS Plan 2 retires from both systems at age sixty-five. The retiree's TRS Plan 1 average compensation is thirty thousand dollars. The TRS Plan 1 maximum benefit is sixty percent of average compensation. The retiree's maximum TRS benefit is eighteen thousand dollars or one thousand five hundred dollars per month. The retiree's PERS Plan 2 average compensation is twenty-eight thousand dollars. The retiree's maximum PERS 2 benefit is sixteen thousand eight hundred dollars or one thousand four hundred dollars per month. The retiree's maximum benefit is the higher of the two amounts, one thousand five hundred dollars per month.

Assume the retiree's accrued service is such that her actual TRS Plan 1 monthly benefit is one thousand four hundred fifty dollars and her PERS Plan 2 monthly benefit is one hundred dollars. The retiree's total multiple system benefit is the sum of her TRS Plan 1 and PERS Plan 2 benefits, or one thousand five hundred fifty dollars. Because the retiree's total multiple system benefit exceeds her maximum benefit by fifty dollars, the department would proportionately reduce her TRS Plan 1 and PERS Plan 2 benefits. Her TRS Plan 1 benefit is 29/30 of her total service or ninety-seven percent, and her PERS Plan 2 benefit is 1/30 of total service, or three percent. The department would reduce her TRS Plan 1 benefit by ninety-seven percent of the overage, or forty-eight dollars and fifty cents (50 x .97) and her PERS Plan 2 benefit by three percent of the overage, or one dollar and fifty cents (50 x .03).

(3) **If you select a benefit payment option, the department will reduce your multiple system benefit to account as appropriate.** After making any applicable maximum benefit reductions, the department will further reduce your benefit if you choose:

- (a) To withdraw your accumulated contributions at the time you retire from TRS Plan 1;
- (b) A survivor benefit option; or
- (c) A cost-of-living adjustment (COLA) option.
- (4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.
 - (a) "Average compensation" - WAC 415-113-030.
 - (b) "Dual member" - RCW 41.54.010(4), WAC 415-113-041.
 - (c) "Dual member system" - WAC 415-113-030.
 - (d) "First class city system" - WAC 415-113-030.
 - (e) "Member participant" - WAC 415-113-030.
 - (f) "Multiple system benefit" - WAC 415-113-030.
 - (g) "Multiple system retiree" - WAC 415-113-030.
 - (h) "Nonmember participant" - WAC 415-113-030.

fee rate will be applied beginning with the month in which the new rate becomes effective. The maximum additional administrative fee that may be assessed is determined as follows:

(1) If the additional administrative fee as determined in accordance with WAC 415-115-080 is less than fifty percent of the standard administrative fee, the additional administrative fee is the maximum fee allowable.

(2) If the additional administrative fee as determined in accordance with WAC 415-115-080 is greater than or equal to fifty percent of the standard administrative fee, fifty percent of the standard administrative fee is the maximum fee allowable.

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-115-020 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Department" refers to the department of retirement systems established pursuant to chapter 41.50 RCW as now existing or hereafter amended.

(2) "Employers" refers to all employers within the retirement systems administered by the department, as defined in RCW 41.50.030.

(3) "Reports" refers to the department of retirement systems transmittal report sent each month by employers to the department.

(4) "Close of business" refers to 5:00 p.m. of a business day.

(5) "Standard administrative fee" for employers in the public employees', public safety employees', school employees', teachers', and law enforcement officers' and fire fighters' retirement systems refers to the administrative fee provided for under RCW 41.50.110; for employers in the judges, judicial, and Washington state patrol retirement systems refers to the biennial appropriation that the department receives for administering each system.

(6) "Additional administrative fee" refers to the fee provided for under RCW 41.50.110(3) which is related to increased costs incurred by the department in processing deficient reports.

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-115-090 Maximum additional administrative fee allowable for the public employees', public safety employees', teachers', and law enforcement officers' and fire fighters' retirement systems. The maximum additional administrative fee that may be charged to employers in the public employees' retirement system, the public safety employees' retirement system, the school employees' retirement system, the teachers' retirement system, and the law enforcement officers' and fire fighters' retirement system for any six-month period shall not exceed fifty percent of the standard administrative fee due for that six-month period. In instances where the standard administrative fee rate changes during the six-month period, the new standard administrative