

**WSR 10-08-086**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)  
[Filed April 6, 2010, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-109.

Title of Rule and Other Identifying Information: WAC 388-543-1150 Limits and limitation extensions, 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered, 388-543-1600 Items and services which require authorization, 388-543-2800 Reusable and disposable medical supplies, 388-545-300 Occupational therapy, and 388-545-500 Physical therapy.

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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on May 25, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 26, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 25, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 11, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is eliminating coverage for electrical neural stimulation devices and supplies (including battery chargers and all other supplies for client-owned devices) for in-home use.

Reasons Supporting Proposal: These amendments are necessary for the department to fully meet the legislatively mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for durable medical equipment for fiscal years 2010-2011 and to further clarify the department's coverage policy.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009 (ESHB 1244), RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Erin Mayo, P.O. Box 45560, Olympia, WA 98504-5560, (360) 725-1729.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The prepara-

tion of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Erin Mayo, DME Program Manager, (360) 725-1729 or Maureen Guzman, PT/OT Program Manager, (360) 725-2033, P.O. Box 45506, Olympia, WA 98504-5506, fax (360) 586-9727, e-mail [mayoe@dshs.wa.gov](mailto:mayoe@dshs.wa.gov) or [guzmam@dshs.wa.gov](mailto:guzmam@dshs.wa.gov).

March 26, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-22-047, filed 10/28/09, effective 11/28/09)

**WAC 388-543-1150 Limits and limitation extensions.**

The department covers non-DME (MSE), DME, and related supplies, prosthetics, orthotics, medical supplies, and related services as described in WAC 388-543-1100(1). The department limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client. In order to exceed the stated limits, the provider must request a limitation extension (LE), which is a form of prior authorization (PA). The department evaluates such requests for LE under the provisions of WAC 388-501-0169. Procedures for LE are found in department billing instructions. The following items and quantities do not require prior authorization; requests to exceed the stated quantities require LE:

- (1) Antiseptics and germicides:
  - (a) Alcohol (isopropyl) or peroxide (hydrogen) - one pint per month;
  - (b) Alcohol wipes (box of two hundred) - one box per month;
  - (c) Betadine or pHisoHex solution - one pint per month;
  - (d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month; or
  - (e) Periwash (when soap and water are medically contraindicated) - one five-ounce bottle of concentrate solution per six-month period.
- (2) Blood monitoring/testing supplies:
  - (a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three-month period;
  - (b) Spring-powered device for lancet - one in a six-month period.
  - (c) Test strips and lancets for an insulin dependent diabetic - one hundred of each, per month; and
  - (d) Test strips and lancets for a noninsulin dependent diabetic - one hundred of each, per three-month period.
- (3) Braces, belts and supportive devices:
  - (a) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;
  - (b) Ankle, elbow, or wrist brace - two per twelve-month period;

(c) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;

(d) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.

(4) Decubitus care products:

(a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;

(b) Synthetic or lambs wool sheepskin pad - one per twelve-month period;

(c) Heel or elbow protectors - four per twelve-month period.

(5) Ostomy supplies:

(a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.

(b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.

(c) Adhesive remover or solvent - three ounces per month.

(d) Adhesive remover wipes, fifty per box - one box per month.

(e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - sixty per month.

(f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.

(g) Continent plug for continent stoma - thirty per month.

(h) Continent device for continent stoma - one per month.

(i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.

(j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.

(k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.

(l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.

(m) Irrigation bag - two every six months.

(n) Irrigation cone and catheter, including brush - two every six months.

(o) Irrigation supply, sleeve - one per month.

(p) Ostomy belt (adjustable) for appliance - two every six months.

(q) Ostomy convex insert - ten per month.

(r) Ostomy ring - ten per month.

(s) Stoma cap - thirty per month.

(t) Ostomy faceplate - ten per month. The department does not allow the following to be used on a faceplate in combination with drainable pouches (refer to the billing instructions for further details):

(i) Drainable pouches with plastic face plate attached; or

(ii) Drainable pouches with rubber face plate.

(6) ~~((Supplies associated with client-owned transectaneous electrical nerve stimulators (TENS):~~

~~(a) For a four-lead TENS unit - two kits per month. (A kit contains two leads, conductive paste or gel, adhesive, adhesive remover, skin preparation material, batteries, and a battery charger for rechargeable batteries.)~~

~~(b) For a two-lead TENS unit - one kit per month.~~

~~(c) TENS tape patches (for use with carbon rubber electrodes only) are allowed when they are not used in combination with a kit(s).~~

~~(d) A TENS stand alone replacement battery charger is allowed when it is not used in combination with a kit(s).~~

~~(7)) Urological supplies - diapers and related supplies:~~

~~(a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., briefs, diapers, pull-up pants, underpads for beds, liners, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:~~

~~(i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;~~

~~(ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;~~

~~(iii) The padding must provide uniform protection;~~

~~(iv) The product must be hypoallergenic;~~

~~(v) The product must meet the flammability requirements of both federal law and industry standards; and~~

~~(vi) All products are covered for client personal use only.~~

~~(b) In addition to the standards in subsection (a) of this section, diapers must meet all the following specifications. They must:~~

~~(i) Be hourglass shaped with formed leg contours;~~

~~(ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;~~

~~(iii) Have leg gathers that consist of at least three strands of elasticized materials;~~

~~(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;~~

~~(v) Have a backsheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;~~

~~(vi) Have a topsheet that resists moisture returning to the skin;~~

~~(vii) Have an inner lining that is made of soft, absorbent material; and~~

~~(viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:~~

~~(A) For child diapers, at least two tapes, one on each side.~~

~~(B) The tape adhesive must release from the backsheet without tearing it, and permit a minimum of three fastening/unfastening cycles.~~

~~(c) In addition to the standards in subsection (a) of this section, pull-up pants and briefs must meet the following specifications. They must:~~

~~(i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;~~

~~(ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;~~

(iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;

(iv) Have leg gathers that consist of at least three strands of elasticized materials;

(v) Have a backsheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;

(vi) Have an inner lining made of soft, absorbent material; and

(vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads are covered only for incontinent purposes in a client's bed and must meet the following specifications:

(i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;

(ii) Be manufactured with a waterproof backing material;

(iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;

(iv) Have a covering or facing sheet that is made of non-woven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;

(v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and

(vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners, shields, guards, pads, and undergarments are covered for incontinence only and must meet the following specifications:

(i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;

(ii) Have a waterproof backing designed to protect clothing and linens;

(iii) Have an inner liner that resists moisture returning to the skin;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and

(vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) The department covers the products in this subsection only when they are used alone; they cannot be used in combination with each other. The department approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use (see department billing instructions for how to specify this when billing). The total quantity of all products in this section used in combination cannot exceed the monthly limitation for the product with the highest limit (see subsections (g), (h), (i), (j), (k), (l), and (m) of this section for product limitations). The following products cannot be used together:

(i) Disposable diapers;

(ii) Disposable pull-up pants and briefs;

(iii) Disposable liners, shields, guards, pads, and undergarments;

(iv) Rented reusable diapers (e.g., from a diaper service); and

(v) Rented reusable briefs (e.g., from a diaper service), or pull-up pants.

(g) Purchased disposable diapers (any size) are limited to:

(i) Two hundred per month for a child three to eighteen years of age; and

(ii) Two hundred per month for an adult nineteen years of age and older.

(h) Reusable cloth diapers (any size) are limited to:

(i) Purchased - thirty-six per year; and

(ii) Rented - two hundred per month.

(i) Disposable briefs and pull-up pants (any size) are limited to:

(i) Two hundred per month for a child age three to eighteen years of age; and

(ii) One hundred fifty per month for an adult nineteen years of age and older.

(j) Reusable briefs, washable protective underwear, or pull-up pants (any size) are limited to:

(i) Purchased - four per year.

(ii) Rented - one hundred fifty per month.

(k) Disposable pant liners, shields, guards, pads, and undergarments are limited to two hundred per month.

(l) Underpads for beds are limited to:

(i) Disposable (any size) - one hundred eighty per month.

(ii) Purchased, reusable (large) - forty-two per year.

(iii) Rented, reusable (large) - ninety per month.

~~((8))~~ (7) Urological supplies - urinary retention:

(a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. This cannot be billed in combination with any of the following:

(i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adaptor; and/or

(ii) With an insertion tray with drainage bag, and with or without catheter.

(b) Bedside drainage bottle, with or without tubing - two per six month period.

(c) Extension drainage tubing (any type, any length), with connector/adaptor, for use with urinary leg bag or urostomy pouch. This cannot be billed in combination with a vinyl urinary leg bag, with or without tube.

(d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.

(e) Indwelling catheters (any type) - three per month.

(f) Insertion trays:

(i) Without drainage bag and catheter - one hundred and twenty per month. These cannot be billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.

(ii) With indwelling catheters - three per month. These cannot be billed in combination with: Other insertion trays without drainage bag and/or indwelling catheter; individual indwelling catheters; and/or individual lubricant packets.

(g) Intermittent urinary catheter - one hundred twenty per month. These cannot be billed in combination with: An

insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.

(h) Irrigation syringe (bulb or piston) - cannot be billed in combination with irrigation tray or tubing.

(i) Irrigation tray with syringe (bulb or piston) - thirty per month. These cannot be billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.

(j) Irrigation tubing set - thirty per month. These cannot be billed in combination with an irrigation tray or irrigation syringe (bulb or piston).

(k) Leg straps (latex foam and fabric). Allowed as replacement only.

(l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.

(m) Urinary suspensory with leg bag, with or without tube - two per month. This cannot be billed in combination with: a latex urinary leg bag; urinary suspensory without leg bag; extension drainage tubing; or a leg strap.

(n) Urinary suspensory without leg bag, with or without tube - two per month.

(o) Urinary leg bag, vinyl, with or without tube - two per month. This cannot be billed in combination with: A leg strap; or an insertion tray with drainage bag and without catheter.

(p) Urinary leg bag, latex - one per month. This cannot be billed in combination with an insertion tray with drainage bag and with or without catheter.

~~((9))~~ (8) Miscellaneous supplies:

(a) Bilirubin light therapy supplies - five days' supply. The department reimburses only when these are provided with a prior authorized bilirubin light.

(b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.

(c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.

(d) Eye patch (adhesive wound cover) - one box of twenty.

(e) Nontoxic gel (e.g., LiceOut TM) for use with lice combs - one bottle per twelve month period.

(f) Nonsterile gloves - one hundred per box, two box per month.

(g) Sterile gloves - thirty pair, per month.

~~((10))~~ (9) Miscellaneous DME:

(a) Bilirubin light or light pad - five days rental per twelve-month period.

(b) Blood glucose monitor (specialized or home) - one in a three-year period.

(c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.

(d) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.

(e) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap w/adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.

(f) Pneumatic compressor - one in a five-year period.

(g) Positioning car seat - one in a five-year period.

~~((11))~~ (10) Prosthetics and orthotics:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.

(f) All other prosthetics and orthotics are limited to one per twelve-month period per limb.

~~((12))~~ (11) Positioning devices:

(a) Positioning system/supine boards (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one in a five-year period.

(b) Prone stander (child, youth, infant or adult size) - one in a five-year period.

(c) Adjustable standing frame (for child/adult thirty - sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one in a five-year period.

~~((13))~~ (12) Beds, mattresses, and related equipment:

(a) Pressure pad, alternating with pump - one in a five-year period.

(b) Dry pressure mattress - one in a five-year period.

(c) Gel or gel-like pressure pad for mattress - one in a five-year period.

(d) Gel pressure mattress - one in a five-year period.

(e) Water pressure pad for mattress - one in a five-year period.

(f) Dry pressure pad for mattress - one in a five-year period.

(g) Mattress, inner spring - one in a five-year period.

(h) Mattress, foam rubber - one in a five-year period.

(i) Hospital bed, semi-electric - one in a ten-year period.

(j) Bedside rails - one in a ten-year period.

~~((14))~~ (13) Other patient room equipment:

(a) Patient lift, hydraulic, with seat or sling - one in a five-year period.

(b) Traction equipment - one in a five year period.

(c) Trapeze bars - one in a five-year period.

(d) Fracture frames - one in a five-year period.

(e) Transfer board or devices - one in a five-year period.

~~((15))~~ (14) Noninvasive bone growth(~~nerve~~) stimulators(=

~~(a) Transcutaneous electrical nerve stimulation device (TNS) - one in a five-year period.~~

~~(b))~~ (such as osteogenesis stimulators) - one in a five-year period.

~~((16))~~ (15) Communication devices - artificial larynx, any type - one in a five-year period.

~~((17))~~ (16) Ambulatory aids:

(a) Canes - one in a five-year period.

(b) Crutches - one in a five-year period.

(c) Walkers - one in a five-year period.

AMENDATORY SECTION (Amending WSR 09-22-047, filed 10/28/09, effective 11/28/09)

**WAC 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered.**

(1) The department pays only for DME and related supplies, medical supplies and related services that are medically necessary, listed as covered in this chapter, and meet the definition of DME and medical supplies as defined in WAC 388-543-1000 and prescribed per WAC 388-543-1100 and 388-543-1200.

(2) The department pays only for prosthetics or orthotics that are listed as such by the Centers for Medicare and Medicaid Services (CMS) that meet the definition of prosthetic and orthotic as defined in WAC 388-543-1000 and are prescribed per WAC 388-543-1100 and 388-543-1200.

(3) The department considers all requests for covered DME, related supplies and services, medical supplies, prosthetics, orthotics, and related services under the provisions of WAC 388-501-0165.

(4) The department evaluates a request for any DME item listed as noncovered in this chapter under the provisions of WAC 388-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the department evaluates a noncovered service, equipment, or supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-543-0100 for EPSDT rules).

(5) The department specifically excludes services and equipment in this chapter from fee-for-service (FFS) scope of coverage when the services and equipment do not meet the definition for a covered item, or the services are not typically medically necessary. This exclusion does not apply if the services and equipment are:

- (a) Included as part of a managed care plan service package;
- (b) Included in a waived program;
- (c) Part of one of the medicare programs for qualified medicare beneficiaries; or
- (d) Requested for a child who is eligible for services under the EPSDT program. The department reviews these requests according to the provisions of chapter 388-534 WAC.

(6) Excluded services and equipment include, but are not limited to:

- (a) Services, procedures, treatment, devices, drugs, or the application of associated services that the Food and Drug Administration (FDA) and/or the Centers for Medicare and Medicaid Services (CMS) consider investigative or experimental on the date the services are provided;
- (b) Any service specifically excluded by statute;
- (c) A client's utility bills, even if the operation or maintenance of medical equipment purchased or rented by the department for the client contributes to an increased utility bill (refer to the aging and disability services administration's (ADSA) COPES program for potential coverage);
- (d) Hairpieces or wigs;
- (e) Material or services covered under manufacturers' warranties;
- (f) Shoe lifts less than one inch, arch supports for flat feet, and nonorthopedic shoes;

(g) Outpatient office visit supplies, such as tongue depressors and surgical gloves;

(h) Prosthetic devices dispensed solely for cosmetic reasons;

(i) Home improvements and structural modifications, including but not limited to the following:

- (i) Automatic door openers for the house or garage;
- (ii) Saunas;
- (iii) Security systems, burglar alarms, call buttons, lights, light dimmers, motion detectors, and similar devices;
- (iv) Swimming pools;
- (v) Whirlpool systems, such as jacuzzies, hot tubs, or spas; or
- (vi) Electrical rewiring for any reason;
- (vii) Elevator systems and elevators; and
- (viii) Lifts or ramps for the home; or
- (ix) Installation of bathtubs or shower stalls.

(j) Nonmedical equipment, supplies, and related services, including but not limited to, the following:

- (i) Back-packs, pouches, bags, baskets, or other carrying containers;
- (ii) Bed boards/conversion kits, and blanket lifters (e.g., for feet);
- (iii) Car seats for children under five, except for positioning car seats that are prior authorized. Refer to WAC 388-543-1700(13) for car seats;
- (iv) Cleaning brushes and supplies, except for ostomy-related cleaners/supplies;
- (v) Diathermy machines used to produce heat by high frequency current, ultrasonic waves, or microwave radiation;
- (vi) Electronic communication equipment, installation services, or service rates, including but not limited to, the following:
  - (A) Devices intended for amplifying voices (e.g., microphones);
  - (B) Interactive communications computer programs used between patients and healthcare providers (e.g., hospitals, physicians), for self care home monitoring, or emergency response systems and services (refer to ADSA COPES or outpatient hospital programs for emergency response systems and services);
  - (C) Two-way radios; and
  - (D) Rental of related equipment or services;
- (vii) Environmental control devices, such as air conditioners, air cleaners/purifiers, dehumidifiers, portable room heaters or fans (including ceiling fans), heating or cooling pads, and light boxes;
- (viii) Ergonomic equipment;
- (ix) Exercise classes or equipment such as exercise mats, bicycles, tricycles, stair steppers, weights, trampolines;
- (x) Generators;
- (xi) Computer software other than speech generating, printers, and computer accessories (such as anti-glare shields, backup memory cards);
- (xii) Computer utility bills, telephone bills, internet service, or technical support for computers or electronic notebooks;
- (xiii) Any communication device that is useful to someone without severe speech impairment (e.g., cellular telephone, walkie-talkie, pager, or electronic notebook);

- (xiv) Racing strollers/wheelchairs and purely recreational equipment;
- (xv) Room fresheners/deodorizers;
- (xvi) Bidet or hygiene systems, sharp containers, paraffin bath units, and shampoo rings;
- (xvii) Timers or electronic devices to turn things on or off, which are not an integral part of the equipment;
- (xviii) Vacuum cleaners, carpet cleaners/deodorizers, and/or pesticides/insecticides; or
- (xix) Wheeled reclining chairs, lounge and/or lift chairs (e.g., geri-chair, posture guard, or lazy boy).
- (k) Blood monitoring:
  - (i) Sphygmomanometer/blood pressure apparatus with cuff and stethoscope;
  - (ii) Blood pressure cuff only; and
  - (iii) Automatic blood pressure monitor.
- (l) Bathroom equipment:
  - (i) Bath stools;
  - (ii) Bathtub wall rail (grab bars);
  - (iii) Bed pans;
  - (iv) Control unit for electronic bowel irrigation/evacuation system;
  - (v) Disposable pack for use with electronic bowel system;
  - (vi) Potty chairs;
  - (vii) Raised toilet seat;
  - (viii) Safety equipment (e.g. belt, harness or vest);
  - (ix) Shower/commode chairs;
  - (x) Sitz type bath or equipment;
  - (xi) Standard and heavy duty bath chairs;
  - (xii) Toilet rail;
  - (xiii) Transfer bench tub or toilet;
  - (xiv) Urinal male/female.
- (m) Disinfectant spray - one twelve-ounce bottle or can per six-month period.
- (n) Personal and **comfort items** including but not limited to the following:
  - (i) Bathroom items, such as antiperspirant, astringent, bath gel, conditioner, deodorant, moisturizer, mouthwash, powder, shampoo, shaving cream, shower cap, shower curtains, soap (including antibacterial soap), toothpaste, towels, and weight scales;
  - (ii) Bedding items, such as bed pads, blankets, mattress covers/bags, pillows, pillow cases/covers, sheets, and bumper pads;
  - (iii) Bedside items, such as bed trays, carafes, and over-the-bed tables;
  - (iv) Clothing and accessories, such as coats, gloves (including wheelchair gloves), hats, scarves, slippers, socks, custom vascular supports (CVS), surgical stockings, gradient compression stockings, and graduated compression stockings for pregnancy support (panty hose style);
  - (v) Clothing protectors, surgical masks, and other protective cloth furniture coverings;
  - (vi) Cosmetics, including corrective formulations, hair depilatories, and products for skin bleaching, commercial sun screens, and tanning;
  - (vii) Diverter valves and handheld showers for bathtub;
  - (viii) Eating/feeding utensils;
  - (ix) Emesis basins, enema bags, and diaper wipes;

- (x) Health club memberships;
- (xi) Hot or cold temperature food and drink containers/holders;
- (xii) Hot water bottles and cold/hot packs or pads not otherwise covered by specialized therapy programs;
- (xiii) Impotence devices;
- (xiv) Insect repellants;
- (xv) Massage equipment;
- (xvi) Medication dispensers, such as med-collators and count-a-dose, except as obtained under the compliance packaging program. See chapter 388-530 WAC;
- (xvii) Medicine cabinet and first-aid items, such as adhesive bandages (e.g., Band-Aids, Curads), cotton balls, cotton-tipped swabs, medicine cups, thermometers, and tongue depressors;
- (xviii) Page turners;
- (xix) Radio and television;
- (xx) Telephones, telephone arms, cellular phones, electronic beepers, and other telephone messaging services; and
- (xxi) Toothettes and toothbrushes, waterpics, and peridental devices whether manual, battery-operated, or electric.
- (o) Certain wheelchair features and options are not considered by the department to be medically necessary or essential for wheelchair use. This includes, but is not limited to, the following:
  - (i) Attendant controls (remote control devices);
  - (ii) Canopies, including those for strollers and other equipment;
  - (iii) Clothing guards to protect clothing from dirt, mud, or water thrown up by the wheels (similar to mud flaps for cars);
  - (iv) Identification devices (such as labels, license plates, name plates);
  - (v) Lighting systems;
  - (vi) Speed conversion kits; and
  - (vii) Tie-down restraints, except where medically necessary for client-owned vehicles.
- (p) Electrical neural stimulation devices and supplies for in-home use, including battery chargers.

**AMENDATORY SECTION** (Amending WSR 09-22-047, filed 10/28/09, effective 11/28/09)

**WAC 388-543-1600 Items and services which require prior authorization.** (1) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require **prior authorization (PA)** or **expedited prior authorization (EPA)** on utilization criteria. (See WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA.) The department considers all of the following when establishing utilization criteria:

- (a) High cost;
- (b) Potential for utilization abuse;
- (c) Narrow therapeutic indication; and
- (d) Safety.

(2) The department requires providers to obtain prior authorization for certain items and services, except for dual-eligible medicare/medicaid clients when medicare is the pri-

mary payer. This includes, but is not limited to, the following:

- (a) Augmentative communication devices (ACDs);
- (b) Certain by report (BR) DME and supplies as specified in the department's published issuances, including billing instructions and numbered memoranda;
- (c) Blood glucose monitors requiring special features;
- (d) Certain equipment rentals and certain prosthetic limbs, as specified in the department's published issuances, including billing instructions and numbered memoranda;
- (e) Decubitus care products and supplies;
- (f) Decubitus care mattresses, including flotation or gel mattress, if the provider fails to meet the criteria in WAC 388-543-1900;
- (g) Equipment parts and labor charges for repairs or modifications and related services;
- (h) Hospital beds, if the provider fails to meet the requirements in WAC 388-543-1900;
- (i) Low air loss flotation system, if the provider fails to meet the requirements in WAC 388-543-1900;
- (j) Orthopedic shoes and selected orthotics;
- (k) Osteogenic stimulator, noninvasive, if the provider fails to meet the requirements in WAC 388-543-1900;
- (l) Positioning car seats for children under five years of age;
- (m) ~~((Transcutaneous electrical nerve stimulators, if the provider fails to meet the requirements in WAC 388-543-1900;~~
- ~~((n)))~~ Wheelchairs, wheelchair accessories, wheelchair modifications, air, foam, and gel cushions, and repairs;
- ~~((o)))~~ (n) Other DME not specifically listed in the department's published issuances, including billing instructions and numbered memoranda, and submitted as a miscellaneous procedure code; and
- ~~((p)))~~ (o) Limitation extensions.

AMENDATORY SECTION (Amending WSR 07-17-062, filed 8/13/07, effective 9/13/07)

**WAC 388-543-2800 Reusable and disposable medical supplies.** (1) The department requires that a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC) prescribe reusable and disposable medical supplies. Except for dual eligible medicare/medicaid clients, the prescription must:

- (a) Be dated and signed by the prescriber;
  - (b) Be less than six months in duration from the date the prescriber signs the prescription; and
  - (c) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity.
- (2) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA). The department considers all of the following when establishing utilization criteria:
- (a) High cost;
  - (b) The potential for utilization abuse;

- (c) A narrow therapeutic indication; and
- (d) Safety.

(3) The department requires a provider to obtain a limitation extension in order to exceed the stated limits for non-durable medical equipment and medical supplies. See WAC 388-501-0165.

(4) The department categorizes medical supplies and non-DME (MSE) as follows (see WAC 388-543-1150, 388-543-1600, and department's billing instructions for further information about specific limitations and requirements for PA and EPA):

- (a) Antiseptics and germicides;
- (b) Bandages, dressings, and tapes;
- (c) Blood monitoring/testing supplies;
- (d) Braces, belts, and supportive devices;
- (e) Decubitus care products;
- (f) Ostomy supplies;
- (g) Pregnancy-related testing kits and nursing equipment supplies;
- (h) ~~((Supplies associated with transcutaneous electrical nerve stimulators (TENS);~~
- ~~((i)))~~ Syringes and needles;
- ~~((j)))~~ (i) Urological supplies (e.g., diapers, urinary retention catheters, pant liners, and doublers); and
- ~~((k)))~~ (j) Miscellaneous supplies.

AMENDATORY SECTION (Amending WSR 01-02-075, filed 12/29/00, effective 1/29/01)

**WAC 388-545-300 Occupational therapy.** (1) The following providers are eligible to enroll with ~~((medical assistance administration (MAA)))~~ the department to provide occupational therapy services:

- (a) A licensed occupational therapist;
  - (b) A licensed occupational therapy assistant supervised by a licensed occupational therapist; and
  - (c) An occupational therapy aide, in schools, trained and supervised by a licensed occupational therapist.
- (2) Clients in the following ~~((MAA))~~ department programs are eligible to receive occupational therapy services described in this chapter:
- (a) Categorically needy;
  - (b) Children's health;
  - (c) General assistance unemployable (within Washington state or border areas only);
  - (d) Alcoholism and drug addiction treatment and support act (ADATSA) (within Washington state or border areas only);
  - (e) Medically indigent program for emergency hospital-based services only; or
  - (f) Medically needy program only when the client is either:
    - (i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis and treatment program (healthy kids program) as described in chapter 388-534 WAC; or
    - (ii) Receiving home health care services as described in chapter 388-551 WAC, subchapter II.
- (3) Occupational therapy services received by ~~((MAA))~~ department eligible clients must be provided:

(a) As part of an outpatient treatment program for adults and children;

(b) By a home health agency as described under chapter 388-551 WAC, subchapter II;

(c) As part of the physical medicine and rehabilitation (PM&R) program as described in WAC 388-550-2551;

(d) By a neurodevelopmental center;

(e) By a school district or educational service district as part of an individual education program or individualized family service plan as described in WAC 388-537-0100; or

(f) When prescribed by a provider for clients age twenty-one or older. The therapy must:

(i) Prevent the need for hospitalization or nursing home care;

(ii) Assist a client in becoming employable;

(iii) Assist a client who suffers from severe motor disabilities to obtain a greater degree of self-care or independence; or

(iv) Be a part of a treatment program intended to restore normal function of a body part following injury, surgery, or prolonged immobilization.

(4) ~~((MAA))~~ The department pays only for covered occupational therapy services listed in this section when they are:

(a) Within the scope of an eligible client's medical care program;

(b) Medically necessary, when prescribed by a provider; and

(c) Begun within thirty days of the date prescribed.

(5) ~~((MAA))~~ The department covers the following occupational therapy services per client, per calendar year:

(a) Unlimited occupational therapy program visits for clients twenty years of age or younger;

(b) One occupational therapy evaluation. The evaluation is in addition to the twelve program visits allowed per year;

(c) Two durable medical equipment needs assessments. The assessments are in addition to the twelve program visits allowed per year;

(d) Twelve occupational therapy program visits;

(e) Twenty-four additional outpatient occupational therapy program visits when the diagnosis is any of the following:

(i) A medically necessary condition for developmentally delayed clients;

(ii) Surgeries involving extremities, including:

(A) Fractures; or

(B) Open wounds with tendon involvement;

(iii) Intracranial injuries;

(iv) Burns;

(v) Traumatic injuries;

(f) Twenty-four additional occupational therapy program visits following a completed and approved inpatient PM&R program. In this case, the client no longer needs nursing services but continues to require specialized outpatient therapy for any of the following:

(i) Traumatic brain injury (TBI);

(ii) Spinal cord injury (paraplegia and quadriplegia);

(iii) Recent or recurrent stroke;

(iv) Restoration of the levels of function due to secondary illness or loss from multiple sclerosis (MS);

(v) Amyotrophic lateral sclerosis (ALS);

(vi) Cerebral palsy (CP);

(vii) Extensive severe burns;

(viii) Skin flaps for sacral decubitus for quads only;

(ix) Bilateral limb loss; or

(x) Acute, infective polyneuritis (Guillain-Barre' syndrome).

(g) Additional medically necessary occupational therapy services, regardless of the diagnosis, must be approved by ~~((MAA))~~ the department.

~~((MAA will pay for one visit to instruct in the application of transectaneous neurostimulator (TENS), per client, per lifetime.~~

~~(7) MAA))~~ The department does not cover occupational therapy services that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

AMENDATORY SECTION (Amending WSR 01-02-075, filed 12/29/00, effective 1/29/01)

**WAC 388-545-500 Physical therapy.** (1) The following providers are eligible to provide physical therapy services:

(a) A licensed physical therapist or physiatrist; or

(b) A physical therapist assistant supervised by a licensed physical therapist.

(2) Clients in the following ~~((MAA))~~ department programs are eligible to receive physical therapy services described in this chapter:

(a) Categorically needy (CN);

(b) Children's health;

(c) General assistance-unemployable (GA-U) (within Washington state or border areas only);

(d) Alcoholism and drug addiction treatment and support act (ADATSA) (within Washington state or border areas only);

(e) Medically indigent program (MIP) for emergency hospital-based services only; or

(f) Medically needy program (MNP) only when the client is either:

(i) Twenty years of age or younger and referred under the early and periodic screening, diagnosis and treatment program (EPSDT/healthy kids program) as described in WAC 388-86-027; or

(ii) Receiving home health care services as described in chapter 388-551 WAC.

(3) Physical therapy services that ~~((MAA))~~ department eligible clients receive must be provided as part of an outpatient treatment program:

(a) In an office, home, or outpatient hospital setting;

(b) By a home health agency as described in chapter 388-551 WAC;

(c) As part of the acute physical medicine and rehabilitation (acute PM&R) program as described in the acute PM&R subchapter under chapter 388-550 WAC;

(d) By a neurodevelopmental center;

(e) By a school district or educational service district as part of an individual education or individualized family service plan as described in WAC 388-537-0100; or



(f) For disabled children, age two and younger, in natural environments including the home and community settings in which children without disabilities participate, to the maximum extent appropriate to the needs of the child.

(4) ~~((MAA))~~ The department pays only for covered physical therapy services listed in this section when they are:

(a) Within the scope of an eligible client's medical care program;

(b) Medically necessary and ordered by a physician, physician's assistant (PA), or an advanced registered nurse practitioner (ARNP);

(c) Begun within thirty days of the date ordered;

(d) For conditions which are the result of injuries and/or medically recognized diseases and defects; and

(e) Within accepted physical therapy standards.

(5) Providers must document in a client's medical file that physical therapy services provided to clients age twenty-one and older are medically necessary. Such documentation may include justification that physical therapy services:

(a) Prevent the need for hospitalization or nursing home care;

(b) Assist a client in becoming employable;

(c) Assist a client who suffers from severe motor disabilities to obtain a greater degree of self-care or independence; or

(d) Are part of a treatment program intended to restore normal function of a body part following injury, surgery, or prolonged immobilization.

(6) ~~((MAA))~~ The department determines physical therapy program units as follows:

(a) Each fifteen minutes of timed procedure code equals one unit; and

(b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(7) ~~((MAA))~~ The department does not limit coverage for physical therapy services listed in subsections (8) through (10) of this section if the client is twenty years of age or younger.

(8) ~~((MAA))~~ The department covers, without requiring prior authorization, the following ordered physical therapy services per client, per diagnosis, per calendar year, for clients twenty-one years of age and older:

(a) One physical therapy evaluation. The evaluation is in addition to the forty-eight program units allowed per year;

(b) Forty-eight physical therapy program units;

(c) Ninety-six additional outpatient physical therapy program units when the diagnosis is any of the following:

(i) A medically necessary condition for developmentally delayed clients;

(ii) Surgeries involving extremities, including:

(A) Fractures; or

(B) Open wounds with tendon involvement.

(iii) Intracranial injuries;

(iv) Burns;

(v) Traumatic injuries;

(vi) Meningocele;

(vii) Down's syndrome;

(viii) Cerebral palsy; or

(ix) Symptoms involving nervous and musculoskeletal systems and lack of coordination;

(d) Two durable medical equipment (DME) needs assessments. The assessments are in addition to the forty-eight physical therapy program units allowed per year. Two program units are allowed per DME needs assessment; and

(e) One wheelchair needs assessment in addition to the two durable medical needs assessments. The assessment is in addition to the forty-eight physical therapy program units allowed per year. Four program units are allowed per wheelchair needs assessment.

(f) The following services are allowed, per day, in addition to the forty-eight physical therapy program units allowed per year:

(i) Two program units for orthotics fitting and training of upper and/or lower extremities.

(ii) Two program units for checkout for orthotic/prosthetic use.

(iii) One muscle testing procedure. Muscle testing procedures cannot be billed in combination with each other.

(g) Ninety-six additional physical therapy program units are allowed following a completed and approved inpatient acute PM&R program. In this case, the client no longer needs nursing services but continues to require specialized outpatient physical therapy for any of the following:

(i) Traumatic brain injury (TBI);

(ii) Spinal cord injury (paraplegia and quadriplegia);

(iii) Recent or recurrent stroke;

(iv) Restoration of the levels of functions due to secondary illness or loss from multiple sclerosis (MS);

(v) Amyotrophic lateral sclerosis (ALS);

(vi) Cerebral palsy (CP);

(vii) Extensive severe burns;

(viii) Skin flaps for sacral decubitus for quadriplegics only;

(ix) Bilateral limb loss;

(x) Open wound of lower limb; or

(xi) Acute, infective polyneuritis (Guillain-Barre' syndrome).

(9) For clients age twenty-one and older, ~~((MAA))~~ the department covers physical therapy services which exceed the limitations established in subsection (8) of this section if the provider requests prior authorization and ~~((MAA))~~ the department approves the request.

~~((10))~~ ~~((MAA will pay for one visit to instruct in the application of transcutaneous neurostimulator (TENS) per client, per lifetime.~~

~~((11))~~ Duplicate services for occupational therapy and physical therapy are not allowed for the same client when both providers are performing the same or similar procedure(s).

~~((12))~~ ~~((MAA))~~ (11) The department does not cover physical therapy services that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

~~((13))~~ ~~((MAA))~~ (12) The department does not cover physical therapy services performed by a physical therapist in an outpatient hospital setting when the physical therapist is not employed by the hospital. Reimbursement for services must be billed by the hospital.

**WSR 10-08-088  
PROPOSED RULES  
NORTHWEST CLEAN  
AIR AGENCY**

[Filed April 6, 2010, 3:44 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Northwest Clean Air Agency regulation.

Hearing Location(s): Washington Department of Ecology, 1440 10th Street, Suite 102, Bellingham, WA 98225, on June 1, 2010, at 9:00 a.m.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: Mark Buford, Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, e-mail mark@nwcleanair.org, fax (360) 428-1620, by June 10, 2010.

Assistance for Persons with Disabilities: Contact Scott Allison by May 10, 2010, (360) 428-1617 ext. 200.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update agency adoptions by reference, update internal references within the regulation, and to adopt New Section 155 - State Environmental Policy Act (SEPA), clarifying SEPA authority, policy and procedures.

Reasons Supporting Proposal: Authorized by WAC 197-11-904.

Statutory Authority for Adoption: Chapters 70.94 and 43.21C RCW.

Statute Being Implemented: Chapters 70.94 and 43.21C RCW.

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

Name of Proponent: Northwest Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Asmundson, 1600 South Second Street, Mount Vernon, WA, (360) 428-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable under RCW 70.94.141.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70.94.141.

April 6, 2010  
Mark Buford  
Assistant Director

**AMENDATORY SECTION**

**SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES**

**104.1** All provisions of State Law as it now exists or may be hereafter amended, which is pertinent to the operation of the NWCAA, is hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the Washington State Clean Air Act (RCW 70.94), the Administrative Procedures Act (RCW 34.05) and RCW 43.21A and 43.21B and the following state

rules: WAC 173-400, (except – 035, -070(8), -099, -100, -101, -102, -104, -110, -114, -116, -171), WAC 173-401, WAC 173-406, WAC 173-407, WAC 173-420, WAC 173-425, WAC 173-430, WAC 173-433, WAC 173-434, WAC 173-435, WAC 173-450, WAC 173-460, WAC 173-470, WAC 173-474, WAC 173-475, WAC 173-481, WAC 173-490, WAC 173-491, WAC 173-492, WAC 173-495, (~~WAC 173-802~~), and (~~WAC 197-11~~) portions of WAC 197-11 contained in Section 155.

**104.2** All provisions of the following federal rules that are in effect as of April 5, 2010 (~~October 29, 2007~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, B, C, Cb, Cc, Cd, Ce, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa (~~AA~~), CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, HHHH, IIII, JJJJ, KKKK and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, B, C, D, E, F, H, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, J, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, (~~XX~~) WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEEE, FFFFF, GGGG, HHHH, IIII, JJJJ, KKKK, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, (~~DDDDDD, EEEEE, FFFFF, GGGGG~~); and 40 CFR 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION**

**SECTION 300 – NEW SOURCE REVIEW**

**300.7** Notice of Construction - Submittal Requirements  
Each Notice of Construction application shall:

- a) be submitted on forms provided by the NWCAA;
- b) be accompanied by the appropriate fee specified in NWCAA 324.2;
- c) be accompanied by a completed State Environmental Policy Act (SEPA) checklist consistent with (~~WAC 197-11~~) NWCAA 155; and
- d) include a "top down" BACT analysis, as defined at the time of submittal, except where the Federal Clean Air Act requires LAER; and
- e) An applicant filing a Notice of Construction application for a project described in WAC 173-400-117(2), Special

protection requirements for Class I areas, shall send a copy of the application to the responsible federal land manager.

### **NEW SECTION**

## **SECTION 155 - STATE ENVIRONMENTAL POLICY ACT**

### **155.1 Authority**

A. NWCAA adopts these policies and procedures under State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, Washington Administrative Code (WAC) 197-11-904, with respect to its performance of or participation in environmental review.

B. The SEPA Rules set forth in Chapter 197-11 WAC must be used in conjunction with these policies and procedures.

### **155.2 Purpose and Adoption by Reference.**

A. NWCAA adopts the following sections of Chapter 197-11 WAC by reference:

- WAC 197-11-040: Definitions
  - 050: Lead Agency
  - 055: Timing of the SEPA Process
  - 060: Content of Environmental Review
  - 070: Limitations on Actions During SEPA Process
  - 080: Incomplete or Unavailable Information
  - 090: Supporting Documents
  - 100: Information Required of Applicants
  - 250: SEPA/Model Toxics Control Act Integration
  - 253: SEPA Lead Agency for MTCA Actions
  - 256: Preliminary Evaluation
  - 259: Determination of Nonsignificance for MTCA Remedial Action
  - 262: Determination of Significance for MTCA Remedial Action
  - 265: Early Scoping for MTCA Remedial Actions
  - 268: MTCA Interim Actions
- WAC 197-11-300: Purpose of This Part
  - 305: Categorical Exemptions
  - 310: Threshold Determination Required
  - 315: Environmental Checklist
  - 330: Threshold Determination Process
  - 335: Additional Information
  - 340: Determination of Non-Significance (DNS)
  - 350: Mitigated DNS
  - 360: Determination of Significance (DS)/Initiation of Scoping

- 390: Effect of Threshold Determination
- WAC 197-11-400: Purpose of EIS
  - 402: General Requirements
  - 405: EIS Types
  - 406: EIS Timing
  - 408: Scoping
  - 410: Expanded Scoping
  - 420: EIS Preparation
  - 425: Style and Size
  - 430: Format
  - 435: Cover Letter or Memo
  - 440: EIS Contents
  - 442: Contents of EIS on Non-Project Proposals
  - 443: EIS Contents When Prior Non-Project EIS
  - 444: Elements of the Environment
  - 448: Relationship of EIS to Other Considerations
  - 450: Cost-Benefit Analysis
  - 455: Issuance of DEIS
  - 460: Issuance of FEIS
- WAC 197-11-500: Purpose of This Part
  - 502: Inviting Comment
  - 504: Availability and Cost of Environmental Documents
  - 508: SEPA Register
  - 510: Public Notice
  - 535: Public Hearings and Meetings
  - 545: Effect of No Comment
  - 550: Specificity of Comments
  - 560: FEIS Response to Comments
  - 570: Consulted Agency Costs to Assist Lead Agency
- WAC 197-11-600: When to Use Existing Environmental Documents
  - 610: Use of NEPA Documents
  - 620: Supplemental Environmental Impact Statement - Procedures
  - 625: Addenda – Procedures
  - 630: Adoption – Procedures
  - 635: Incorporation by Reference – Procedures
  - 640: Combining documents
- WAC 197-11-650: Purpose of This Part.
  - 655: Implementation.
  - 660: Substantive Authority and Mitigation.
  - 680: Appeals.
- WAC 197-11-700: Definitions

- 702: Act
- 704: Action
- 706: Addendum
- 708: Adoption
- 710: Affected Tribe
- 712: Affecting
- 714: Agency
- 716: Applicant
- 718: Built Environment
- 720: Categorical Exemption
- 722: Consolidated Appeal
- 724: Consulted Agency
- 726: Cost-Benefit Analysis
- 728: County/City
- 730: Decision-Maker
- 732: Department
- 734: Determination of Non-Significance (DNS)
- 736: Determination of Significance (DS)
- 738: EIS
- 740: Environment
- 742: Environmental Checklist
- 744: Environmental Document
- 746: Environmental Review
- 750: Expanded Scoping
- 752: Impacts
- 754: Incorporation by Reference
- 756: Lands Covered by Water
- 758: Lead Agency
- 760: License
- 762: Local Agency
- 764: Major Action
- 766: Mitigated DNS
- 768: Mitigation
- 770: Natural Environment
- 772: NEPA
- 774: Non-Project
- 776: Phased Review
- 778: Preparation
- 780: Private Project
- 782: Probable
- 784: Proposal
- 786: Reasonable Alternative
- 788: Responsible Official
- 790: SEPA
- 792: Scope
- 793: Scoping
- 794: Significant
- 796: State Agency
- 797: Threshold Determination
- 799: Underlying Governmental Action
- WAC 197-11-800: Categorical Exemptions
- 880: Emergencies
- 890: Petitioning DOE to Change Exemptions
- WAC 197-11-900: Purpose of This Part
- 902: Agency SEPA Policies
- 904: Agency SEPA Procedures
- 916: Application to Ongoing Actions
- 920: Agencies with Environmental Expertise
- 922: Lead Agency Rules
- 924: Determining the Lead Agency
- 926: Lead Agency for Governmental Proposals
- 928: Lead Agency for Public and Private Proposals
- 930: Lead Agency for Private Projects With One Agency With Jurisdiction
- 932: Lead Agency for Private Projects Requiring Licenses From More Than One Agency, When One of the Agencies Is a County/City
- 934: Lead Agency for Private Projects Requiring Licenses From A Local Agency, Not a City/County, and One or More Than One State Agency
- 936: Lead Agency for Private Projects Requiring Licenses From More Than One State Agency
- 938: Lead Agencies for Specific Proposals
- 940: Transfer of Lead Agency Status to a State Agency
- 942: Agreements on Lead Agency Status
- 944: Agreements on Division of Lead Agency Duties
- 946: DOE Resolution of Lead Agency Disputes
- 948: Assumption of Lead Agency Status
- WAC 197-11-960: Environmental Checklist
- 965: Adoption Notice
- 970: Determination of Non-Significance
- 980: Determination of Significance and Scoping Notice (DS)
- 985: Notice of Assumption of Lead Agency Status
- 990: Notice of Action

B. In addition to the definitions contained in WAC 197-11-700 through WAC 197-11-799, when used in these policies and procedures the following terms shall have the following meanings, unless the context indicates otherwise:

SEPA Rules. "SEPA Rules" means Chapter 197-11 WAC.

### **155.3 Responsible Official Designation and Responsibilities**

A. For all proposals for which NWCAA is the lead agency, the responsible official shall be the Control Officer of NWCAA or the NWCAA employee designated by the Control Officer.

B. For all proposals for which NWCAA is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to "NWCAA," the "lead agency," or "responsible official" by these policies and procedures.

C. NWCAA shall retain all documents required by these policies and procedures and make them available in accordance with applicable law.

### **155.4 Lead Agency Determination and Responsibilities**

A. When the NWCAA receives an application for or initiates a proposal that involves a nonexempt action, the NWCAA shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the NWCAA is aware that another agency is in the process of determining the lead agency. When the NWCAA is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

B. When NWCAA is not the lead agency for a proposal, it shall use and consider, as appropriate, the environmental documents of the lead agency in making decisions on the proposal. NWCAA shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Agency may conduct supplemental environmental review under WAC 197-11-600.

C. If NWCAA receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination and take such action as authorized by the SEPA Rules.

D. NWCAA may make agreements as to lead agency status or shared lead agency duties for a proposal as described in WAC 197-11-942 and 197-11-944.

E. When making a lead agency determination for a private project, NWCAA shall require sufficient information from the applicant to identify which other agencies (if any) have jurisdiction over the proposal.

### **155.5. Time Limits and Other Considerations Applicable to SEPA Rules**

A. For nonexempt proposals, the DNS, FEIS, and/or such other environmental documentation as the responsible

official deems appropriate shall accompany NWCAA's staff recommendation to any appropriate advisory body.

### **155.6 Use of Exemptions**

A. When NWCAA receives an application for a permit or, in the case of governmental proposals, NWCAA initiates the proposal, NWCAA shall determine whether the permit and/or the proposal is exempt. NWCAA's determination that a permit or proposal is exempt shall be final and not subject to administrative review. If a permit or proposal is exempt, none of the procedural requirements of these policies and procedures apply to the proposal. NWCAA shall not require completion of an environmental checklist for an exempt permit or proposal.

B. In determining whether or not a proposal is exempt, NWCAA shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, NWCAA shall determine the lead agency, even if the license application that triggers NWCAA's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, NWCAA may authorize exempt actions prior to compliance with the procedural requirements of these policies and procedures, except that:

1. NWCAA shall not give authorization for:
  - a) Any nonexempt action;
  - b) Any action that would have an adverse environmental impact; or
  - c) Any action that would limit the choice of alternatives.
2. NWCAA may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and
3. NWCAA may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

### **155.7 Environmental Checklist**

A. A completed environmental checklist (or a copy) shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in these policies and procedures; notwithstanding the preceding, a checklist is not needed if NWCAA and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The environmental checklist shall be in the form provided in WAC 197-11-960, except that Section B.2.a. Air, of the checklist shall state: "What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke, greenhouse gases) during construction and when the project is completed? If any, generally describe and give approximate quantities, if known." As used throughout these policies and procedures, environmental checklist means the environmental checklist required by these policies and procedures.

B. NWCAA shall use the environmental checklist to determine the lead agency and, if NWCAA is the lead agency, for determining the responsible official and for making the threshold determination.

C. For private proposals, NWCAA will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, NWCAA shall complete the environmental checklist. NWCAA may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

1. NWCAA has technical information on a question or questions that is unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

### 155.8 Mitigated DNS

A. As provided in these policies and procedures and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. "Early notice" means NWCAA's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal. The request must:

1. Follow submission of a complete permit application and environmental checklist for a nonexempt proposal for which NWCAA is lead agency; and
2. Precede NWCAA's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within 30 working days. The response shall:

1. Be written;
2. State whether NWCAA currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading NWCAA to consider a DS; and
3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, NWCAA should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, NWCAA shall base its threshold determination on the changed or clarified proposal and shall make the determination within 15 days of receiving the changed or clarified proposal:

1. If NWCAA indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, NWCAA shall issue and circulate a DNS under WAC 197-11-340(2).
2. If NWCAA indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, NWCAA shall make the threshold determination, issuing a DNS or DS as appropriate.

3. The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific.

4. Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to NWCAA staff reports, studies, or other documents.

F. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice.

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by NWCAA.

H. If NWCAA's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, NWCAA should evaluate the threshold determination to ensure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).

I. NWCAA's early notice under Section 155.8 C above shall not be construed as determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind NWCAA to consider the clarifications or changes in its threshold determination.

### 155.9 Preparation of EIS—Additional Considerations

A. Preparation of a draft and final EIS (DEIS and FEIS) and draft and final supplemental EIS (SEIS) is the responsibility of the responsible official. Before NWCAA issues an EIS, the responsible official shall be satisfied that it complies with these policies and procedures and Chapter 197-11 WAC.

B. The DEIS and FEIS or draft and final SEIS may be prepared by NWCAA, by outside consultants selected by NWCAA, or by such other person as NWCAA may so direct consistent with the SEPA Rules. The NWCAA retains sole authority to select persons or firms to author, co-author, provide special services, or otherwise participate in preparing required environmental documents. If the NWCAA requires an EIS for a proposal and determines that someone other than the NWCAA will prepare the EIS, the responsible official shall notify the applicant after completion of the threshold determination. The responsible official shall also notify the applicant of the NWCAA's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. NWCAA may require an applicant to provide information NWCAA does not possess, including specific investigations or research. However, the applicant may not be required to supply information that is not required under these policies and procedures or that is being requested from another agency. (This does not apply to information NWCAA may request under other authority.) Additional information may be required as set forth in WAC 197-11-100.

### 155.10 Additional Elements To Be Covered In An EIS

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the

criteria for threshold determination or perform any other function or purpose under these policies and procedures:

- A. Economy
- B. Social policy analysis
- C. Cost-benefit analysis

#### 155.11 Public Notice

A. Whenever the NWCAA issues a DNS under WAC 197-11-340(b) or a DS under WAC 197-11-360(c), the NWCAA shall give public notice as follows:

1. If public notice is required for a nonexempt permit or decision document, the notice shall state whether a DS or DNS has been issued and when comments are due.

2. If no public notice is required for the permit or approval, the NWCAA shall give notice of the DNS or DS by:

a) Written or electronic (email) notice to public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered, and

b) Posting notice on the NWCAA website.

3. Whenever the NWCAA issues a DS under WAC 197-11-360(3), the NWCAA shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

B. Whenever the NWCAA issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt permit or decision document; and at least one of the following methods:

2. Posting the property, for site-specific proposals;

3. Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

4. Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered;

5. Notifying the news media;

6. Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;

7. Publishing notice in NWCAA newsletters and/or sending notice to NWCAA mailing lists (general lists or specific lists for proposals or subject areas); and/or

8. Posting notice on the NWCAA website.

C. Whenever possible, the NWCAA shall integrate the public notice required under these policies and procedures with existing notice procedures for the NWCAA's nonexempt permit(s) or approval(s) required for the proposal.

D. The NWCAA may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

#### 155.12 Designation of Official to Perform Consulted Agency Responsibilities for NWCAA

A. The responsible official shall be responsible for the preparation of written comments for NWCAA in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The responsible official shall be responsible for the NWCAA's compliance with WAC 197-11-550 whenever the NWCAA is a consulted agency. The responsible official is

authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from the NWCAA. If the nature of the proposal is such that it involves significant impacts on NWCAA's facilities or property, or will require a significant amount of time to provide the information requested to the lead agency, NWCAA may request that the lead agency impose fees upon the applicant to cover the costs of NWCAA's SEPA compliance.

#### 155.13 SEPA Substantive Authority

A. The policies and goals set forth in this ordinance are supplementary to those in NWCAA's existing authorities.

B. NWCAA may attach conditions to a permit or approval for a proposal so long as the NWCAA determines that:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance; and

2. Such conditions are in writing; and

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

4. NWCAA has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in subsections D through F of this section and cited in the permit or other decision document.

C. The NWCAA may deny a permit or approval for a proposal on the basis of SEPA so long as the NWCAA determines that:

1. The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental EIS prepared pursuant to these policies and procedures; and

2. Reasonable mitigation measures are insufficient to mitigate the identified impact.

3. The denial is based on one or more policies identified in subsections D through F of this section and identified in writing in the decision document.

D. NWCAA designates and adopts by reference the following policies, plans, rules, and regulations as the potential bases for NWCAA's exercise of substantive authority under SEPA, pursuant to this section:

1. NWCAA shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b) Ensure for all people of Washington, safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d) Preserve important historic, cultural, and natural aspects of our national heritage;

e) Maintain, wherever possible, an environment that supports diversity and variety of individual choice;

f) Achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. NWCAA recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

E. NWCAA adopts by reference the policies in the following laws and NWCAA resolutions, regulations, and plans:

1. Federal and state Clean Air Acts, and regulations adopted thereunder.

2. The Regulation of the Northwest Clean Air Agency

3. Resolutions adopted by NWCAA Board of Directors.

4. Maintenance plans.

5. Washington State Implementation Plan.

F. NWCAA establishes the following additional policies:

1. Air quality

a) Policy Background

(i) Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life.

(ii) NWCAA is responsible for monitoring air quality in the three-county area, setting standards, and regulating certain development activities with the objective of meeting all applicable air quality standards.

(iii) Federal, state, and regional regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts.

b) Policies

(i) To minimize or prevent adverse air quality impacts.

(ii) To secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, seek public participation in policy planning and implementation, promote the economic and social development of the area within our jurisdiction, and facilitate the enjoyment of the natural attractions of the Puget Sound area.

(iii) To eliminate emissions of ozone-depleting chlorofluorocarbons, in the interests of national and global environmental protection; to consider energy efficiency and conservation to reduce greenhouse gases and in addition, to recognize other existing relevant regulatory requirements.

(iv) To reduce woodstove emissions by educating the public about the effects of woodstove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from woodstoves pursuant to standards adopted by State and Federal Agencies; and to encourage replacing uncertified woodstoves with cleaner sources of heat.

(v) To reduce outdoor burning to the greatest extent practical.

(vi) To develop and adopt strategies for effectively reducing or eliminating impacts from toxic air contaminants.

(vii) To control volatile organic compound (VOC) emissions in order to meet National Ambient Air Quality Standard for ozone.

(viii) If the responsible official makes a written finding that the applicable federal, state, and/or regional regulations did not anticipate or are inadequate to address the particular impact(s) of a project, the responsible official may condition or deny the proposal to mitigate its adverse impacts.

2. Land Use

a) Policy Background

(i) Adverse land use impacts may result when a proposed project or land use policy includes uses that may be consistent with applicable zoning requirements but inconsistent with air quality objectives or regulations.

(ii) Adverse cumulative impacts may result when particular land uses permitted under the zoning code occur in an area to such an extent that they expose sensitive populations to air quality related health and environmental adverse impacts.

b) Policies

(i) To ensure that proposed uses in projects are reasonably compatible with surrounding uses and are consistent with applicable air quality regulations.

(ii) To reduce regional air pollution emissions associated with land uses by promoting clean alternative forms of domestic use fuels, including natural gas, in new single and multifamily housing developments within urban growth areas. In addition, to discourage wood as a source of heat for residential development in low-lying areas susceptible to pollution accumulations.

(iii) To encourage municipal curbside solid and compostable waste collection services at reasonable costs.

3. Transportation

a) Policy Background

(i) Excessive traffic can adversely affect regional air quality.

(ii) Substantial traffic volumes associated with major projects may adversely impact air quality in surrounding areas.

b) Policies

(i) To minimize or prevent adverse traffic impacts that would undermine the air quality of a neighborhood or surrounding areas.

(ii) To promote transportation demand and systems management actions designed to reduce vehicle emissions by reducing the use of single occupancy vehicles, reducing traffic congestion, and increasing public transportation services.

(iii) To encourage integrating land use and transportation planning.

(iv) To emphasize the importance of air quality conformity determinations required for proposed transportation plans, programs, and projects.

(v) To pursue and support alternative and clean fuels projects and programs.

(vi) To promote and support land use plans and projects designed to reduce vehicle emissions by reducing the use of single occupant vehicles, number of vehicle miles traveled, and traffic congestion; and supporting the use of public transportation.



(vii) In determining the necessary air quality impact mitigation, the responsible official will examine the mitigation proposed by the local jurisdiction.

#### 4. Cumulative Effects

a) The analysis of cumulative effects shall include a reasonable assessment of:

(i) The capacity of natural systems, such as air, water, light, and land, to absorb the direct and reasonably anticipated indirect impacts of the proposal, and

(ii) The demand upon facilities, services, and natural systems of present, simultaneous, and known future development in the area of the project or action.

b) An action or project may be conditioned or denied to lessen or eliminate its cumulative effects on the environment:

(i) When considered together with prior, simultaneous, or induced future development; or

(ii) When, taking into account known future development under established zoning or other regulations, it is determined that a project will use more than its share of present and planned facilities, services, and natural systems.

#### 155.14 Administrative Appeals

A. NWCAA hereby eliminates, pursuant to WAC 197-11-680(2), appeals to its legislative body of determinations relating to SEPA.; and

B. NWCAA hereby elects, pursuant to WAC 197-11-680(3), not to provide for administrative appeals of determinations relating to SEPA.

#### 155.15 Notice/Statue of Limitations

A. NWCAA, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the NWCAA, the city clerk or county auditor, applicant, or proponent pursuant to RCW 43.21C.080.

#### 155.16 Fees

A. In addition to the fees set forth in Section 324 of the NWCAA Regulation, the following fees apply:

1. Threshold Determination - NWCAA may contract directly with a consultant for preparation of an environmental checklist or other information needed for NWCAA to make a threshold determination, and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs and expenses. In addition, NWCAA may charge a calculated fee from any applicant to cover the costs incurred by NWCAA in preparing an environmental checklist or other information needed for NWCAA to make a threshold determination.

#### 2. Environmental Impact Statement

a) When NWCAA is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of NWCAA, NWCAA may charge and collect a reasonable fee from any applicant to cover costs incurred by NWCAA in preparing the EIS.

b) The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation;

the applicant shall post bond or otherwise ensure payment of such costs.

c) The responsible official may determine that NWCAA will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than NWCAA and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs.

d) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under Section 155.16 A 1, and 2 of these policies and procedures that remain after incurred costs are paid.

e) NWCAA may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of these policies and procedures relating to the applicant's proposal.

f) NWCAA shall not collect a fee for performing its duties as a consulted agency, except as provided in WAC 197-11-570.

g) NWCAA may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.17 RCW.

#### 155.17 Severability

A. If any provision of these policies and procedures or their application to any person or circumstance is held invalid, the remainder of these policies and procedures, or the application of such invalid provision to other persons or circumstances, shall not be affected.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

### WSR 10-09-020

#### PROPOSED RULES

#### WASHINGTON STATE LOTTERY

[Filed April 13, 2010, 9:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-014.

Title of Rule and Other Identifying Information: WAC 315-04-095(4) Retailer credit criteria, describes credit ratings and significant incidents as these pertain to a lottery retailers ability to be licensed. The proposed rule change eliminates the word "any" significant incident to simply "significant incident," then describing what may be a significant incident.

Hearing Location(s): Washington's Lottery, 814 4th Avenue, Olympia, WA 98506, on May 25, 2010, at 0900.

Date of Intended Adoption: June 22, 2010.

Submit Written Comments to: Jana Jones, P.O. Box 43000, Olympia, WA 98506, e-mail jjones@walottery.com, fax (360) 586-1039, by May 20, 2010.

Assistance for Persons with Disabilities: Contact Debbie Robinson by May 20, 2010, TTY (360) 586-0933 or (360) 664-4815.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed changes to the WAC will enable the lottery director to consider credit

worthiness for lottery retailer license applicants by a more specific definition of significant incident. The director will be able to determine which credit history significant incidents prohibit lottery retailer licensing, rather than the current language requirement that all significant incidents create a bar.

Reasons Supporting Proposal: The current language requires that potential corporate licensees be denied a license if there are three significant incidents on its credit report. Some corporations may have minor incidents that are nevertheless defined as significant. The change in language will allow for the directors discretion in determining qualification under the credit criteria.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Washington state lottery commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jana Jones, Washington's Lottery, (360) 664-4833; Implementation: Washington's Lottery, (360) 664-; and Enforcement: Len Brudvik, Washington's Lottery, (360) 664-4742.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The only business allowed by law to sell lottery products are existing licensed lottery retailers.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed WAC changes do not give rise to a cost-benefit analysis.

April 13, 2010  
Jana L. Jones  
Director of  
Legal Services

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

**WAC 315-04-095 Retailer credit criteria.** (1) The director shall deny a lottery retailer license to any applicant whose credit is found to be poor.

(2) The director may grant a lottery retailer license to an applicant whose credit is rated as marginal or minimum as defined in this section. Provided, the director shall require:

(a) Applicants whose credit is rated as marginal as defined in this section to obtain a surety bond or savings certificate under terms and conditions established by the director prior to issuance of the license. Such surety bond must be secured from a company licensed to do business in the state of Washington. The bond or certificate shall be in the amount of three thousand five hundred dollars unless the director determines a higher amount is required.

(b) Applicants whose credit is rated as minimum as defined in this section may be required to obtain a surety bond or post cash in lieu of a bond under terms and conditions established by the director or submit three letters of credit to the lottery prior to issuance of ~~((the))~~ a lottery retailer license. Such surety bond must be secured from a company licensed to do business in the state of Washington. The bond or cash shall be in the amount of three thousand five hundred dollars

unless the director determines a higher amount is required, based on sales volume and financial solvency of the retailer.

(3) In the event the retailer's credit is rated as poor or marginal subsequent to the issuance of the license the director may:

(a) Revoke or suspend a retailer's license; and/or

(b) Require such a retailer to secure a surety bond from a company licensed to do business in the state of Washington or post a savings certificate under terms and conditions established by the director. The surety bond or saving certificate shall be in the amount of three thousand five hundred dollars unless the director determines, based on sales volume and financial solvency of the retailer, a higher amount is required.

(4) Credit rating is defined as the ability to meet financial obligations when they become due. It includes current reporting accounts payable and public financial record information including, but not limited to, court records, other public records and reports from credit bureaus or other credit reporting agencies up to three years prior to the lottery's credit check request. A significant incident ~~((shall be defined as public financial record information which))~~ may include ~~((s any))~~ a lien, judgment, bankruptcy, involuntary collection action or any similar incident which reflects on the individual's willingness and ability to pay creditors. A numerical rating of "one" represents excellent credit. A numerical rating of "nine" represents involuntary collection.

(a) A "poor" credit rating indicates public record showing three or more significant incidents within the past three years.

(b) A "marginal" credit rating indicates public record information showing one or more significant incidents within the past three years.

(c) A "minimum" credit rating indicates the information is insufficient for evaluation.

(d) An "acceptable" credit rating indicates that there have been no significant incidents in the public record within the past three years. Provided, at least three accounts must be evaluated in order to receive an "acceptable" rating.

(5) Credit rating checks shall be conducted as follows:

(a) Corporation business credit ratings shall be checked. Personal credit ratings of the corporate officers and owners of ten percent or more equity in the corporation may also be checked.

(b) Sole proprietors and partnership business credit ratings shall be checked. Personal credit ratings of:

(i) The sole proprietor and his or her spouse; or

(ii) All partners and their spouses shall also be checked.

(c) Findings shall be applied in accordance with subsections (1), (2) and (3) of this section.

**WSR 10-09-026**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed April 13, 2010, 12:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-040.

Title of Rule and Other Identifying Information: WAC 392-121-136 Limitation of enrollment counts.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Wanamaker Conference Room, Olympia, WA, on May 27, 2010, at 10:30 a.m.

Date of Intended Adoption: May 27, 2010.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by May 26, 2010.

Assistance for Persons with Disabilities: Contact Kristin Collins by May 26, 2010, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing two changes to this WAC.

1. This proposed change would establish the basis of claiming summer school enrollment in skill centers that would align better with the nonmonthly schedule that skill centers programs are offered during the summer.

2. This proposed new rule change would limit a student's enrollment to a 2.0 FTE.

Reasons Supporting Proposal: 1. The current rule allows only for claiming students on the first school day of each summer month. Skill center programs are offered in short sessions that do not align with the monthly structure encompassed in this current rule. WAC 392-121-139 (1)(c) limits basic education and skill center enrollment to a 1.6 FTE.

2. WAC 392-121-139 (1)(c) limits basic education and skill center enrollment to a 1.6 FTE. WAC 392-169-057(1) speaks to the limitation between running start and basic education enrollment. However, there is no rule in place that addresses limitation between the three programs. Potentially, a student could enroll for the maximum allowed hours (13) and be counted as a 2.6 FTE. This rule change closes this unintended gap.

Statutory Authority for Adoption: RCW 28A.150.-290(1).

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

Name of Proponent: Office of the superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capital Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: Calvin W. Brodie, Old Capital Building, 600 South Washington, Olympia, WA, (360) 725-6301; Enforcement: Shawn Lewis, Old Capital Building, 600 South Washington, Olympia, WA, (360) 725-6292.

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

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

April 13, 2010  
Randy Dorn  
State Superintendent

AMENDATORY SECTION (Amending WSR 09-01-172, filed 12/23/08, effective 1/23/09)

**WAC 392-121-136 Limitation on enrollment counts.**

Enrollment counts pursuant to WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the ~~((first school day of July of each year))~~ aggregate of enrolled hours based upon the fourth day of each summer session. Each district operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term(s) ~~((based upon the July enrollment data))~~ subject to the limitation in (c) of this subsection.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments and is limited to an overall maximum 2.0 FTE.

(c) Subject to (b) of this subsection, a student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student.

~~((A))~~ Each student ~~((can))~~ may be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment and a maximum of a 1.0 full-time equivalent for the student's high school enrollment subject to the overall 1.6 FTE maximum.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old preschool student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as part-time on Form SPI E-672 shall not be reported by a school district for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts for basic education and on Form SPI E-672 must not exceed one full-time equivalent.

(6) Districts providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim up to an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

**WSR 10-09-034**  
**PROPOSED RULES**  
**TRANSPORTATION IMPROVEMENT BOARD**

[Filed April 14, 2010, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-20-045.

Title of Rule and Other Identifying Information: Amending chapters 479-10 and 479-12 WAC to add language regarding small city matching funds provided by the transportation improvement board for small city projects.

Hearing Location(s): The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on June 25, 2010, at 9:00 a.m.

Date of Intended Adoption: June 25, 2010.

Submit Written Comments to: Eileen Bushman, P.O. Box 40901, Olympia, WA 98504-0901, e-mail eileenb@tib.wa.gov, fax (360) 586-1165, by June 11, 2010.

Assistance for Persons with Disabilities: Contact Eileen Bushman by June 4, 2010, (360) 586-1146.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To define and provide criteria for small cities to receive matching funds from the transportation improvement board. Chapter 47.26 RCW finds that it is in the state's interest to support the economic vitality of all cities and towns, recognizing that those cities and towns with a population of less than five thousand are unable to fully maintain and preserve their street and sidewalk system.

Reasons Supporting Proposal: The new language to chapters 479-10 and 479-12 WAC would establish the principles under which small cities would receive matching funds and provide rules for small cities to receive the necessary funding to repair and maintain their infrastructure.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Statute Being Implemented: RCW 47.26.345 and 47.26.340.

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

Name of Proponent: Washington state transportation improvement board, governmental.

Name of Agency Personnel Responsible for Drafting: Rhonda Reinke, P.O. Box 40901, Olympia, WA 98504-0901, (360) 586-1140; Implementation and Enforcement: Stevan Gorcester, P.O. Box 40901, Olympia, WA 98504-0901, (360) 586-1139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Customers are local government entities.

A cost-benefit analysis is not required under RCW 34.05.328. Not required under RCW 34.05.328(5).

April 14, 2010  
Stevan Gorcester  
Executive Director

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

**WAC 479-10-011 Programs funded from the small city pavement preservation and sidewalk account.** The

small city pavement preservation and sidewalk account funds ~~((both the))~~;

(1) Small city preservation program and ~~((the))~~ if funds are available, for use on a project-by-project basis for the small cities to match federal funding provided for local government federal aid of transportation, on a first come/first served basis; and

(2) City hardship assistance program.

NEW SECTION

**WAC 479-10-170 Small city match funding eligibility and application.** Cities may request matching funds for projects that meet TIB eligibility requirements for small city preservation program funding as described in WAC 479-10-120 and 479-10-121. A TIB funding application form must be submitted to apply for match funding.

NEW SECTION

**WAC 479-10-171 Restriction on use of small city match funding.** Match funds are only for transportation projects funded through federal transportation grants. All other local sources must be sought before applying for match funds from TIB.

NEW SECTION

**WAC 479-10-172 Small city match funding priority.** If funds remain after small city preservation program projects are funded, match funds may be committed to eligible projects. The priority for funding is in the order in which the applications are received until the available funds are fully allocated.

NEW SECTION

**WAC 479-10-173 If small city match funding is fully allocated.** If an eligible application is received after all of the funding is allocated, the local agency may seek board approval for funding at the next scheduled board meeting from the notice of denial from TIB staff. The notice of denial may be in the form of an e-mail or letter.

NEW SECTION

**WAC 479-10-174 Small city match funding increases.** Increases in match funding for chosen projects may be made within the executive director's authority in accordance with WAC 479-01-060.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-12-011 Programs funded from the urban arterial trust account.** The urban arterial trust account funds the following programs:

- (1) The urban arterial program;
- (2) The small city arterial program(~~((and))~~);
  - (a) Grants; and
  - (b) Match funding.

- (3) The sidewalk programs:  
 (a) Urban sidewalk program; and  
 (b) Small city sidewalk program.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-12-131 Award criteria for the urban arterial program.** The board establishes the following criteria for use in evaluating urban arterial program grant applications:

- (1) Safety improvements - addresses accident reduction, eliminates roadway hazards, and corrects roadway deficiencies.
- (2) Mobility improvements - improves level of service, improves access to generators, and connects urban street networks.
- (3) Pavement condition - replaces or rehabilitates street surfaces and structural deficiencies.
- (4) ~~((Mode accessibility – provides additional high occupancy vehicle lanes, bus volume, or nonmotorized facilities.))~~ Sustainability - improves mode accessibility, reduces or eliminates water detention, and encourages energy reduction technology and use of recycled materials.
- (5) Local support - demonstrates initiative to achieve full funding and project completion.

NEW SECTION

**WAC 479-12-215 Small city match funding allocation.** Within the small city arterial program, ten percent of the annual allocation may be portioned as an amount available for small cities to match federal funding provided for local government federal aid of transportation, on a first come/first served basis.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-12-231 Award criteria for the small city arterial program.** The board establishes the following criteria for use in evaluating small city arterial program grant applications:

- (1) Safety improvement - projects that address accident reduction, hazard elimination, and roadway deficiencies.
- (2) Pavement condition - replaces or rehabilitates street surfaces and structural deficiencies.
- (3) Local support - projects that improve network development and address community needs.
- (4) Sustainability - improves network development of street system, reduces or eliminates water detention, and encourages energy reduction technology and use of recycled materials.

NEW SECTION

**WAC 479-12-270 Small city match funding eligibility and application.** Cities with a population under five thousand may request matching funds for projects that meet TIB eligibility requirements for the small city arterial program

described under WAC 479-12-221. A TIB funding application form must be submitted to apply for match funding.

NEW SECTION

**WAC 479-12-271 Restriction on use of small city match funding.** Match funds are only for transportation projects funded through federal transportation grants. All other local funding sources must be sought before applying for match funds from TIB.

NEW SECTION

**WAC 479-12-272 Small city match funding priority.** The priority for funding match applications is the order in which the applications are received until the funds are fully allocated.

NEW SECTION

**WAC 479-12-273 If small city match funding is fully allocated.** If an eligible application is received after all of the apportioned funding is committed, TIB may use small city preservation program funds as described in WAC 479-10-011 and 479-10-174. If all SCAP and SCPP funds are committed, the local agency may present their project to the board at the next scheduled board meeting after receiving the notice of denial from TIB staff. The notice of denial may be in the form of an e-mail or letter.

NEW SECTION

**WAC 479-12-274 Small city match funding increases.** Increases in match funding for chosen projects may be made within the executive director's authority in accordance with WAC 479-01-060.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

**WAC 479-12-431 Award criteria for the sidewalk program.** The board establishes the following criteria for use in evaluating sidewalk program grant applications for both urban and small city sidewalk projects:

- (1) Safety improvement - projects that address hazard mitigation and accident reduction.
- (2) Pedestrian access - projects that improve or provide access to facilities including:
  - (a) Schools;
  - (b) Public buildings;
  - (c) Central business districts;
  - (d) Medical facilities;
  - (e) Activity centers;
  - (f) High density housing (including senior housing);
  - (g) Transit facilities;
  - (h) Completes or extends existing sidewalks.
- (3) Local support - addresses local needs and is supported by the local community.
- (4) Sustainability - improves sidewalk width, provides hardscaping and appropriate plantings, addresses low impact

development or natural drainage practices, and encourages previous surface use.

**WSR 10-09-036**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed April 14, 2010, 12:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-149.

Title of Rule and Other Identifying Information: Chapter 196-26A WAC, Registered professional engineers and land surveyor fees.

Hearing Location(s): Comfort Inn & Suites, 19333 International Boulevard, Room 243, SeaTac, WA 98188, on May 27, 2010, at 6:00 p.m.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by May 25, 2010.

Assistance for Persons with Disabilities: Contact Kim King, administrative assistant, by May 24, 2010, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to chapter 196-26A WAC are necessary to make a reduction in renewal fees charged to licensees. These adjustments are being made to assure revenue collections are consistent with expenditures and do not result in an over collection.

Reasons Supporting Proposal: This proposal will reduce the renewal fees that individuals pay the state thus making their access to state services less burdensome and their cost to do business lower. The limited suspension (two years) will enable the department and the program to more quickly respond to changing economic impacts.

Statutory Authority for Adoption: RCW 18.43.080.

Statute Being Implemented: Chapter 18.43 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no negative economic impact to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. There is no negative economic impact to licensees.

April 14, 2010  
 Walt Fahrer  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-06-019, filed 2/21/06, effective 3/24/06)

**WAC 196-26A-110 Suspended fees.** Effective ((July 1, 2006)) August 1, 2010, the following fees will have the listed portions suspended from collection until July ((1, 2008)) 31, 2012.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
<b>License Renewals:</b>			
Engineer	\$116	<del>16</del> <u>40</u>	<del>100</del> <u>76</u>
Engineer late renewal penalty	\$174	<del>24</del> <u>60</u>	<del>150</del> <u>114</u>
Surveyor	\$116	<del>16</del> <u>40</u>	<del>100</del> <u>76</u>
Surveyor late renewal penalty	\$174	<del>24</del> <u>60</u>	<del>150</del> <u>114</u>

**WSR 10-09-037**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed April 14, 2010, 1:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-21-068.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-294 [181-82A-204], removes requirement for contracted employment experience from rules governing teachers seeking additional endorsements.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive S.W., Olympia, WA 98502, on July 21, 2010, at 8:30 a.m.

Date of Intended Adoption: July 21, 2010.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 14, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by July 14, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current requirement for adding endorsements is to demonstrate ninety days experience in the classroom that is "contracted." This language is a barrier to some teachers who have experience, but not a contract with the district. Amendment removes the word "contracted" from the rule.

Reasons Supporting Proposal: Unintended impact from economic conditions and statutory changes for professional certification.

Statutory Authority for Adoption: RCW 28A.410.210.

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: Amends WAC 181-79A-204 [181-82A-204].

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is not required under RCW 34.05.328. No cost impact. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

April 14, 2010  
David Brenna  
Legislative and  
Policy Coordinator

**AMENDATORY SECTION** (Amending WSR 09-12-057 and 09-22-052, filed 5/28/09 and 10/29/09, effective 6/28/09 and 11/29/09)

**WAC 181-82A-204 Endorsement requirements.** (1) Candidates completing endorsements required to obtain a residency certificate, shall complete college/university teacher preparation programs approved by the professional educator standards board pursuant to chapter 181-78A WAC, which include methodology (see WAC 181-78A-264(5)) and field experience/internship (see WAC 181-78A-264(6)) and pursuant to endorsement program approval requirements in this chapter.

(2) In order to add an additional endorsement, the candidate shall:

(a) Have completed a state-approved endorsement program which includes methodology (see WAC 181-78A-264(5)) and addresses all endorsement-specific competencies adopted by the professional educator standards board and published by the superintendent of public instruction. The requirement for field experience shall be at the discretion of the college/university. Provided, that in cases where programs require a field experience/internship, the colleges/universities should make every attempt to allow the individual to complete field-based requirements for the endorsement within the confines of the individual's teaching schedule; or

(b) Achieve National Board certification in a Washington teaching endorsement area and hold a valid National Board certificate; or

(c) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought. The instructional methodology and content-related skills of the desired subject endorsement must be compatible with one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 1 endorsements adopted by the professional educator standards board and published by the superintendent of public instruction.

The applicant must document a minimum of ninety days teaching experience as a ((~~contracted~~)) teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, in the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 1 endorsement; or

(d)(i) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought and successfully meet all eligibility criteria and process requirements for Pathway 2 endorsements as adopted by the professional educator standards board and published by the superintendent of public instruction. The desired subject endorsement must be identified as a Pathway 2 endorsement for one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 2 endorsements adopted by the professional educator standards board and published by the superintendent of public instruction. The applicant must document a minimum of ninety days teaching experience as a ((~~contracted~~)) teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, in the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 2 endorsement.

The ninety day teaching requirement is waived per RCW 28A.660.045 for individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate and pursuing an endorsement in middle level mathematics or science.

(ii) Teacher preparation programs that offer Pathway 2 endorsement programs shall follow process steps as adopted by the professional educator standards board and published by the superintendent of public instruction to verify successful completion of the Pathway 2 process and to recommend adding the endorsement to the applicant's teacher certificate.

(3) Candidates from out-of-state shall be required to present verification that they completed a state-approved program (equivalent to a major) in a Washington endorsement area.

(4) Course work used to meet endorsement requirements must be completed through a regionally accredited college/university.

(5) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved endorsement program.

(6) Nothing within this chapter precludes a college or university from adopting additional requirements as conditions for recommendation, by such college or university, to the superintendent of public instruction for a particular subject area endorsement.

**WSR 10-09-047**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed April 15, 2010, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-080.

Title of Rule and Other Identifying Information: The community services division is proposing to amend WAC 388-444-0030 Work requirements for persons who are able-bodied[d] adults without dependents (ABAWDs), to extend the time limit dates for ABAWDs to September 2011 (the current ABAWD time limit will end September 30, 2010).

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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on May 25, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 26, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., May 25, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 11, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Extends the time limit of benefits for ABAWDs until September 30, 2011.

Reasons Supporting Proposal: The proposed amendments will implement requirements under C.F.R. 273.24 (F)(2) and FNS Administrative Notice 10-16.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.-120.

Rule is necessary because of federal law, American Recovery Investment Act 2009.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4895.

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.

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."

April 13, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-14-018, filed 6/22/09, effective 7/23/09)

**WAC 388-444-0030 Work requirements for persons who are able-bodied adults without dependents (ABAWDs).** (1) Able-bodied adults without dependents (ABAWDs) are age eighteen to fifty and have no dependents. They must, unless determined exempt, participate in specific employment and training activities to receive food assistance.

(2) Nonexempt ABAWDs who fail to participate may continue to receive food assistance until September 30, ((2010)) 2011.

(3) Beginning October 1, ((2010)) 2011, an ABAWD is not eligible to receive food assistance for more than three full months in a thirty-six month period, except as provided in WAC 388-444-0035, unless that person:

(a) Works at least twenty hours a week averaged monthly; or

(b) Participates in and complies with the requirements of a work program for twenty hours or more per week; or

(c) Participates in a workfare program as provided in WAC 388-444-0040.

(4) A work program is defined as a program under:

(a) The Job Training Partnership Act (JTPA);

(b) Section 236 of the Trade Act of 1974; or

(c) A state-approved employment and training program.

**WSR 10-09-051**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed April 15, 2010, 11:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-067.

Title of Rule and Other Identifying Information: WAC 415-02-500 Property division in dissolution orders and 415-02-720 What does the department charge for processing split payments?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on May 28, 2010, at 1:30 p.m.

Date of Intended Adoption: July 1, 2010.

Submit Written Comments to: Ken Goolsby, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail [rules@drs.wa.gov](mailto:rules@drs.wa.gov), fax (360) 753-5397, by 5:00 p.m. on May 28, 2010.

Assistance for Persons with Disabilities: Contact Ken Goolsby, rules coordinator, by May 20, 2010, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.



Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to remove the ongoing six dollar fee associated with property division obligation payments.

Reasons Supporting Proposal: The ongoing six dollar fee is being removed because the department charges seventy-five dollars for the first property division obligation payment and the ongoing fee has been determined to be unnecessary.

Statutory Authority for Adoption: RCW 41.50.050(5) and 41.50.680.

Statute Being Implemented: RCW 41.50.600 and 41.50.680.

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, Ken Goolsby, 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.

April 14, 2010  
Ken Goolsby  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-18-009, filed 8/24/06, effective 9/24/06)

**WAC 415-02-500 Property division in dissolution orders<sup>1</sup>.** This section applies to all retirement plans that the department administers. This section also directs you to additional sections as needed for your particular situation.

(1) **What can a court do?** A court can enter a dissolution order dividing your retirement account in either of the following ways:

(a) Awarding an interest<sup>2</sup> in your account to your ex-spouse by using WAC 415-02-510 or 415-02-530; or

(b) Splitting<sup>3</sup> your account into two separate accounts (one for you and one for your ex-spouse) by using WAC 415-02-520 or 415-02-540, but only if you are vested at the time the dissolution order is entered. "Vested" is defined in subsection (16) of this section.

(2) **Which section should I use?** Consult the following table for direction to the section to use in developing your property division dissolution order. Different sections are provided depending on whether your property division dissolution order is going to provide an interest to your ex-spouse or whether you are splitting your retirement account with your ex-spouse.

<b>If you are in this system and plan:</b>	<b>And the following is true:</b>	<b>Use this section:</b>
Any	You need general information and rules about drafting dissolution orders related to your retirement plan and system.	415-02-500
JRF, JRS, LEOFF Plan 1, and WSPRS Plan 1	You are drafting a dissolution order. (We recommend that you contact the department for assistance because some exceptions may apply.)	415-02-510
LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, and TRS Plan 1 or 2, WSPRS Plan 2	You are drafting a dissolution order that will be entered <b>before you are vested</b> ; or You are vested and you are drafting a dissolution order that awards an interest in your account to your ex-spouse.	415-02-510
	You <b>are</b> vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-520
PERS Plan 3, SERS Plan 3, and TRS Plan 3	You are drafting a dissolution order that will be entered <b>before you are vested</b> ; or You <b>are vested</b> and you are drafting a dissolution order that awards an interest in your account to your ex-spouse.	415-02-530
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-540
PERS Plan 2, SERS Plan 2, and TRS Plan 2	The department has already accepted your property division order, and you are considering a transfer to Plan 3.	415-02-550

(3) **What are the requirements for dissolution orders and amendments that provide for a property division of my retirement account?** The order must:

(a) Be entered by a court of competent jurisdiction and enforceable in Washington state;

(b) Be filed with the department within ninety days of the court's entry of the order;

(c) Establish the right of your ex-spouse to a portion of your retirement;

(d) Provide the name and date of birth of your ex-spouse;

(e) Incorporate the applicable language in this section and one of the following: WAC 415-02-510, 415-02-520, 415-02-530, or 415-02-540; and

(f) Indicate which WAC section was used in support of the order.

(4) **What else, besides a copy of the dissolution order, must my ex-spouse and I provide to the department?** You must provide addresses and Social Security numbers for both you and your ex-spouse before the department will honor a dissolution order or amendment. This information can be submitted in a cover letter, in another document, or by other means arranged with the department.

(5) **I belong to more than one retirement plan. Does the order have to be written any differently?** The order must include specific provisions for each plan.

(a) Example for providing an **interest** to an ex-spouse (RCW 41.50.670 and WAC 415-02-510): Paul belongs to both TRS Plan 2 and PERS Plan 3. His preretirement dissolution order gives an interest in his retirement accounts to his ex-spouse. The order should include the language provided in:

(i) WAC 415-02-510 to divide Paul's TRS Plan 2 monthly retirement allowance or accumulated contributions.

(ii) WAC 415-02-530 to divide Paul's PERS Plan 3 monthly retirement allowance and/or accumulated contributions.

(b) Example for **splitting** an account with an ex-spouse: Mary is vested in both TRS Plan 2 and PERS Plan 3. Her preretirement dissolution order provides for splitting her retirement accounts with her ex-spouse. The order should include the language provided in:

(i) WAC 415-02-520 for preretirement splits to divide Mary's TRS Plan 2 retirement account.

(ii) WAC 415-02-540 for preretirement splits to divide Mary's PERS Plan 3 monthly retirement allowance and/or defined contributions.

(6) **What happens if my ex-spouse misses the ninety-day deadline for filing a copy of the dissolution order with the department?**

(a) RCW 41.50.670 requires the "obligee" (ex-spouse) to file a copy of the dissolution order with the department within ninety days of the order's entry with the court of record.

(b) The department will accept an order after the ninety-day deadline but will not make retroactive payments or split your defined contribution account retroactively.

(7) **How will the department divide the "after-tax" and "tax-deferred" dollars in my retirement account between my ex-spouse and me?** Depending on your plan and how long you have been a member, your retirement account may include both "after-tax" and "tax-deferred" dollars. The department will divide the "after-tax" and "tax-deferred" dollars based on the amount(s) awarded to your ex-spouse, unless the dissolution order states otherwise.

Example: At the time of John's marriage dissolution, he had \$50,000 total contributions in his retirement account with \$20,000 in after-taxed dollars and \$30,000 in tax-deferred dollars. The dissolution order awards 50% of his accumulated contributions to his ex-

spouse, Susan. Therefore, the department will give Susan \$10,000 of after-tax dollars and \$15,000 of tax-deferred dollars.

(8) **If I am in a retirement plan that offers survivor options, can the court order me to name my ex-spouse as my survivor beneficiary?** Yes. To do so, the dissolution order must include the language in RCW 41.50.790(1).

(9) **Is there a minimum benefit amount that the department will pay to my ex-spouse if the property division dissolution order splits my retirement account with my ex-spouse?** The answer is different depending on if the department accepts the property division dissolution order **BEFORE** or **AFTER** you retire.

(a) **BEFORE** retirement split: Yes. If the court order splits your account with your ex-spouse, and your ex-spouse's monthly payment will be less than the minimum monthly dollar amount for your retirement plan, the department may make a lump sum payment instead of monthly payments. The lump sum payment will be equal to the present value of the monthly payments. The department will **NOT** make the lump sum payment until your ex-spouse meets the age requirement for a normal retirement for your system and plan.

(b) **AFTER** retirement split: No. The department will pay the amount specified in the dissolution order as the ex-spouse's monthly payment amount even if it is less than the minimum monthly dollar amount for your system and plan.

(10) **Is there a maximum payment amount that the department will pay to my ex-spouse?** Yes. A court may not order the department to pay more than seventy-five percent of your monthly retirement allowance to your ex-spouse. See RCW 41.50.670(4).

(11) **How much is the fee the department charges for making payments directly to my ex-spouse?** The ~~((department charges))~~ fee for making payment to your former spouse is seventy-five dollars ((for making the first disbursement and six dollars for each subsequent disbursement)). The ~~((department will divide the fees evenly between you and your ex-spouse))~~ fee will be divided evenly between you and your former spouse. See RCW 41.50.680.

(12) **What happens to my account if I return to retirement system membership?** Please contact the department for information if you are in this situation.

(13) **What language should the property division order use to divide my deferred compensation program (DCP) account?** Refer to WAC 415-501-495 or contact DCP for information about your DCP account and your marriage dissolution.

(14) **How do I contact the department for additional assistance?** Complete information is available in WAC 415-06-100 (How do I contact the department?).

(15) **Where can I find examples of completed property division dissolution orders?** Following are examples of the required language from the statutes and WAC sections that must be used in a dissolution order. The information in **bold italics** will be dictated by your own circumstances.

(a) **Example 1.** Jane Doe, a nonvested member of PERS Plan 2, and her husband, John Doe, decide to divorce. **WAC 415-02-510** governs dissolution orders of nonvested members of PERS Plan 2. Jane and John complete the paragraphs in RCW 41.50.670(2) and WAC 415-02-510(2) as follows:

**Defined Benefits:**  
RCW 41.50.670(2),  
paragraph two, and  
WAC 415-02-510(2)

If *Jane Doe* (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to *John Doe* (the obligee), *N/A* dollars from such payments or *a fraction where the numerator is equal to 24 (the number of months in which service credit was earned while the marital community was in existence), and the denominator is equal to the number of months of service credit earned by the obligor at the time of retirement X 50* percent of such payments.

If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

**Accumulated Contributions:**  
RCW 41.50.670(2),  
paragraph three, and  
WAC 415-02-510(2)

If *Jane Doe* (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to *John Doe* (the obligee) **\$5,700** dollars plus interest at the rate paid by the Department of Retirement Systems on member contributions. Such interest will accrue from the date of this order's entry with court of record.

(b) **Example 2:** Binh Nguyen (a TRS Plan 3 retiree) and his wife, Lan Nguyen, are obtaining a property division dissolution order that splits his retirement account. When he retired, Binh had selected Lan to receive survivor benefits. WAC 415-02-540 applies, and the couple completes the required paragraphs.

**Defined Benefits:**  
WAC 415-02-  
540(12)

The Department of Retirement Systems (department) shall create a **defined benefit account** for Lan Nguyen (ex-spouse) in the Teachers' Retirement System Plan 3 (name of retirement system and plan) and pay him or her **\$350** (amount) for his or her life. To pay for this benefit, Binh Nguyen's (member's) **monthly defined benefit** payment will be reduced for life. This provision shall become effective no more than 30 days after the department's acceptance of the order.

**Defined Contributions:**  
WAC 415-02-540(9)

The Department of Retirement Systems (department) shall split Binh Nguyen's (member's) **defined contribution account** in the Teachers' Retirement System Plan 3 (name of retirement system and plan) and create a separate account for Lan Nguyen (ex-spouse). The amount of **\$25,000** (amount) shall be transferred from Binh Nguyen's (member's) **defined contribution account** to Lan Nguyen's (ex-spouse's) new account. This provision shall become effective no more than 30 days after the department's acceptance of the order.

**(16) Terms used:**

- (a) Department's acceptance - The department's determination that a dissolution order fully complies with the department's requirements and with chapter 41.50 RCW.
- (b) Dissolution order - RCW 41.50.500.
- (c) Obligee - RCW 41.50.500(5).
- (d) Obligor - RCW 41.50.500(6).
- (e) Plan 3 - WAC 415-111-100.
- (f) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnotes for section:

<sup>1</sup> "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state. RCW 41.50.500(3) (2002).

<sup>2</sup> When a court awards an interest in your retirement account, the department is required to pay a portion

of your monthly retirement allowance or a portion of your contributions to your ex-spouse.

- 3 When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account has been established, your account and your ex-spouse's account are not tied in any way.

AMENDATORY SECTION (Amending WSR 04-04-040, filed 1/29/04, effective 3/1/04)

**WAC 415-02-720 What does the department charge for processing split payments?** This section applies whenever the department administers split payments for child support, mandatory benefit assignment orders (MBAOs), or other direct pay orders.

	Type	Amount	Statutory Authority
(1)	<b>Child support</b>	Ten dollars for the first disbursement and one dollar for each additional. Fees will be charged to the obligor.	RCW 26.18.110 (4); 26.23.060(9) and 74.20A.080(15)
(2)	<b>Mandatory assignment of retirement benefits (MBAO)</b>	Twenty-five dollars for the first disbursement and six dollars for each additional. Fees will be charged to the obligor.	RCW 41.50.600 (4)
(3)	<b>Property division obligations</b> (see also WAC 415-02-500 (11))	Seventy-five dollars ( <del>for the first disbursement and six dollars for each additional</del> ). Fee(s) will be divided equally between the obligor and obligee <u>and deducted from your first payment.</u>	RCW 41.50.680

**WSR 10-09-053**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Health and Recovery Services Administration)  
 [Filed April 16, 2010, 7:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-028.

Title of Rule and Other Identifying Information: WAC 388-475-0400 SSI-related medical—Vehicles excluded as resources.

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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on May 25, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 26, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., May 25, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 11, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending this rule regarding exclusion of vehicles as a resource for SSI-related medical eligibility, in order to comply with the federal rule change in 20 C.F.R. 416.1218. In 2005, federal legislation changed the rule regarding exclusions for vehicles for SSI-related clients by eliminating the \$5,000 fair market value vehicle exclusion.

Reasons Supporting Proposal: Compliance with federal regulations is required to continue to receive federal funding.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, and 74.09.500.

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: Catherine Fisher, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1357.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule change does not impact small businesses.

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

April 13, 2010  
 Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-09-003, filed 4/7/04, effective 6/1/04)

**WAC 388-475-0400 SSI-related medical—Vehicles excluded as resources.** (1) For SSI-related medical programs, a vehicle is defined as anything used for transporta-

tion. In addition to cars and trucks, a vehicle can include boats, snowmobiles, and animal-drawn vehicles.

(2) One vehicle is excluded regardless of its value, if it is used to provide transportation for the disabled individual or a member of the individual's household(~~(:~~

~~(a) For employment;~~

~~(b) For the treatment of a specific or regular medical problem;~~

~~(c) For transportation of or modified for operation by a handicapped person; or~~

~~(d) Because of climate, terrain, distance, or similar factors to perform essential daily activities)).~~

(3) ~~((If no vehicle is excluded under subsection (2), the department excludes up to five thousand dollars of the current fair market value of one vehicle as a resource. If the current fair market value of the vehicle exceeds five thousand dollars, the excess is counted toward the resource limit))~~ For an SSI-related institutional client with a community spouse, one vehicle is excluded regardless of its value or its use. See WAC 388-513-1350 (7)(b).

(4) A vehicle used as the client's primary residence is excluded as the home, and does not count as the one excluded vehicle under subsection (2) or (3).

(5) All other vehicles, except those excluded under WAC 388-475-0350 (11) through (14), are treated as nonliquid resources and the equity value is counted toward the resource limit.

**WSR 10-09-054**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed April 16, 2010, 7:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-06-061.

Title of Rule and Other Identifying Information: The community services division is proposing to amend WAC 388-408-0035 Who is in my assistance unit for Basic Food?, 388-489-0015 How long will my family receive transitional food assistance? and 388-489-0020 Am I required to report changes in my household's circumstances while on transitional food assistance?; and is proposing to establish new section WAC 388-489-0022 What happens if I reapply for Basic Food while receiving transitional food 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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on May 25, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 26, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS

RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 25, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 11, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments, and new section to chapter 388-489 WAC, will establish eligibility and certification requirements for transitional food assistance.

Reasons Supporting Proposal: The amendments will be consistent with federal regulations published on January 29, 2010, related to the Farm Security and Rural Investment Act of 2002.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.010, 74.08A.903.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.010, 74.08A.903.

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: Kim Chea, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4653.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have an economic impact on small businesses. The proposed rules affect client's eligibility for Washington Basic Food and transitional 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."

April 13, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-19-061, filed 9/16/05, effective 11/1/05)

**WAC 388-408-0035 Who is in my assistance unit for Basic Food?** (1) For Basic Food, a person must be in your assistance unit (AU) if they live in the same home as you and:

(a) Regularly buy food or prepare meals with you; or  
(b) You provide meals for them and they pay less than a reasonable amount for meals.

(2) If the following people live with you, they must be in your AU even if you do not usually buy or prepare food together:

(a) Your spouse;  
(b) Your parents if you are under age twenty-two (even if you are married);  
(c) Your children under age twenty-two;  
(d) The parent of a child who must be in your AU;

(e) A child under age eighteen who doesn't live with their parent unless the child:

- (i) Is emancipated;
- (ii) Gets a TANF grant in their own name; or
- (iii) Is not financially dependent on an adult in the AU because they get and have control of income of at least the TANF payment standard under WAC 388-478-0020(2) before taxes or other withholdings.

(3) If any of the people in subsections (1) or (2) already receive transitional food assistance under chapter 388-489 WAC, you can only receive benefits if they choose to reapply for Basic Food as described in WAC ((388-489-0020)) 388-489-0022.

(4) If you live in an institution where you may be eligible for Basic Food under WAC 388-408-0040, we decide who is in your AU as follows:

(a) If the facility is acting as your authorized representative under WAC 388-460-0015, we include you and anyone who must be in your AU under subsection (2) of this rule; or

(b) If you apply for benefits on your own, we include you, anyone who must be in your AU under subsection (2) of this rule, and other residents you choose to apply with.

(5) Anyone who must be in your AU under subsection (1) or (2) is an ineligible AU member if they:

(a) Are disqualified for an intentional program violation (IPV) under WAC 388-446-0015;

(b) Do not meet ABAWD work requirements under WAC 388-444-0030.

(c) Do not meet work requirements under WAC 388-444-0055;

(d) Do not provide a Social Security number under WAC 388-476-0005;

(e) Do not meet the citizenship or alien status requirements under chapter 388-424 WAC;

(f) Are fleeing a felony charge or violating a condition of parole or probation under WAC 388-442-0010.

(6) If your AU has an ineligible member:

(a) We count the ineligible member's income as part of your AU's income under WAC 388-450-0140;

(b) We count all the ineligible members resources to your AU; and

(c) We do not use the ineligible member to determine your AU's size for the maximum income amount or allotment under WAC 388-478-0060.

(7) If the following people live in the same home as you, you can choose if we include them in your AU:

(a) A permanently disabled person who is age sixty or over and cannot make their own meals if the total income of everyone else in the home (not counting the elderly and disabled person's spouse) is not more than the one hundred sixty-five percent standard under WAC 388-478-0060;

(b) A boarder. If you do not include a boarder in your AU, the boarder cannot get Basic Food benefits in a separate AU;

(c) A person placed in your home for foster care. If you do not include this person in your AU, they cannot get Basic Food benefits in a separate AU;

(d) Roomers; or

(e) Live-in attendants even if they buy or prepare food with you.

(8) If someone in your AU moves out of your home for at least a full issuance month, they are not eligible for benefits as a part of your AU, unless you receive transitional food assistance.

(9) For transitional food assistance, your TFA AU includes the people who were in your Basic Food AU for the last month you received:

(a) Temporary assistance for needy families;

(b) State family assistance; or

(c) Tribal TANF benefits.

(10) If someone received Basic Food or food stamps in another AU or another state, they cannot receive benefits in your AU for the same period of time with one exception. If you already received Basic Food, food stamp, or transitional food assistance benefits:

(a) In another state, you are not eligible for Basic Food for the period of time covered by the benefits you received from the other state; or

(b) In another AU, you are not eligible for Basic Food in a different AU for the same period of time;

(c) In another AU, but you left the AU to live in a shelter for battered women and children under WAC 388-408-0045, you may be eligible to receive benefits in a separate AU.

(11) The following people who live in your home are not members of your AU. If they are eligible for Basic Food, they may be a separate AU:

(a) Someone who usually buys and prepares food separately from your AU if they are not required to be in your AU; or

(b) Someone who lives in a separate residence.

(12) A student who is ineligible for Basic Food under WAC 388-482-0005 is not a member of your AU.

AMENDATORY SECTION (Amending WSR 05-19-060, filed 9/16/05, effective 11/1/05)

**WAC 388-489-0015 How long will my ((family)) household receive transitional food assistance?** If your Basic Food assistance unit is eligible for transitional food assistance according to WAC 388-489-0005, you will receive transitional food assistance for up to five months after your ((family)) household leaves temporary assistance for needy families.

(1) If you stopped getting temporary assistance for needy families from the department, you are eligible for transitional benefits beginning the month after your ((family)) household received their last grant.

(2) If you stopped receiving tribal TANF benefits, you are eligible for transitional benefits:

(a) With the next monthly issuance after we update your case to show you no longer have tribal TANF income, if the tribal TANF end date is the end of the current month or the end of a prior month; or

(b) On the first of the month following the tribal TANF end date, if the tribal TANF end date is the end of a future month.

(3) If necessary, we will extend or shorten your Basic Food assistance unit's current certification period to match the five-month transition period.

(4) You may choose to end your five-month transition period early by submitting an application for regular Basic Food under WAC (~~388-489-0020~~) 388-489-0022 or by asking us to terminate your benefits.

(5) We send you a notice before the end of your five-month transition period so you can reapply for regular Basic Food benefits and continue to receive benefits without interruption as described in WAC 388-434-0010.

(6) We may terminate your transitional food assistance early for the reasons stated in WAC 388-489-0025.

**AMENDATORY SECTION** (Amending WSR 05-19-060, filed 9/16/05, effective 11/1/05)

**WAC 388-489-0020 Am I required to report changes in my household's circumstances while on transitional food assistance?** (1) If you only receive transitional food assistance, you are not required to report any changes in your household circumstances.

(2) If you receive benefits from another cash or medical assistance program, you must meet the reporting requirements for the other program as required by WAC 388-418-0005. Except for changes listed under WAC 388-489-0025, the changes you report for the other program will not affect your (~~family's~~) household's eligibility for transitional food assistance.

(3) If your (~~family~~) household experiences a change in circumstances during your five-month transition period, and you think that you may be eligible for more food assistance, you may submit an application for the regular Basic Food program under WAC 388-489-0022. Examples of such changes include the loss of income by a person who gets transitional food assistance with you or adding a new person to your household.

~~((a) If you submit a new application, we will determine your eligibility for Basic Food and allow you to choose if you want to remain on transitional food assistance or receive regular Basic Food benefits.~~

~~(b) If you choose to go back on Basic Food and are found eligible, we will start your new benefit amount on the first day of the month after we receive your application for Basic Food. If you have already received transitional food assistance for this month and are eligible for more assistance on the Basic Food program, we will pay you the additional amount.)~~

**NEW SECTION**

**WAC 388-489-0022 What happens if I reapply for Basic Food while receiving transitional food assistance?**

(1) You can choose to reapply for Basic Food at any time during your TFA period. If you submit an application for Basic Food, we will:

(a) Interview you according to WAC 388-452-0005.

(b) Send you a letter if we need additional information and give you at least ten days to provide the information according to WAC 388-458-0020.

(c) Process your application within thirty days. We will keep your TFA active while your request for Basic Food is pending.

(d) Process your application according to WAC 388-434-0010 if your application was submitted in the last month of your TFA period.

(2) If you are eligible for Basic Food, we tell you the amount you will receive and allow you to choose if you want Basic Food or continue your TFA.

(3) If you choose to go back on Basic Food, we will start your new benefit amount on the first day of the month after we receive your application for Basic Food. If you already received transitional food assistance for this month and are eligible for:

(a) More assistance on Basic Food, we will pay you the additional amount.

(b) Less assistance on the Basic Food, you will have to pay back the additional amount.

(4) If you choose to go back on Basic Food and receive less assistance, we do not have to give you advance notice.

(5) If we are unable to approve your request for Basic Food, we will deny your application and continue your TFA through the end of your transitional period, unless you become ineligible for TFA under WAC 388-489-0025.

**WSR 10-09-055**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed April 16, 2010, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-06-116.

Title of Rule and Other Identifying Information: WAC 388-535-1084 Covered dental-related services for clients through age twenty—Restorative services, 388-535-1090 Covered dental-related services for clients through age twenty—Prosthodontics (removable), 388-535-1100 Dental-related services not covered for clients through age twenty, 388-535-1261 Covered dental-related services for clients age twenty-one and older—Endodontic services, 388-535-1266 Covered dental-related services for clients age twenty-one and older—Prosthodontics (removable), 388-535-1267 Covered dental-related services for clients age twenty-one and older—Oral and maxillofacial surgery services, 388-535-1269 Covered dental-related services for clients age twenty-one and older—Adjunctive general services, and 388-535-1271 Dental-related services not covered for clients age twenty-one and older.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on June 8, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 9, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery

4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 8, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 25, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending sections in chapter 388-535 WAC in order to, for clients through age twenty, reduce coverage of restorative services (crowns) and reduce coverage for repairs to partial dentures; for clients age twenty-one and older, reduce coverage for endodontic treatment and oral and maxillofacial surgery; and for all clients, reduce coverage for partial dentures. The amendments also update and clarify other language in this chapter.

Reasons Supporting Proposal: These amendments are necessary for the department to fully meet the legislatively mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for dental and dental-related services for fiscal years 2010-2011, and to further clarify the department's coverage policy.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009 (ESHB 1244), RCW 74.08.090 and 74.09.800.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1748.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. John Davis, Program Manager, HRSA/DHS, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, fax (360) 586-1590, e-mail johndavis2@dshs.wa.gov.

April 1, 2010  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-10 issue of the Register.

## WSR 10-09-056

## PROPOSED RULES

**BOARD OF REGISTRATION  
FOR PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS**

[Filed April 16, 2010, 8:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-06-076.

Title of Rule and Other Identifying Information: New chapter 196-13 WAC, Professional engineer licensure by comity.

Hearing Location(s): Comfort Inn & Suites, 19333 International Boulevard, Room 243, SeaTac WA, 98188, on May 27, 2010, at 6:00 p.m.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by May 25, 2010.

Assistance for Persons with Disabilities: Contact Kim King, administrative assistant, by May 24, 2010, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new rule is being created to address issues to applicants that are seeking licensure in Washington that are currently licensed in non-United States jurisdictions and the United States without an examination.

Reasons Supporting Proposal: The board has looked at the equivalency between the licensure process common to Canadian associations and those common in the United States. License mobility for eligible United States and Canadian professional engineers will be promoted with the adoption of the new rule.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is no economic impact to licensees.

April 16, 2010  
George A. Twiss  
Executive Director



## Chapter 196-13 WAC

PROFESSIONAL ENGINEER LICENSURE BY  
COMITYNEW SECTION

**WAC 196-13-010 Purpose of rules.** The rules within this chapter identify the requirements and conditions for the board of registration for professional engineers and land surveyors (board) to consider qualified applicants from U.S. states, U.S. territories or recognized foreign jurisdictions.

NEW SECTION

**WAC 196-13-020 Board review of applications.** The board may use any one or combinations of the following procedures in determining if an applicant is eligible for licensure under this chapter:

- (1) Detailed review and evaluation of application;
- (2) Interviews with applicant's references;
- (3) Review of examples of applicant's work product;
- (4) Oral interview/examination with applicant.

NEW SECTION

**WAC 196-13-030 Eligibility.** Licensure by comity under this chapter is NOT applicable to an applicant who:

- (1) Is seeking licensure in structural engineering without having passed a board approved structural examination; or
- (2) Has attempted and failed any of the engineering principle and practice examinations developed by the board or the National Council of Examiners for Engineering and Surveying (NCEES) within the six years immediately preceding the date of application; or
- (3) Has a record of disciplinary action against his or her license where findings of negligence or incompetence were proven by competent judicial or administrative authority.

NEW SECTION

**WAC 196-13-100 Application requirements.** The board may grant licensure as a professional engineer to a United States or Canadian professional engineer who satisfies the following:

- (1) Has an active license as a professional engineer in a U.S. state or U.S. territory or as a professional engineer member in a constituent member organization of Engineers Canada; and
- (2) Has educational experience acceptable to the board; and
- (3) Has engineering practice experience acceptable to the board. The board may require up to six years of engineering experience after the initial date of licensure as a professional engineer. The experience shall include two years of engineering practice on projects in the United States or in an environment acceptable to the board where codes similar to those used in the United States were applied; and
- (4) Has identified three or more professional engineers who can serve as references, acceptable to the board, and are

able to attest to the applicant's credibility, ethical conduct, and technical competence as a professional engineer.

**WSR 10-09-057**

## PROPOSED RULES

## DEPARTMENT OF TRANSPORTATION

[Filed April 16, 2010, 9:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-06-067.

Title of Rule and Other Identifying Information: Minor revisions to chapter 468-70 WAC, Motorist information signs.

Hearing Location(s): 310 Maple Park Avenue S.E., Transportation Commission Board Room 1D2, Olympia, WA 98503, on May 26, 2010, at 1:00 p.m.

Date of Intended Adoption: May 26, 2010.

Submit Written Comments to: Rick Mowlds, P.O. Box 47344, Olympia, WA 98504-7344, e-mail mowlds@wsdot.wa.gov, fax (360) 705-6826, by May 25, 2010.

Assistance for Persons with Disabilities: Contact WSDOT reception desk by May 25, 2010, (360) 705-7000.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will amend existing rules to incorporate signing eligibility requirements for curb service drive-in food activities and to clarify the specification for business sign materials.

Reasons Supporting Proposal: The rule is needed to authorize curb service drive-in food activities as eligible for business signs, and to enhance the quality and consistency of all business signs statewide.

Statutory Authority for Adoption: RCW 47.36.030 and 47.36.320.

Statute Being Implemented: None.

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

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rick Mowlds, Olympia, Washington, (360) 705-7988.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is exempt from the small business economic impact statement process under RCW 19.85.025(3) and 34.05.310 (4)(c) and (d). There is no economic impact to small business because participation in the motorist information sign program is voluntary.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is exempt under RCW 34.05.328 (5)(b)(iii) and (iv). The rule does not materially change federal regulations or Washington state law. The rule reflects national food service user trends and clarifies language without changing its effect.

April 16, 2010

Stephen T. Reinmuth  
Chief of Staff

AMENDATORY SECTION (Amending WSR 06-15-018, filed 7/7/06, effective 8/7/06)

**WAC 468-70-020 Definitions.** When used in these regulations the term:

(1) "Conventional road" shall mean a noninterstate highway which is not an expressway or freeway.

(2) "Curb service" shall mean that food may be ordered from a vehicle parked in a drive-in service stall and served to a vehicle window by food service staff. At no time shall the vehicle driver or any passenger be required to leave the vehicle to order or be served food.

(3) "Department" shall mean the Washington state department of transportation.

~~((3))~~ (4) "Expressway" shall mean a divided arterial highway for through traffic with partial control of access and grade separations at most major intersections.

~~((4))~~ (5) "Fee zone" means:

(a) Fee zone 1, freeways and expressways with average daily trips greater than eighty thousand;

(b) Fee zone 2, freeways and expressways with average daily trips less than eighty thousand;

(c) Fee zone 3, conventional highways.

~~((5))~~ (6) "Freeway" shall mean an expressway with full control of access, and grade separations over the entire length of the numbered highway route.

~~((6))~~ (7) "Motorist information signs" shall mean the same as specific service signs as set forth in the Manual on Uniform Traffic Control Devices adopted by the department as chapter 468-95 WAC.

~~((7))~~ (8) "Motorist service activity" shall mean a business furnishing gas, food, lodging, camping, recreation, tourist-oriented, and twenty-four-hour pharmacy services.

~~((8))~~ (9) "Owner" shall mean a person who owns or operates a motorist service activity and who has authority to enter into and be bound by agreements relevant to matters covered by these regulations.

~~((9))~~ (10) "Qualified tourist-oriented business" means any lawful cultural, historical, recreational, educational, or entertaining activity or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business season from motorists not residing in the immediate area of the activity.

~~((10))~~ (11) "RV symbol" means a logo, for a business or destination that accommodates recreational vehicles, designed and attached to a business sign in accordance with WAC 468-70-060(4).

~~((11))~~ (12) "Supplemental directional panel" shall mean a motorist information sign panel located on, opposite, or at the terminus of an exit ramp bearing business sign for a qualified motorist service activity and directional information.

~~((12))~~ (13) "Tourist-oriented directional (TOD) sign" means a sign on a motorist information sign panel on the state highway system to provide directional information to a qualified tourist-oriented business, service, or activity.

~~((13))~~ (14) "Trade name" shall mean any brand name, trade mark, distinctive symbol or other similar device or thing used to identify a particular motorist service.

~~((14))~~ (15) "Urban area" shall mean an area including and adjacent to a municipality or other place of five thousand

or more population as shown by the latest available federal census.

AMENDATORY SECTION (Amending WSR 09-18-056, filed 8/27/09, effective 9/27/09)

**WAC 468-70-050 Business eligibility.** (1) To be eligible for placement of a business sign on a motorist information sign panel a motorist service activity must conform to the following standards:

(a) Gas activity:

(i) Provide vehicle services including fuel, oil, tire repair and water; and

(ii) Be in continuous operation at least sixteen hours a day, seven days a week; and

(iii) Provide restroom facilities, drinking water and a telephone access;

(iv) Motorist information sign panels may be installed and existing signing will not be removed when the motorist service activity is closed for a short period of time or when its hours of operation have been reduced as a result of a shortage of gasoline;

(v) Activities not meeting the tire repair requirement of (i) of this subsection but have gas, oil, and water may qualify for signing provided that the motorist information sign panel displays fewer than the full complement of business signs. A telephone must also be available at no cost for a person to use to acquire tire repair;

(vi) Business signs for card-lock gas activities may be installed, provided that the activities serve the general motoring public, without membership, and accept a variety of credit cards available to the general public. Card-lock gas activities must also meet the applicable requirements of (a)(i) through (v) of this subsection.

(b) Food activity:

(i) Be licensed or approved by the county health office; and

(ii) Food activities in fee zones 1 and 2 shall be in continuous operation to serve meals for a minimum of ten hours a day six days a week, and food activities in fee zone 3 shall be in continuous operation to serve meals for a minimum of eight hours a day six days a week; and

(iii) Have inside seating for a minimum of twenty patrons and parking facilities for a minimum of ten vehicles; and

(iv) If curb service is provided, have a minimum of ten drive-in service stalls; and

(v) Provide telephone and restroom facilities.

(c) Lodging activity:

(i) Be licensed or approved by the Washington department of health; and

(ii) Provide adequate sleeping and bathroom accommodations available without reservations for rental on a daily basis; and

(iii) Provide public telephone facilities.

(d) Camping activity (applicable only for activities available from interstate highways):

(i) Have a valid business license;

(ii) Consist of at least twenty camping spaces and have adequate parking, modern sanitary and drinking water facilities for such spaces; and

(iii) Have an attendant on duty to manage and maintain the facility twenty-four hours a day while in operation.

(e) Recreation activity (applicable only for activities available from noninterstate highways):

(i) Consist of activities and sports of interest to family groups and the public generally in which people participate for purposes of active physical exercise, collective amusement or enjoyment of nature; e.g., hiking, golfing, skiing, boating, swimming, picnicking, camping, fishing, tennis, horseback riding, ice skating and gun clubs; and

(ii) Be licensed or approved by the state or local agency regulating the particular type of business; and

(iii) When the recreational activity is a campground, it must meet the criteria specified in WAC 468-70-050 (1)(d)(i) thru (iii).

(iv) Activities must be open to the motoring public without appointment, at least six hours a day, five days a week including Saturday and/or Sunday.

(f) Tourist-oriented business activity:

(i) A natural, recreational, historical, cultural, educational, or entertainment activity, or a unique or unusual commercial or nonprofit activity, the major portion of whose income or visitors are derived during its normal business seasons from motorists not residing in the immediate area of the activity.

(ii) Be listed as a historic district on the National Register of Historic Places, on the Washington Heritage Register, or as a National Historic Landmark with the state's office of archaeology and historic preservation. Signs on private property that mark the entrance to the historic district and a letter of support by the jurisdictional local agency are required.

(iii) Be a commercial district as adopted by a city ordinance or resolution with a minimum of one million square feet of leasable commercial space located within one square mile. The commercial district must provide a unique commercial activity where the majority of the district's customers do not reside in the city where the commercial district is located. The commercial district shall be located within one mile of the nearest state highway. Only the name of the commercial district will be displayed on the business sign. Corporate logos may not be displayed.

(iv) Activities must be open to the motoring public without appointment, at least six hours a day, five days a week including Saturday and/or Sunday.

(g) Twenty-four-hour pharmacy:

(i) Be open twenty-four hours a day, seven days a week.

(ii) Have a state-licensed pharmacist present and on duty at all times.

(2) To be eligible for a RV symbol on its business sign, the business or destination shall have amenities, designed to accommodate recreational and other large vehicles, including:

(a) A hard-surfaced access to and from the business, that is free of potholes and is at least twelve feet wide with minimum turning radii of fifty feet.

(b) The roadway access and parking facilities must be free of utility wires, tree branches, or other obstructions up to fourteen feet above the surfacing.

(c) Facilities having short-term parking, such as restaurants and tourist attractions, must have a minimum of two parking spaces that are at least twelve feet wide and sixty-five feet long with a minimum turning radius of fifty feet for entering and exiting.

(d) Fueling islands must be located to allow for pull-through with a minimum entering and exiting turning radius of fifty feet.

(e) Canopied fueling islands must have a fourteen-foot minimum overhead clearance.

(f) Fueling facilities selling diesel are required to have pumps with noncommercial nozzles.

(g) For campgrounds, a minimum of two parking spaces at least eighteen feet wide and forty-five feet long are required.

(h) Business activities must also post directional signing on the premises as needed to indicate RV-friendly parking spaces and other on-site RV-friendly services, so that the motorist is given additional guidance upon leaving the public highway and entering the property.

(3) Distances prescribed herein will be measured from the center of the interchange or intersection along the centerline of the most direct public road to the facility access.

(4) The maximum distance that gas, food, lodging, camping, recreational, or tourist-oriented activities can be located on either side of an interchange or intersection to qualify for a business sign shall be as follows:

(a) From an interstate highway, gas, food, and lodging activities shall be located within three miles in either direction. Camping or tourist-oriented activities shall be located within five miles in either direction;

(b) From a noninterstate highway, gas, food, lodging, recreation, or tourist-oriented activities shall be located within five miles in either direction.

(c) A twenty-four-hour pharmacy must be located within three miles of an interstate or noninterstate highway.

(d) Where there are fewer than the maximum number, as specified in WAC 468-70-060 (3)(a), of eligible services within the distance limits prescribed in (a) and (b) of this subsection, the distance limits may be increased up to a maximum of fifteen miles to complete the balance of allowable signs.

(i) In reference to WAC 468-70-040(3), the department may erect and maintain signs on an alternate route that is longer than fifteen miles if it is safer and still provides reasonable and convenient travel to an eligible activity.

(ii) The department may erect and maintain signs on a route up to a maximum of twenty miles if an activity qualifies as eligible and is located within a distressed area under the criteria set forth in chapter 43.168 RCW.

(5) Within cities and towns having a population greater than twenty-five thousand, the department shall obtain concurrence from the municipality of locations for installing panels, and may request that the municipality install the panels.

(6) A gas, food, lodging, camping/recreational, tourist-oriented, or twenty-four-hour pharmacy activity visible from

the mainline at least three hundred feet prior to an intersection shall not qualify for a business sign on such highway. The activity's on-premise sign is considered part of that activity in determining the three hundred foot visibility.

(7) When a multiple business activity qualifies for business sign placement on more than one type of motorist information sign panel, placement will be made on that type of panel which, as determined by the department, best describes the main product or service. Additional business signs for a qualifying multiple business activity may only be placed on more than one type of motorist information sign panel where the applicable panels display fewer than a full complement of business signs. Where these additional business signs complete the full complement of business signs on a motorist information sign panel, the most recently installed of such additional business signs shall be substituted for in the event that a qualifying single business activity applies to receive business signs.

(8) Motorist information sign panels will not be erected and maintained by the department until adequate follow-through signing, as specified by the department, is erected on local roads and/or streets. Written assurance that the follow-through signs will be maintained is required.

(9) Where operations are seasonal, business signs for each specific location shall be removed or covered during the appropriate period as determined by the department.

AMENDATORY SECTION (Amending WSR 09-18-056, filed 8/27/09, effective 9/27/09)

**WAC 468-70-060 Signing details.** (1) Specifications(-):

(a) All motorist information sign panels, supplemental directional panels, and business signs shall be constructed in accordance with the Washington state standard specifications(-) and standard plans, and amendments thereto. ((All business signs and RV symbols shall be constructed of a single piece of 0.063 inch thick aluminum. All panels, business signs, and RV symbols shall be fully reflectorized to show the same shape and color both by day and night.))

(b) All business signs and RV symbols shall be constructed of a single piece of 0.063 inch thick aluminum meeting the requirements of the Washington state standard specifications and amendments thereto.

(c) Reflective sheeting on business signs shall be Type II, Type III, or Type IV meeting the minimum requirements of the Washington state standard specifications and amendments thereto.

(d) Silk-screen paint for business signs shall meet the minimum requirements of the Washington state standard specifications and amendments thereto.

(e) All panels, business signs, and RV symbols shall be fully reflectorized to show the same color both by day and night.

(2) Color of panels, signs, and RV symbols:

(a) The background color for gas, food, lodging, camping, TOD, and twenty-four-hour pharmacy motorist information sign panels and supplemental directional panels shall be blue. The background color for recreation motorist information sign panels and supplemental directional panels shall be

brown. The border and lettering on all such signs shall be white.

(b) The background and message colors of business signs shall be at the businesses' option, subject to the department's approval as prescribed by WAC 468-70-070(5).

(c) The background color of RV symbols shall be yellow, with the letters RV in black.

(3) Composition of motorist information sign panels:

(a) For interchanges, the maximum number of business signs which may be displayed on a motorist information sign panel are six for each gas, food, lodging, camping/recreation, TOD's, and twenty-four-hour pharmacy panel. For intersections, each panel is limited to six business signs. For combined motorist information sign panels on the mainline, the minimum number of business signs which may be displayed is two for each type of motorist service activity. For supplemental directional panels located along interchange ramps, there is no minimum number of business signs which may be displayed for each type of motorist service activity.

(b) Sign panel fabrication layouts, and business sign sizes, are provided in the Appendices of the Motorist Information Signs Booklet published by the Washington state department of transportation.

(i) The panel size shall be sufficient to accommodate the various sizes of business signs and directional information.

(ii) For qualifying businesses located more than one mile from an intersection the business sign shall show the mileage to the business to the nearest mile. For interchanges the mileage will be shown on the supplemental directional panel business signs installed along an interchange ramp or at a ramp terminal.

(4) RV symbol design and statutory mounting location:

(a) RV symbols installed on freeway/expressway size business signs shall be a round twelve-inch diameter plaque displaying eight-inch RV letters. RV symbols installed on conventional roadway size business signs shall be a round six-inch diameter plaque displaying four-inch RV letters.

(b) The RV symbol shall be displayed in the lower right corner of the gas, food, lodging, camping, or tourist activity business signs installed along the mainline of freeways/expressways and along conventional highways. The term lower right corner is exclusive of any panel displaying the mileage message referenced in subsection (3)(b)(ii) of this section. RV symbols shall not be installed on supplemental directional panel business signs installed along an interchange ramp or at a ramp terminal.

**WSR 10-09-060**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed April 19, 2010, 6:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-06-061.

Title of Rule and Other Identifying Information: The community services division is proposing to change the way the supplemental nutrition assistance program (SNAP) assistance unit size is determined to select the appropriate standard deduction amount used in the household income budgeting process by amending WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly 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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on May 25, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 1, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., May 25, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 11, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: USDA Food and Nutrition Service final rules for the Farm Security and Rural Investment Act (FSRIA) of 2002 (farm bill) final rule announcement included clarification of what household members can be used in determining the assistance unit size and the appropriate standard deduction in the federal SNAP benefit calculation.

Reasons Supporting Proposal: The rule changes are needed to comply with the FSRIA final rule announcement clarification of the proper assistance unit size determination and use of the SNAP standard deduction for the Basic Food program.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. §§ 273.1 and 273.9 (d)(1).

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

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 changing the way assistance unit size is determined for selecting the appropriate Basic Food (SNAP) standard deduction.

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."

April 14, 2010

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-23-004, filed 11/5/09, effective 11/15/09)

**WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?**

We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible <del>((and ineligible))</del> AU members	Standard deduction
1	\$141
2	\$141
3	\$141
4	\$153
5	\$179
6 or more	\$205

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

(a) Keep work, look for work, or accept work;

(b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) A portion of your shelter costs as described in WAC 388-450-0190.

**WSR 10-09-062  
PROPOSED RULES  
LIQUOR CONTROL BOARD**

[Filed April 19, 2010, 8:12 a.m.]

Supplemental Notice to WSR 10-06-121.

Preproposal statement of inquiry was filed as WSR 09-12-037.

Title of Rule and Other Identifying Information: Chapter 314-17 WAC, Mandatory alcohol server training.

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on May 26, 2010, at 10:00 a.m.

Date of Intended Adoption: June 2, 2010.

Submit Written Comments to: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9869, by May 26, 2010.

Assistance for Persons with Disabilities: Contact Karen McCall by May 26, 2010, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The review of rules dealing with mandatory alcohol server training (MAST) is part of the liquor control board's ongoing review of rules. The rules will be reviewed for relevance, clarity, and plain talk. Rules are also being created to implement an on-line MAST certification program.

Reasons Supporting Proposal: The proposed rules provide clarity to liquor licensees, MAST permit holders, MAST trainers, and stakeholders.

Statutory Authority for Adoption: RCW 66.08.030, 66.20.330.

Statute Being Implemented: RCW 66.20.330.

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: This proposal replaces an earlier proposal filed under WSR 10-06-121. Revisions were made requiring a supplemental CR-102.

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Kim Sauer, MAST Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1727; Implementation: Alan Rathbun, Director of Licensing, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; Enforcement: Pat Parmer, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not change the impact on liquor licensees or stakeholders.

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

April 15, 2010

Sharon Foster

Chairman

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-005 What is the purpose of this chapter?** (1) RCW 66.20.300 through 66.20.350 set up a mandatory alcohol server training program. These laws require persons who serve, mix, sell, or supervise the service of alcohol for on-premises consumption to hold one of two permits(;) as outlined in this chapter.

(2) This chapter (~~outlines how a person receives these permits, and how a person can~~) explains how a person

receives a class 12 or 13 permit, and how a person may become certified to provide alcohol server training.

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-010 Definitions.** The following definitions (~~are to~~) clarify the purpose and intent of the (~~rules and~~) laws and regulations governing mandatory alcohol server training and chapter 314-17 WAC. Additional definitions are in RCW 66.04.010 and 66.20.300.

(1) (~~A "permit holder" is a person who holds either a Class 12 mixologist or a Class 13 server permit. The permit is the property of the permit holder, and can be used at any liquor licensed establishment.~~

(2) ~~A "provider" is an individual, partnership, corporation, college, educational institute, or other bona fide legal entity that the board certifies to provide a board approved alcohol server education course (per RCW 66.20.300). The provider is a training entity.~~

(3) ~~A "trainer" is an individual employed or authorized by a provider to conduct an alcohol server education course. Upon the successful completion of the course, the student will receive a Class 12 mixologist or Class 13 server permit from the trainer.)~~ "Alcohol server education program," "mandatory alcohol server training" or "mandatory alcohol server training program" means the set of policies and procedures developed and administered by the board to educate servers and enforce state liquor laws and regulations.

(2) "Permit holder" means a person who holds either a class 12 or 13 permit.

(3) "Provider" means a "training entity" as defined in RCW 66.20.300.

(4) "Retail licensed premises" means any:

(a) Premises licensed to sell or serve alcohol by the glass, by the drink, by samples or in original containers, primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.540, 66.24.570, 66.24.580, 66.24.590 or 66.24.600;

(b) Distillery or craft distillery, licensed pursuant to RCW 66.24.140 or 66.24.145, that is authorized to serve samples of its own production; or

(c) Facility established by a domestic winery for serving or selling wine pursuant to RCW 66.24.170(4).

(5) "Student" means an individual enrolled in a class 12 or 13 training course.

(6) "Trainer" means an individual employed or authorized by a provider to conduct a training course.

(7) "Training course" means a board-certified mandatory alcohol server training class.

(8) "Training program" means a provider's curriculum administered by a provider or a trainer.

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-015 What are the two types of alcohol server training permits?** There are two types of permits for persons who serve (~~alcohol for on-premises consumption, or who supervise the sale of alcohol for on-premises consump-~~

tion)), mix, sell, or who supervise the sale of, alcohol at a retail licensed premises.

<p><b><del>((1)) Per RCW 66.20.310, a Class 12 mixologist permit is required for liquor licensees or their employees who:</del></b></p>	<p><b><del>(2) Per RCW 66.20.310, a Class 13 server permit is required for persons who:</del></b></p>
<p><del>(a) Manage a premises licensed to sell alcohol beverages for on-premises consumption;</del>  <del>(b) Act as a bartender for selling or mixing alcohol beverages which may include spirits, beer, and/or wine for on-premises consumption; and/or</del>  <del>(c) Draw beer and/or wine from a tap and/or spirits from a dispensing device at an establishment licensed to sell liquor for on-premises consumption.</del>  <del>(d) A Class 12 mixologist permit holder must be at least twenty-one years of age.</del>  <del>(e) A Class 12 mixologist permit includes the authority to act as a server, under the Class 13 server permit.</del>  <del>(f) See RCW 66.20.310 (7) for exceptions for employees of grocery stores that have an on-premises liquor license.</del></p>	<p><del>(a) Take orders for alcohol beverages to be consumed on premises;</del>  <del>(b) Deliver alcohol beverages to customers for consumption on premises; and/or</del>  <del>(c) Open and/or pour beer or wine into a customer's glass at the customer's table.</del>  <del>(d) A class 13 server permit holder must be at least eighteen years of age.))</del></p>

<u>Class 12 permit</u>	<u>Class 13 permit</u>
(1) <u>A class 12 permit holder must be at least twenty-one years of age.</u>	(5) <u>A class 13 permit holder must be at least eighteen years of age.</u>
(2) <u>A class 12 permit is required for any person who:</u>	(6) <u>A class 13 permit is required for any person who:</u>
(a) <u>Manages a retail licensed premises licensed to sell alcoholic beverages for on-premises consumption;</u>	(a) <u>Takes orders for alcoholic beverages for on-premises consumption;</u>

<u>Class 12 permit</u>	<u>Class 13 permit</u>
(b) <u>Sells, mixes or draws from a dispensing device alcoholic beverages for on-premises consumption;</u> or	(b) <u>Delivers alcoholic beverages to customers for on-premises consumption; or</u>
(c) <u>Supervises a class 13 permit holder.</u>	(c) <u>Opens or pours beer or wine into a customer's glass at a customer's table.</u>
(3) <u>A class 12 permit includes all authorities granted under a class 13 permit.</u>	(7) <u>See RCW 66.20.310 for exceptions for grocery store employees.</u>
(4) <u>See RCW 66.20.310 for exceptions for grocery store employees.</u>	

~~((3)) (8) Upon ((the)) a temporary absence of a ((Class 12 mixologist permit holder, a Class 13 server permit holder who is at least twenty-one years of age may perform the functions of a Class 12 permit holder until a Class 12 permit holder can arrive to fulfill those duties, but in no event for more than thirty consecutive days)) class 12 permit holder, a class 13 permit holder may perform the functions of a class 12 permit holder until a class 12 permit holder arrives to fulfill those duties provided that a class 13 permit holder:~~

- ~~(a) Is twenty-one years of age or older; and~~
- ~~(b) Functions as a class 12 permit holder for no more than thirty calendar days per year.~~
- ~~(9) See RCW 66.44.310, 66.44.316, 66.44.318, and 66.44.350 for additional information about permissions and restrictions for eighteen to twenty-year-old persons.~~

AMENDATORY SECTION (Amending WSR 04-18-038, filed 8/25/04, effective 9/25/04)

**WAC 314-17-020 How long are ((the)) class 12 and 13 permits good for((, and how does a permit holder renew)?** (1) Class 12 ((mixologist)) and ((Class)) 13 ((server)) permits are valid for five years. ((The permits expire)) A class 12 or 13 permit expires on the first day of the month, five years following the month ((the person successfully completed the alcohol server education course)) a student passes the standardized exam. For example, if a student passes the standardized exam on June 15, 2010, his or her class 12 or 13 permit will expire on July 1, 2015.

(2) ((In order to renew the permit, the mixologist or server must attend an alcohol server education course given by a board certified trainer or provider prior to the expiration of the permit.)) A permit holder must retake a class 12 or 13 training course and pass the standardized exam to obtain a subsequent class 12 or 13 permit.

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-025 ~~((Do))~~ Does a permit holder(s) have to carry ~~((their))~~ his or her class 12 or 13 permit ~~((with them))~~?** (1) Any time a licensee or an employee ~~((is performing))~~ performs the duties outlined in WAC 314-17-015~~((, the person))~~ at a retail licensed premises, a licensee or an employee must have:

(a) ~~((Their Class 12 mixologist or Class 13 server permit on the premises,))~~ His or her class 12 or 13 permit on the retail licensed premises; and

(b) One ~~((piece))~~ form of identification (see RCW 66.16.040 for acceptable forms of identification ~~((are outlined in RCW 66.16.040))~~).

(2) Both ~~((the))~~ a class 12 or 13 permit and ~~((the))~~ a form of identification must be available for inspection by any representative of the board, peace officer or law enforcement officer.

(3) ~~((It will be considered a violation of this section for any person to:~~

(a) Falsify a Class 12 mixologist or a Class 13 server permit; or

(b) Keep or possess a Class 12 mixologist permit or a Class 13 server permit contrary to the provisions of this title)) A person shall be in violation if he or she falsifies a class 12 or 13 permit or keeps or possesses a class 12 or 13 permit contrary to the provisions of this title.

(4) The name and personal identifying characteristics on a class 12 or 13 permit must match with those on a permit holder's form of identification.

AMENDATORY SECTION (Amending WSR 04-18-038, filed 8/25/04, effective 9/25/04)

**WAC 314-17-030 Are employers responsible ~~((to ensure that their employees hold an alcohol server permit))~~ for ensuring that their employees have class 12 or 13 permits?** ~~((All licensees who hold))~~ Yes. Any person who holds a license to sell liquor ~~((for on-premises consumption))~~ at a retail licensed premises must ensure that any person ~~((that))~~ who engages in the sale or service of liquor for on-premises consumption, or who supervises such activities, has a current and valid class 12 ~~((mixologist))~~ or ~~((Class))~~ 13 ~~((server))~~ permit within sixty calendar days of the date of hire. See RCW 66.20.310~~((7))~~ for exceptions for grocery stores that have an on-premises liquor license.

(1) ~~((The permit must be in the same name and with the same identifying characteristics as indicated on the permit holder's identification (acceptable forms of identification are outlined in WAC 314-11-025):~~

(2) Per WAC 314-11-040, a person twenty-one years of age or older)) A class 12 permit holder must be on ~~((the))~~ a retail licensed premises to supervise the on-premises sale, service, and consumption of liquor.

~~((3) The))~~ (2) A class 12 or 13 permit is the sole property of ~~((the))~~ a permit holder.

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-035 How are lost class 12 and 13 permits replaced?** To replace a lost ~~((Class 12 mixologist or Class 13 server permit, the))~~ class 12 or 13 permit or to replace a class 12 or 13 permit because of a name change, a permit holder ~~((can))~~ must:

(1) Contact the provider or trainer who issued the class 12 or 13 permit; or

(2) ~~((Submit an affidavit of lost permit on a form provided by the board to the licensing and regulation division with a fee as prescribed by))~~ Complete a class 12 or 13 permit replacement form, and submit that form and the appropriate fee to the board. The board will ~~((cancel the lost permit and issue a replacement))~~ issue a new class 12 or 13 permit, which will have the same expiration date as the original class 12 or 13 permit.

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-040 ~~((Can Class 13 server permit holders upgrade to a Class 12 mixologist permit when they turn twenty-one?))~~ May an eighteen to twenty year-old student who takes and passes a class 12 training course upgrade to a class 12 permit upon turning twenty-one without retaking the training course?** ~~((Class 12 mixologist permits are only issued to persons twenty-one years of age or older. Therefore, any eighteen, nineteen, or twenty year-old person who successfully completes a Class 12 mixologist class will be issued a Class 13 server permit.~~

(1) Upon turning twenty-one years of age, the server may contact the provider or trainer who issued the permit and receive an upgraded Class 12 mixologist)) Yes.

(1) An eighteen, nineteen or twenty year-old person may take a class 12 training course and pass the corresponding exam; however, he or she may be issued only a class 13 permit. Upon turning twenty-one years of age, such a person who obtains a class 13 permit after taking and passing a class 12 training course and exam may request that a provider or trainer upgrade his or her class 13 permit to a class 12 permit.

(2) The expiration date of ~~((the permit will remain five years from the date of the original class))~~ an upgraded class 12 permit shall be the same expiration date as the original class 13 permit.

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-045 How do I get a class 12 ~~((mixologist))~~ or ~~((a Class))~~ 13 ~~((server))~~ permit in Washington if I was trained in another state?** ~~((1) Per RCW 66.20.320(10), if you have completed an alcohol server education course in another state since July 1, 1993, and the course is also certified in Washington state, you may receive a Class 12 mixologist or a Class 13 server permit in Washington by completing the provider's Washington state supplement to the program. This supplement will cover Washington state liquor laws and regulations. (You can contact the board's licensing~~



and regulation division to find out if the course you completed is certified in Washington.)

(2) The provider will issue you a Washington state permit, which will expire five years from the first day of the month following the date the original class was taken. (For example, if you completed the program in another state on June 15, 1996, the Washington permit will expire on July 1, 2001.) (1) If a person completes an alcohol server training course in another state and a training course is also certified in the state of Washington, he or she may receive a class 12 or 13 permit in Washington by completing the provider's board-certified Washington state supplement to the program and passing the standardized exam.

(2) A trainer or provider shall issue a class 12 or 13 permit, which will expire five years from the first day of the month following the date an original training course was taken. For example, if you complete a training course on June 15, 2010, your class 12 or 13 permit will expire on July 1, 2015.

AMENDATORY SECTION (Amending WSR 04-18-038, filed 8/25/04, effective 9/25/04)

**WAC 314-17-050 How ((can a person receive certification as a Class 12 mixologist or Class 13 server permit) do I become a provider?** ((An individual, partnership, corporation, college, educational institute, or other bona fide legal entity may apply to be certified by the board to become a Class 12 mixologist and/or a Class 13 server permit provider.

(1) In order to get a course certified, the proposed provider must submit the following information to the board's licensing and regulation division:)) (1) **Application process, application materials, and briefing.** To become a provider, you must submit an application to the board and brief board staff on the proposed training program. Application materials shall include:

- (a) A completed application form provided by the board;
- (b) A copy of the proposed curriculum for the training program (see WAC 314-17-060);
- (c) A copy of all audio, video, on-line, and instructional materials that will be used in the ((course)) training program;
- (d) A copy of all printed ((materials that will be provided to participants as part of the course; and)) or printable (as in the case of an on-line training course) materials that will be provided to a student;
- (e) An explanation of the examination procedures necessary to pass ((the)) a training course;
- (f) An explanation of how a student's identity shall be ensured for an on-line training course;
- (g) A plan describing how a provider shall assess a trainer's work performance;
- (h) A trainer's manual; and
- (i) Documentation demonstrating a trainer's qualifications and education to teach a training course in the state of Washington.

(2) ((The board's licensing and regulation division will respond to the request for certification within forty-five days of receipt of the material-)) The board will respond within

forty-five calendar days of receipt of the application materials, at which point the board will either:

(a) Issue ((a letter of certification which will be valid for five years, or

(b) Provide a letter outlining what additions or changes need to be made to the course to meet the requirements outlined in this title. If the additions or changes are not received by the licensing and regulation division within thirty days, the application for course certification will be withdrawn.

(3)(a) Upon certification of the program, the board will provide the standardized exam to be used for all training conducted. Trainers may use existing, board-approved exams until January 1, 2005.

(b) With board approval, trainers may provide an additional exam or add questions to the standardized exam, as long as the questions on the standardized exam are not altered and are left in the same order.

(4) The board or its designee may attend any class provided by certified providers and their trainers at no charge, in order to evaluate the course for conformance with this title.

(5) The provider must receive prior approval from the board's licensing and regulation division before making any changes to the course content or method of presentation that has been certified by the board.

(6) Providers who wish to renew their program must submit a complete program to the board's mandatory alcohol server training program manager at least forty-five days prior to expiration of their certification, as outlined in subsection (2) of this rule.

(7) The board may consider any information pertaining to a provider or trainer's certification in any state, including any certification suspensions or revocations in the past five years)) certification; or

(b) Specify what additions or changes to make to a training program. If additions or changes are not received by the board within thirty calendar days, an application will be withdrawn.

(3) **Temporary certification.** The board may issue temporary certification once an applicant submits an application and briefs board staff.

(a) Temporary certification is valid for up to six months. During this time period, an applicant may adjust a training course outline or method of presentation without prior board approval provided that a training course continues to meet the standards set in WAC 314-17-060.

(b) The board may immediately revoke temporary certification if, in the board's opinion, an applicant fails to comply with a lesson plan as submitted and approved or with any of the requirements of this title.

(c) An applicant who fails to obtain permanent certification during the six-month temporary certification period shall be subject to the discontinuance of business requirements specified in subsection (10) of this section.

(4) The board may consider any information pertaining to a provider's certification in any state, including any certification suspensions or revocations in the past five years. The board, at its discretion and in consideration of public safety, may also consider criminal history, administrative violations, patterns of misconduct, and other applicable occurrences or

circumstances when deciding to approve, deny, suspend or revoke a provider's certification.

(5) **Appeal rights.** See WAC 314-17-115.

(6) **Standardized exam.**

(a) Upon certification of a training program, the board will provide a standardized exam to be used for all training courses.

(b) With board approval, a provider or trainer may provide an additional exam or add questions to the standardized exam.

(c) The board or its designee may attend any in-person training course or take any on-line training course at no charge for evaluation purposes.

(7) A provider must receive approval from the board before making any changes to training course content or method of presentation.

(8) **Qualifying and continuing education.**

(a) A provider must ensure that its trainers are qualified to teach a training course in the state of Washington, and that its trainers are current of new Washington state laws and regulations and science and industry advances pertaining to alcohol service. As part of this effort, a trainer must attend a board-provided conference or a provider-sponsored education workshop, or complete a board-approved professional on-line or long distance program, before receiving certification and then at least once every five years thereafter.

(b) At a minimum, an education or continuing-education conference, workshop or program shall address current Washington state liquor laws and regulations, mandatory alcohol server training rules and procedures, and legal liabilities for servers.

(c) The board may conduct at least one seminar in each provider-sponsored education workshop performed in the state of Washington.

(d) A provider must obtain documentation that verifies a trainer's completion of an education or continuing-education conference, workshop or program, as well as documentation showing the subjects covered at such conference, workshop or program (see WAC 314-17-085).

(e) A provider must supply a trainer with a trainer's manual. A provider must also revise a manual within thirty calendar days following:

(i) The effective date of a new applicable state law or regulation; or

(ii) Receipt of new or updated information from the board.

(9) **Certificate expiration and recertification.** Each certification is valid for up to five years. A provider may be recertified by reapplying at least forty-five days prior to expiration and in accordance with subsections (1) and (2) of this section.

(10) **Discontinuance of business.** When a provider discontinues its training program, a provider must reconcile class 12 and 13 permit form records to the board's satisfaction and return all unused class 12 and 13 permit forms to the board.

AMENDATORY SECTION (Amending WSR 04-18-038, filed 8/25/04, effective 9/25/04)

**WAC 314-17-060 What are the course standards ((for Class 12 mixologist and Class 13 server permits)), course content, and other requirements for class 12 or 13 training programs?**

<p><u>((1) Requirements for a Class 12 mixologist permit course</u></p>	<p>(a) The course of instruction must be at least three hours in length. The course may be by video or audio-visual presentation together with facilitation by an authorized provider or trainer.</p> <p>(b) In addition to meeting the requirements of RCW 66.20.320 (1)(d), the course must contain a standard workbook that covers the specifics of Washington liquor laws and regulations as they relate to:</p> <ul style="list-style-type: none"> <li>(i) Recognizing and dealing with intoxicated persons;</li> <li>(ii) How to check identification;</li> <li>(iii) Employment of persons under twenty-one years of age;</li> <li>(iv) Legal hours of liquor sale and service;</li> <li>(v) Prohibited conduct by patrons and employees;</li> <li>(vi) Required signs in liquor licensed establishments;</li> <li>(vii) Minimum lighting requirements; and</li> <li>(viii) Administrative and criminal sanctions against liquor licensees and Class 12 and Class 13 permit holders.</li> </ul>
<p><u>(2) Requirements for a Class 13 server permit course</u></p>	<p>(a) The course of instruction must be at least one hour in length. The course may be by video or audio-visual presentation of not less than thirty minutes together with facilitation by an authorized provider or trainer, or a sixty-minute self-teaching video.</p> <p>(b) In addition to meeting the requirements of RCW 66.20.320 (1)(d), the course must contain a standard workbook that covers the specifics of Washington liquor laws and regulations as they relate to:</p> <ul style="list-style-type: none"> <li>(i) Recognizing and dealing with intoxicated persons;</li> <li>(ii) How to check identification;</li> <li>(iii) Employment of persons under twenty-one years of age;</li> <li>(iv) Legal hours of liquor sale and service;</li> <li>(v) Prohibited conduct by patrons and employees; and</li> <li>(vi) Administrative and criminal sanctions against licensees and Class 13 server permit holders.</li> </ul>
<p><u>(3) Requirements and guidelines for both Class 12 mixologist and Class 13 server permit courses</u></p>	<p>(a) At the beginning of each class, the trainer must give each student:</p> <ul style="list-style-type: none"> <li>(i) An enrollment agreement that clearly states the obligations of the trainer and student, refund policies, and procedures to terminate enrollment;</li> </ul>

	<p>(ii) A statement that says, "If you have questions, comments, or complaints about the program, please call the liquor control board" and includes the appropriate board telephone numbers; and</p> <p>(iii) A notice that students must complete the course in order to take the exam.</p> <p>(b) Students must complete [a] [the] written examination in the presence of the certified trainer that demonstrates the student is familiar with the liquor laws and rules outlined in subsections (1) and (2) of this rule. During the examination, trainees may not refer to any written or video material or have a discussion with another person during the exam (unless the instructor authorizes the student to use an interpreter).</p> <p>(c) Providers or trainers may not suggest that the state of Washington, the board, or any state agency endorses or recommends the provider's program to the exclusion of any other program.)</p>
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Class 12 and 13 training courses shall have the standards and requirements as stipulated in RCW 66.20.320 and in this section.

(1) **Subjects.** Each class 12 or 13 training course and accompanying workbook shall include:

- (a) Those subjects listed in RCW 66.20.320;
- (b) Washington state liquor laws and regulations;
- (c) Employment of persons under twenty-one years of age;
- (d) Legal hours of liquor sale and service;
- (e) Prohibited conduct by patrons and employees;
- (f) Required signs at retail licensed premises;
- (g) Minimum lighting requirements; and
- (h) Administrative and criminal sanctions against liquor licensees and permit holders, including permit suspension for delinquent child support payment.

(2) **Administrative materials.** Before beginning a class 12 or 13 training course, each student shall receive:

- (a) An enrollment agreement that clearly states the obligations of a trainer and a student, refund policies, and procedures to terminate enrollment;
- (b) A statement that says, "If you have questions, comments or complaints about the program, please contact the Liquor Control Board," and includes the appropriate board contact information; and
- (c) A notice that students must complete the entire training course before taking the standardized exam.

(3) A provider or trainer is prohibited from stating or implying that the state of Washington, the board or any other state agency endorses or recommends one provider's program over another's program.

(4) **Student evaluation of training course.** A student evaluation for each in-person or on-line training course is required. A trainer shall provide a separate course evaluation form to each student enrolled in an in-person training course, and a form shall include the board's contact information.

(5) **Exams.** Exams shall be administered following each class 12 or 13 training course.

(a) An exam must demonstrate a student's familiarity with all of the subjects listed in subsection (1) of this section.

(b) A student may not refer to any written, video or on-line material, or have an in-person or on-line discussion with another person, during an exam. However, a trainer may allow a student to use an interpreter.

(c) The standardized exam shall have a minimum passing grade of eighty percent unless otherwise stipulated from the board.

(6) **On-line training courses.** Effective December 1, 2010, the board allows class 12 and 13 on-line training courses subject to additional requirements.

(a) A provider must take extra measures to ensure the identity of each student. Extra measures include obtaining the log-in and log-off times (see WAC 314-17-085). Other ways to prevent fraudulent test taking may include, but are not limited to:

(i) Allowing a student to access an examination only once per training course;

(ii) Discontinuing an examination if it stays idle for thirty minutes or more or if another program is accessed; or

(iii) Asking each student personal identifying questions.

(b) A trainer shall be available to answer questions during standard business hours via the internet, telephone or some other method.

(7) **Length of class.** Excluding exam time, a class 12 training course shall be at least three hours in length, and a class 13 training course shall be at least one hour in length.

(8) **Presentation method.** A presentation method may be in-class or on-line.

(9) **Student workbook.**

(a) A student workbook must contain accurate, current, and complete information.

(b) A provider must update student workbooks and other training course material within thirty calendar days following:

(i) The effective date of a new applicable state law or regulation; or

(ii) Receipt of new or updated information from the board.

(c) The board may establish additional workbook standards or requirements as the board deems necessary.

AMENDATORY SECTION (Amending WSR 04-18-038, filed 8/25/04, effective 9/25/04)

**WAC 314-17-065 How does a provider receive certification for its trainers?** (1) To ((receive board certification for trainers to teach a course approved by the board, the provider must submit a form provided by the board to the board's licensing and regulation division.

(2) The provider will only contract with trainers who:

(a) Have a minimum of two years of post-secondary education in one or more of the following fields or a combination of the following fields, or equivalent years of experience)) certify one of its trainers, a provider must complete a form provided by and returned to the board.

(2) A provider will contract only with a trainer who:

(a) Has a minimum of two years of post-secondary education in, or equivalent years of work experience in, one or more of the following fields:

- (i) Training;
- (ii) Education;
- (iii) Law;
- (iv) Law enforcement;
- (v) Substance abuse rehabilitation; ~~((and/or~~
- ~~(vi) Hospitality industry.~~
- ~~(b) Hold a Class 12 mixologist permit; and~~
- ~~(c) Meet the criminal history requirements outlined in WAC 314-17-070.~~

~~(3) The board may consider any information pertaining to a provider or trainer's certification in any state, including any certification suspensions or revocations in the past five years.~~

~~(4) Prior to receiving certification, the applicant trainer must attend either:~~

- ~~(a) A board approved train-the-trainer course provided by the MAST provider; or~~
- ~~(b) A briefing conducted by a liquor control board enforcement officer. Proof of the training must be submitted with the trainer registration form.~~

~~(5) The board's licensing and regulation division will respond to the request for trainer certification within thirty days of receipt of the request. The board will either:~~

- ~~(a) Issue a letter to the provider and each trainer that authorizes the trainer(s) to teach the approved course (the trainer's authorization expires on the date the provider's certification expires); or~~
- ~~(b) Send a letter to the provider outlining why an applicant trainer does not meet the qualifications outlined in this title.~~

~~(c) Trainers may not begin training certified alcohol server education courses until they receive their authorization letter from the board.~~

~~(d) Trainers must teach the provider's program as approved and may not change the method of presentation or course content without approval from the provider and the liquor control board's mandatory alcohol server training program manager.~~

~~(6) It is the responsibility of the approved provider to keep the board's licensing and regulation division informed of all current trainers.~~

~~(a) The provider must notify the board's licensing and regulation division within seventy-two hours of the termination of a trainer, or within seventy-two hours of when the provider is notified that a trainer has terminated his/her employment.~~

~~(b) For the hiring of new trainers, the provider can either:~~

- ~~(i) Notify the board's licensing and regulation division in writing of any new trainers within thirty days of the date of hire; or~~
- ~~(ii) Provide a list of all current trainers to the board's licensing and regulation division monthly.) or~~

- ~~(vi) Sale and service of alcoholic beverages;~~
- ~~(b) Holds a class 12 permit;~~
- ~~(c) Meets the criminal history requirements (see WAC 314-17-070); and~~

(d) Meets the continuing education requirements (see WAC 314-17-050).

(3) The board may consider any information pertaining to a trainer's certification in any state, including any certification suspensions or revocations in the past five years. The board, at its discretion and in consideration of public safety, may also consider criminal history (see WAC 314-17-070), administrative violations, patterns of misconduct, and other applicable occurrences or circumstances when deciding to approve, deny, suspend or revoke a trainer's certification.

(4) The board will respond to a request for trainer certification within thirty calendar days of receipt of a request, and then will either certify an applicant trainer or explain why an applicant trainer fails to meet the qualifications.

(5) A trainer may not begin to teach a training course until a trainer receives his or her certification from the board.

(6) A trainer must teach a provider's training program in its entirety as approved, and may not change the method of presentation or course content without approval from a provider and the board.

(7) It is the responsibility of a provider to keep the board informed of its current trainers. In this effort, a provider must notify the board within seventy-two hours of the termination of a trainer or within seventy-two hours of when a provider is notified that a trainer has terminated his or her employment.

**AMENDATORY SECTION** (Amending WSR 04-18-038, filed 8/25/04, effective 9/25/04)

**WAC 314-17-070 What criminal history would prevent a person from receiving certification to be a trainer?**

(1) The ((board's licensing and regulation division may conduct a criminal history check on a person applying to be an alcohol server education trainer, using the point system below. The application may be denied if the applicant's criminal history totals eight or more points)) board may investigate the criminal history of a person applying for trainer certification. The board may also use a point system and deny an application if an applicant's criminal history totals eight or more points. Points are set as follows:

Description	Time period during which points will be assigned	Points the board will assign
<del>((Gross misdemeanor))</del> <u>Felony conviction</u>	<del>((Three))</del> <u>10 years</u>	<del>((5))</del> <u>12 points</u>
<del>((Misdemeanor conviction -- involving alcohol))</del> <u>Currently under federal or state supervision for a felony conviction</u>	<del>((Three years))</del> <u>n/a</u>	<del>((4))</del> <u>8 points</u>
<del>((Misdemeanor conviction -- not involving alcohol))</del> <u>Gross misdemeanor conviction</u>	<del>((Three))</del> <u>3 years</u>	<del>((3))</del> <u>5 points</u>
Driving under the influence conviction	<del>((Three))</del> <u>3 years</u>	5 points
<del>((Reckless and/or negligent driving conviction -- alcohol-related))</del> <u>Misdemeanor conviction</u>	<del>((Three))</del> <u>3 years</u>	<del>((5))</del> <u>4 points</u>

Description	Time period during which points will be assigned	Points the board will assign
<del>((Reckless and/or negligent driving conviction – not alcohol-related))</del> <u>Nondisclosure of any of the above</u>	<del>((Three years))</del> n/a	4 points
<del>((Hit and run, attended – conviction</del>	Three years	5 points
<del>Two to five failures to appear for court conviction</del>	Three years	4 points
<del>Six or more failures to appear for court conviction</del>	Three years	8 points
<del>Felony conviction</del>	Five years	12 points
<del>On parole from a felony</del>	n/a	8 points
<del>Nondisclosure of information requested by the board</del>	n/a	4 points each, PLUS the points of the fact which was not disclosed
<del>Misrepresentation of fact to the board</del>	n/a	8 points, PLUS the points of the fact which was not disclosed))

~~(2) For pending criminal charges that would score eight or more points in the event of conviction, the ((board's licensing and regulation division will hold the trainer's application pending disposition of the matter. If the matter is not resolved within ninety days, the board will withdraw the application.~~

~~(3) A person whose application to become an alcohol server education trainer is denied by the licensing and regulation division due to a criminal history may request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW). At the board's discretion it may elect to conduct the adjudicative hearing itself or it may assign the matter to the office of administrative hearings)) board shall postpone its approval or denial decision pending disposition of the matter. If the matter remains unresolved after ninety calendar days, the board will withdraw an application.~~

~~(3) Appeal rights. See WAC 314-17-115.~~

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-075 How does a provider ((or trainer)) get class 12 ((mixologist and Class 13 server permits to issue to course participants)) or 13 permit forms?** ~~((+) Authorized providers and trainers of certified programs may order Class 12 mixologist and Class 13 server training permits from the board's licensing and regulation division, to issue to students who successfully complete an approved course (see WAC 314-17-080(3) regarding eighteen, nineteen, and twenty year-old students who complete a Class 12 mixologist course).~~

~~(2) The permits must be ordered on a form provided by the board. The board will charge a nominal fee in order to cover its costs to produce the permits.)~~ A provider (or a trainer with authorization from a provider) may purchase

class 12 or 13 permit forms by submitting an order form to the board.

AMENDATORY SECTION (Amending WSR 04-18-038, filed 8/25/04, effective 9/25/04)

**WAC 314-17-080 What ((are the age requirements for trainees to receive, and trainers to issue, Class 12 mixologist and Class 13 server permits)) should a provider or a trainer do when a class 12 or 13 permit is issued in error?** ~~(1) ((Class 12 mixologist permits are only issued to persons twenty one years of age or older. Therefore, any person who is eighteen, nineteen, or twenty years of age who successfully completes a Class 12 mixologist course will be issued a Class 13 server permit.~~

~~(2) Class 13 server permits may only be issued to persons eighteen years of age and older.~~

~~(3) Upon turning twenty one years of age, a Class 13 server permit holder may receive an upgraded Class 12 mixologist permit from the provider or trainer who issued the permit. The expiration date of the permit will remain five years from the date of the class.~~

~~(4)) If a provider or trainer issues a class 12 ((mixologist)) permit in error to a ((person)) student under twenty-one years of age, ((the)) a provider or trainer must ((take the following steps:)) initiate corrective actions within one business day of discovery of an error.~~

~~(a) Contact ((the permit holder)) a student and notify ((him/her)) him or her that ((the)) a permit was issued in error((:)).~~

~~(b) Retrieve the original class 12 ((mixologist)) permit from ((the permit holder, and)) a student.~~

~~(c) Issue ((the correct)) a class 13 ((server)) permit ((only after receiving the original Class 12 mixologist permit that was issued in error)) provided that a student is at least eighteen years of age.~~

~~(d) ((Within thirty days of the date the permit was issued in error, or of being notified by the board of the error, the provider or trainer must:~~

~~(i)) Provide the tear-off portion of ((the)) a corrected class 13 ((server)) permit to the ((board's licensing and regulation division; or)) board.~~

~~((ii)) If unable to contact ((the permit holder)) a student and issue a corrected permit, ((the)) a provider or trainer ((can provide the board's licensing and regulation division)) must provide the board with proof that a certified letter was sent to ((the trainee)) a student who received ((the)) a class 12 ((mixologist)) permit in error.~~

~~((5)) (2) If a provider or trainer issues a class 13 ((server)) permit in error to a ((person)) student under eighteen years of age, ((the)) a provider or trainer must ((take the following steps:)) initiate corrective actions within one business day of discovery of the error.~~

~~(a) Contact ((the permit holder)) a student and notify ((him/her)) him or her that ((the)) a class 13 permit was issued in error.~~

~~(b) Retrieve ((the original)) a class 13 ((server)) permit from ((the permit holder)) a student.~~

~~((i)) If unable to contact ((the permit holder)) a student and retrieve ((the)) an invalid class 13 permit, ((the)) a pro-~~

vider or trainer must provide the ~~((board's licensing and regulation division))~~ board with proof that a certified letter was sent to ~~((the trainee informing the trainee the))~~ a student informing him or her that a class 13 permit was issued in error and that serving liquor with ~~((the))~~ an unauthorized permit may be cause for a criminal citation.

AMENDATORY SECTION (Amending WSR 04-18-038, filed 8/25/04, effective 9/25/04)

**WAC 314-17-085 What records ~~((does the))~~ must a provider or trainer ~~((need to provide))~~ submit to the board or keep on file?** (1) A ~~((list of the individuals receiving the class 12 or class 13 permits must be forwarded to the board's licensing and regulation division within three calendar days of the completion of the class.~~

(2) ~~Within thirty days of all training classes, the provider or trainer must give all class participants who successfully pass the exam their permit and submit the tear-off portion of the permit form, completed in full, for all Class 12 and/or Class 13 permits issued to the board's licensing and regulation division.~~

(3) ~~The following information must be kept at the trainer's place of business, available for inspection and copying by board employees, for a period of five years:~~

(a) ~~Copies of all Class 12 and/or Class 13 permits issued by the provider or authorized trainers (electronic records may be kept in lieu of hard copies of the permit forms for those programs using an automatic upload process); and~~

(b) ~~All course presentation information, including the location, date, and time of every class given, together with the names of the trainer and names of students that attended each class.~~

(4) ~~The provider or trainer must provide the following information to the board or its designee upon request:~~

(a) ~~Advance notice of any classes that have been prescheduled; and~~

(b) ~~Copies of program publications, brochures, pamphlets, scripts, or any other advertising materials related to the alcohol server training course))~~ provider (or a trainer on a provider's behalf) shall submit a list of students receiving class 12 or 13 permits and additional permit information to the board within thirty calendar days of completion of each training course. Information shall be submitted using a format supplied or stipulated by the board.

(2) Within thirty calendar days of a student completing a class 12 or 13 training course and passing the standardized exam, a provider (or a trainer on a provider's behalf) must:

(a) Issue a class 12 or 13 permit to a student; and

(b) Submit a session roster showing each student's name and assigned permit number in a format supplied by the board; and

(c) Submit the tear-off portion of a fully completed class 12 or 13 permit form to the board.

(3) A provider must keep certain records and information at its place of business for a period of five years. Records and information must be available for board inspection, and they shall include:

(a) A session roster showing the student information and assigned permit number of each student who successfully

completes an on-line or in-person training course, and the date and time of completion;

(b) The permit number for any voided permit;

(c) All presentation information for each training course;

(d) Each student's examination answers; and

(e) The log-in and log-off times.

(4) A provider (or a trainer on a provider's behalf) must provide the following information to the board upon request:

(a) Advance notice of any prescheduled training courses;

(b) Copies of program publications, brochures, pamphlets, scripts or any other advertising materials related to a training course; and

(c) Documentation that verifies a trainer's attendance at a continuing education conference or workshop (see WAC 314-17-050).

(5) **Securing records and information.**

All training course records that contain information about a student must be safely secured and maintained.

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-090 Prohibited conduct by providers and trainers.** No provider or trainer ~~((will:~~

(1) ~~Make any material false or misleading statement to induce or prevent board actions;~~

(2) ~~Falsify, alter, or tamper with alcohol server training permits or records;~~

(3) ~~Prohibit or interfere with on-site observations by the board or its staff, or fail to assist the board or its staff))~~ shall:

(1) Make any false material statement or misleading statement to induce or prevent board action;

(2) Falsify, alter or tamper with any material or records associated with a training program, training course or class 12 or 13 permit; or

(3) Prohibit or interfere with on-site observation by the board or fail to assist the board in scheduling ~~((these))~~ an observation(s).

AMENDATORY SECTION (Amending WSR 04-18-038, filed 8/25/04, effective 9/25/04)

**WAC 314-17-095 ~~((Is the provider responsible for the acts of its trainers?))~~ What must a provider do when a trainer violates a liquor law or regulation?** (1) The board may hold a provider responsible ~~((for any act or omission of the provider's program personnel, authorized trainers, or representatives that violates any law or rule affecting provider privileges.~~

(1) ~~If a provider discovers a trainer has not complied with a provision of the alcohol server training requirements, the provider must contact the board's mandatory alcohol server training manager within five calendar days.~~

(2) ~~The provider must submit an action plan to the board's mandatory alcohol server training program manager within ten calendar days. The action plan must include corrective action that will be taken to ensure compliance with liquor control board laws and rules))~~ when any of its trainers, authorized personnel or representatives violate any state liquor law or regulation affecting provider privileges whether through a specific action or through an act of omission.

(2) When a trainer fails to comply with a provision of the alcohol server education program requirements, a provider must:

- (a) Correct a violation immediately;
- (b) Notify the board of discovery as soon as possible, but no later than five calendar days following discovery; and
- (c) Create an action plan to prevent further violations and submit that plan to the board within ten calendar days of discovery.

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-100 What are the penalties ((#)) when a provider or a trainer violates a liquor law or regulation?** ~~((Following are the penalties for a provider or trainer that violates any of the provisions of RCW 66.20.300 through 66.20.350 or any of the requirements of chapter 314-17 WAC (except for providers with temporary certification, see WAC 314-17-055(4)):-))~~ The board may suspend or revoke a provider or trainer certification if a provider or a trainer violates any of the provisions of RCW 66.20.300 through 66.20.350 or of chapter 314-17 WAC or if the board determines that immediate suspension or revocation is in the public interest. The board may also penalize a provider or trainer as follows:

(1) First violation	<p>(a) <del>((The provider or trainer will receive a notice of intended suspension/revocation))</del> <u>A provider or a trainer will receive a notice of intended suspension or revocation of the board's certification or authorization.</u></p> <p>(b) <del>((This notice will give the provider and/or trainer thirty days to correct any violations-))</del> <u>A provider or a trainer will correct any violation as soon as possible, but no later than thirty calendar days following receipt of a notice of intended suspension or revocation.</u></p> <p>(c) <del>If ((the)) a violation or problem is rectified, no further action will be taken.</del></p>
(2) First violation <del>((not resolved and/or) unresolved or second violation occurs within a three-year period</del>	<p>(a) <del>The board will suspend ((its approval and certification of the provider and/or trainer))</del> <u>a provider's or a trainer's certification for up to six months.</u></p> <p>(b) <del>A monetary penalty of up to five hundred dollars may be imposed in lieu of suspension.</del></p> <p>(c) <del>Prior to lifting ((the)) a suspension or accepting a monetary penalty, ((the)) a provider ((and/)) or a trainer must correct the problem(s) ((which)) that caused ((the)) a proposed suspension.</del></p>
(3) Successive violations within a <del>((two-year)) three-year period</del>	<p>The board may cancel or suspend the approval <del>((and)), certification or both, of ((the)) a provider ((and/)) or a trainer for up to five years.</del></p>

AMENDATORY SECTION (Amending WSR 04-18-038, filed 8/25/04, effective 9/25/04)

**WAC 314-17-105 What are the penalties ((#)) when a permit holder violates a liquor law or ((rule)) regulation?** ~~((+))~~ Penalties assessed for violations within a three-year period will normally be as follows:

Violation Type	1st Violation	2nd Violation	3rd Violation	4th Violation
AFTER HOURS: Selling, serving((-)) or allowing alcohol to be consumed between 2 a.m. and 6 a.m. See WAC 314-11-070.	5-day permit suspension OR \$100 monetary option	10-day permit suspension OR \$200 monetary option	30-day permit suspension OR \$400 monetary option	Revocation of permit <del>((permit))</del>
DISORDERLY CONDUCT: Disorderly conduct by <del>((the))</del> a licensee or employee, or allowing patrons to engage in disorderly conduct. See WAC 314-11-050.	5-day permit suspension OR \$100 monetary option	10-day permit suspension OR \$200 monetary option	30-day permit suspension OR \$400 monetary option	Revocation of permit
FALSIFICATION OF PERMIT: Falsifying a class 12 or <del>((class))</del> 13 permit or possessing a class 12 or <del>((class))</del> 13 permit contrary to this title. See RCW 66.20.310 <del>((2))</del> and WAC 314-17-025.	5-day permit suspension OR \$100 monetary option	10-day permit suspension OR \$200 monetary option	30-day permit suspension OR \$400 monetary option	Revocation of permit
INTOXICATED PERSONS: Selling or serving to an apparently intoxicated person or allowing such a person to possess or consume alcohol. See RCW 66.44.200 and WAC 314-11-035.	5-day permit suspension OR \$100 monetary option	10-day permit suspension OR \$200 monetary option	30-day permit suspension OR \$400 monetary option	Revocation of permit
LEWD CONDUCT: Allowing lewd conduct on <del>((the))</del> a retail licensed premises. See WAC 314-11-050.	5-day permit suspension OR \$100 monetary option	10-day permit suspension OR \$200 monetary option	30-day permit suspension OR \$400 monetary option	Revocation of permit
MISCELLANEOUS: Violation of other retail liquor laws or <del>((rules))</del> regulations.	5-day permit suspension OR \$100 monetary option	10-day permit suspension OR \$200 monetary option	30-day permit suspension OR \$400 monetary option	Revocation of permit

Violation Type	1st Violation	2nd Violation	3rd Violation	4th Violation
MINORS: Selling or serving alcohol to a person under twenty-one years of age. See RCW 66.44.310 and WAC 314-11-020( <del>(1)</del> ).	5-day permit suspension OR \$200 monetary option	10-day permit suspension OR \$400 monetary option	30-day permit suspension OR <del>\$(600)</del> 500 monetary option	Revocation of permit
MINORS: Allowing a person( <del>(s)</del> ) under twenty-one years of age to frequent a restricted premises or area. See RCW 66.44.310 and WAC 314-11-020( <del>(2)</del> ).	5-day permit suspension OR \$100 monetary option	10-day permit suspension OR \$200 monetary option	30-day permit suspension OR \$400 monetary option	Revocation of permit
OBSTRUCTING AN OFFICER: Obstructing a law enforcement officer, or failure to allow an inspection. See RCW 66.28.090.	5-day permit suspension OR \$100 monetary option	10-day permit suspension OR \$200 monetary option	30-day permit suspension OR \$400 monetary option	Revocation of permit
OTHER VIOLATION OF LAWS: Conviction of liquor laws, ( <del>(DUI)</del> ) <u>driving under the influence</u> or felony.	5-day permit suspension OR \$100 monetary option	Revocation of permit		
PERMIT: Failure to produce permit ( <del>(and/or ID)</del> ) or <u>identification</u> upon request. See RCW 66.20.310( <del>(2)</del> ) and 66.20.180.	5-day permit suspension OR \$100 monetary option	10-day permit suspension OR \$200 monetary option	30-day permit suspension OR \$400 monetary option	Revocation of permit
PRIVATE CLUBS: Prohibitions involving club liquor and use by the general public. See WAC 314-40-010.	5-day permit suspension OR \$100 monetary option	10-day permit suspension OR \$200 monetary option	30-day permit suspension OR \$400 monetary option	Revocation of permit

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-110 (~~(Can)~~) May the board impose sanctions or penalties other than those (~~(indicated)~~) described in WAC 314-17-105?** (1) Based on aggravating or mitigating circumstances, the board may impose a different penalty or suspension than the standard penalties and suspensions (~~(outlined)~~) described in WAC 314-17-105.

(2) Examples of aggravating and mitigating circumstances include, but are not limited to:

(a) Examples of aggravating circumstances <u>that may cause a more severe penalty:</u>	(b) Examples of mitigating circumstances <u>that may allow a less severe penalty:</u>
<ul style="list-style-type: none"> <li>Patron's identification not checked;</li> <li>Noncooperation with or (<del>(obstructing)</del>) <u>obstruction of</u> any law enforcement officer;</li> <li>Permit holder did not call law enforcement officer when requested by a customer or a board employee.</li> </ul>	<ul style="list-style-type: none"> <li>Permit holder checked one of the acceptable forms of identification (<del>(per)</del>) <u>see</u> RCW 66.16.040);</li> <li>Cooperation with law enforcement officer(s);</li> <li>Permit holder used a licensee certification card (see RCW 66.20.-190).</li> </ul>

AMENDATORY SECTION (Amending WSR 01-03-085, filed 1/17/01, effective 2/17/01)

**WAC 314-17-115 (~~(Can a Class 12 or Class 13 permit holder work on a licensed premises while his/her permit is suspended?)~~) Appeal rights.** (~~(1)~~) During a suspension

~~period, permit holders may work on a liquor licensed premises provided they are not involved in any way in the sale or service of alcohol.~~

(2) ~~No permit is required to be a cashier, receptionist, cook, or custodian.)~~ Any person whose class 12 or 13 permit, trainer certification or provider certification is denied, revoked or suspended may request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW). The board may conduct an adjudicative hearing itself or refer the matter to the office of administrative hearings.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-17-055 Temporary certification as a provider.

**WSR 10-09-071  
PROPOSED RULES  
DEPARTMENT OF ECOLOGY**

[Order 05-03—Filed April 19, 2010, 1:18 p.m.]

Original Notice.  
Preproposal statement of inquiry was filed as WSR 05-06-113.

Title of Rule and Other Identifying Information: Chapter 173-525 WAC, Water resources management program for the Grays-Elochoman watershed (WRIA 25).



Hearing Location(s): Cowlitz County Training Center, 1900 1st Avenue, Longview, WA, on May 26, 2010, at 7:00 p.m.; and at the Morton School District, Lecture Room, 152 Westlake Avenue, Morton, WA, on May 27, 2010, at 7:00 p.m.

Date of Intended Adoption: July 15, 2010.

Submit Written Comments to: Travis Burns, Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-7207, e-mail [tbur461@ecy.wa.gov](mailto:tbur461@ecy.wa.gov), fax (360) 407-6574, by June 4, 2010, preferably via e-mail.

Assistance for Persons with Disabilities: Contact Judy Beitel by May 21, 2010, TTY (800) 833-6388 or (360) 407-6878. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In order to better manage water resources in WRIA 25, the local watershed planning unit recommended that ecology adopt, in rule, a water resource management strategy for the basin. Recommendations were approved by Wahkiakum, Lewis, Cowlitz and Skamania county commissioners in July 2006.

The key rule elements include:

- Setting instream flow levels in the watersheds to protect aquatic resources, including habitat for threatened and endangered salmonids;
- Closing subbasins to future withdrawals with the exception of seasonal water use from the region's larger streams;
- Establishing limited reservations of water for future use; and
- Specifying conditions for accessing the water reserves to benefit instream resources and better manage limited supply.

Reasons Supporting Proposal: RCW 90.82.130(4) states when a watershed plan is approved by a watershed planning unit and the county legislative authority, ecology, as a participating member of the planning unit, is obligated to use the plan for making future water resource decisions for the watershed. The proposal also furthers ecology's water management goals and statutory obligations.

Statutory Authority for Adoption: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW.

Statute Being Implemented: Chapters 90.03, 90.44, 90.54, and 90.82 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Travis Burns, Headquarters, Department of Ecology, (360) 407-7207; Implementation and Enforcement: Thomas Loranger, Southwest Regional Office, Department of Ecology, (360) 407-6058.

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

## Small Business Economic Impact Statement

**Introduction:** The Washington state department of ecology (ecology) is proposing chapters 173-525 and 173-526 WAC, Water resource programs for the Grays/Elochoman and Cowlitz basins, water resources inventory areas (WRIA) 25 and 26.

The objective of this small business economic impact statement (SBEIS) is to identify and evaluate the various requirements and costs that the proposed rules might impose on businesses. In particular, the SBEIS examines whether the costs on businesses from the proposed rules impose a disproportionate impact on the state's small businesses. The RCW 19.85.040 describes the specific purpose and required contents of an SBEIS.<sup>1</sup>

Ecology is developing and issuing this SBEIS as part of its rule adoption process and to meet chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to ensure that the proposed rules are consistent with legislative policy.

**Background/Rule Proposals:** The key elements of the proposed rules include:

- Setting instream flow levels in the watershed to protect aquatic resources, including habitat for threatened and endangered salmonids.
- Closing most subbasins to new year-round withdrawals.
- Defining seasonal interruptible water supplies from larger streams (Cowlitz, Coweeman, Grays, and Elochoman rivers).
- Water reservations to provide a reliable water supply for the twenty-year projected population growth in closed subbasins.
- Specifying conditions to access the reservations so as to benefit stream resources and better manage limited water supply.

The proposed instream flows are designed to protect stream habitat. This makes less water available for future uses during low-flow portions of the year (May through November). To provide a reliable, year-round supply of water for new future uses, it is necessary to reserve water that will be available even when the instream flows are not met. To do this, RCW 90.54.020 (3)(a) requires that ecology determine that the reservations would serve the overriding considerations of the public interest (OCPI).

Without reservations, only interruptible water rights are typically available to group domestic and municipal water suppliers to meet future demands within their service areas.

The proposed reservations give exempt uses, group domestic, and municipal systems more access to reliable water supplies, consistent with RCW 90.54.020(8) and the Growth Management Act (GMA). The reservations ensure a year-round, reliable water supply to meet demands estimated to occur through 2030. Future users from the reservations could obtain their water from either groundwater or surface water sources.

**Analysis of Compliance Costs for Washington Businesses:** We have assessed the proposed rules' impacts by analyzing and comparing water right management under the proposed rules in contrast to current practices. The current

framework or "baseline" includes the use of water by permit-exempt wells (RCW 90.44.050) and any administrative procedures for considering applications for both new water rights and changes to existing water rights. Implementation of chapters 90.22, 90.54, and 90.82 RCW are also part of this baseline. The proposed reservations allot water for new water rights.

We provide a brief description of compliance requirements below. You can find further details of water management under existing practices and proposed rules in Appendices B and C.

**Water Rights Administration Under the Rules:** The proposed chapters 173-525 and 173-526 WAC will create "instream flows." Instream flows are water rights for instream resources and provide protection from impairment by "junior" water rights - those with a later priority date. This means junior water rights must stop use when stream flows do not meet the minimum levels set by the senior instream flows.

The proposed rules also reserve water for future out-of-stream uses, which will not be subject to the instream flows. The reservations were recommended by the WRIA 25 and 26 watershed planning unit, a group representing a broad range of local interests. When negotiating the size of the reservations (see Appendix B), the planning unit considered both the office of fiscal management's regional population growth projections and the projected impacts to surface water flows. The reservations are also based on overriding considerations of the public interest. Water in the reservations would provide new noninterruptible water rights for those that qualify.

The reservations allot water on a subbasin basis. Within each subbasin, a specific amount of surface water or groundwater would be available to certain users, including:

- City and county systems.
- Public utility districts.
- Other public water systems.
- Permit-exempt well users.

As well as creating the instream flows and reservations for new uses, the proposed rules clarify other requirements that might affect future uses. We describe the expected changes to water management below. For more detail on changes to water right administration, see the cost-benefit analysis.

**Surface Water:** The decision process for issuing surface water rights will be similar after the proposed rules as before. Currently (baseline), ecology grants water rights subject to flow conditions or requires mitigation during low-flow periods in the areas proposed for closure. The most significant effect of the rules relates to the creation of reservations that allocate water for new uses. Through the reservations, new surface water uses may continue even during low stream flow conditions.

There may be minimal effects to water users not qualifying for the reservation. Certain nonpublic and larger scale water users (agriculture and industrial users) will not be able to qualify for direct access to the reservations. The proposed reservations do not provide for nonpublic uses of surface water. These businesses would not be able to withdraw water when water is not available (typically May through Novem-

ber). During such periods, water users wanting a new water right would need to either:

- Purchase or lease, and transfer an existing water right.
- Suspend water use during periods of low flows.
- Develop storage mechanisms.
- Develop strategies acceptable to ecology to mitigate their impacts.

However, we do not expect the rules to have a large effect on those that cannot directly access the reservations. These users face similar obstacles to gaining new water rights under current practices. Absent rule making, all new users would need to mitigate or use stored water during periods of low flow. Under the proposed rules, many will have increased access to water through a public water system that has gained rights through the reservation. We expect that most needs from expected regional growth will be satisfied through public water systems and permit-exempt wells.

**Groundwater Permits:** As with surface water, ecology will also make decisions on groundwater right applications similar to the baseline, except for uses from the proposed reservations. New water right permits for groundwater in hydraulic continuity with rivers and streams in WRIAs 25 and 26 would be subject to flow conditions under the baseline or to the instream flows under the proposed rules.

As with surface water, there may be minimal effects to those water users not qualifying for the reservation, but ecology does not expect such effects to change business practices. In particular, many small businesses may still be able to meet demands under the groundwater permit exemption<sup>2</sup>. Potential groundwater users under the proposed rules are also able to avoid interruption by showing that their use is not in hydraulic continuity with closed surface water bodies.

Overall, the change in groundwater permitting does not significantly affect businesses. However, the proposed rules reduce the administrative costs of groundwater permitting. The rules close certain groundwater areas, making case-by-case hydraulic connection determinations unnecessary.

**Permit-Exempt Groundwater:** Under the proposed rules, new users can gain an uninterruptible permit-exempt water use under the reservation. Permit-exempt users currently withdrawal [withdraw] water as authorized by local law and RCW 90.44.050. Although exempt from permitting, exempt wells remain subject to all other state water laws. Permit-exempt well use can be shut off if it impairs senior water rights. This has not yet occurred in WRIAs 25 and 26. Nonetheless, they remain susceptible to future curtailment if withdrawals result in impairment of a senior water right.

The proposed rules reserve water for future permit-exempt wells and are not subject to interruption to protect the created instream flows. The rules provide added assurances to small businesses located outside the service area of municipal water suppliers and rely on year-round water from permit-exempt wells.

**Changes or Transfers of Water Rights:** Ecology will continue to process changes or transfers of existing water rights as permitted by chapters 90.03 and 90.44 RCW. The process is the same with the proposed rules as with the baseline.

**Reservations of Water:** The reservations of water and the conditions of use are part of the proposed rules. The reservations will allow eligible water users the benefit of having a continuous, reliable source of water during low flow periods, with a few limits. These limits include the finite quantity of the reservations and the conditions to accessing reservation water.

The proposed rules do not require permit-exempt uses to meter and report water use to ecology. However, local public water purveyors, the county, or a municipal government may require metering and reporting through ordinances adopted to implement the watershed plan. Ecology also has authority to require metering and reporting under RCW 90.03.360 in the future.

**Impacts to Businesses in WRIs 25 and 26:** Of the proposed rules' elements, the created reservations will have the greatest impact on businesses. Businesses that need water only for potable use for employees and customers will receive benefits from the reservation. Businesses that also need water for commercial or industrial manufacturing processes and landscape or commercial irrigation will see both costs and benefits.

The proposed rules will not directly affect existing water right holders. In general, the economic costs and benefits to businesses are from the business impacts from having less water in a river, but more water available for out of stream use. Under the proposed rules, the reservations can provide water for public water systems and permit-exempt uses, even during low flow periods, for a projected twenty-year period. Having the reservation makes water predictably and reliably available for more out of stream uses than under the baseline. Therefore, it is likely the proposed rules will have a positive effect on most affected businesses. An exception to this would be businesses that use water in the river. The possible impacts are described below.

**Impacts to Businesses Dependant on Stream Flows:** As stated above, the proposed rules create a series of reservations. Accessing the reservations will provide a reliable water supply for new uses during low flow periods. This will slightly reduce the amount of water in the river and could impact instream benefits such as ecosystem services, recreation, and so on. For businesses that provide guide services such as rafting, fishing, and bird watching; or those dependent on dilution for waste removal; there could be a very minor impact. However, discussions with local interests shows that the proposed flow reductions will result in little, if any, impact.

**Impacts to Existing Permitted Water Rights:** Allowing access to water through the reservation could affect the value of existing permitted water rights held by some businesses. The exact effect will depend on the allowable use, volume, and point of diversion of the existing rights, the existing and desired uses, and the volumes needed.

**Costs to Firms and Required Professional Services:** As mentioned above, those businesses that depend on water in the river may experience costs from the proposed rules. Those businesses that would obtain water from the reservation are most likely to gain the benefits. The cost analyses required in chapter 19.85 RCW follow.

**Reporting and Recordkeeping:** The proposed rules add no reporting or record-keeping requirements for small businesses.

**Additional Professional Services:** Ecology anticipates no added professional services. For water users qualifying for the reservations, the proposed rules reduce the need for small businesses to obtain consulting services. The proposed reservations make a reliable water supply available, without the expense and uncertainty of demonstrating water exists on a case-by-case basis.

**Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:** We expect no additional equipment, supplies, labor, or administrative costs from the proposed rules.

**Other Compliance Requirements:** We expect no other compliance requirements from the proposed rules.

**Conclusions:** As mentioned above, firms that depend on instream activities and potentially those that hold existing permits could incur adverse impacts.

- The impacts to instream users would be specific to the firm, but is unlikely to be significant since few firms are dependent on instream flows<sup>3</sup>.
- Existing water right holders could be impacted if the proposed rules resulted in changes to the value of their water right. This would ultimately only affect those that want to sell or lease a right, and only for the period until the reservations are fully allocated to new uses. The exact cost is difficult to determine since it depends on many factors and very few if any transfers would happen in this fashion.

Creation of the reservation will be a net benefit for most businesses that need water. Water being unavailable during low flow periods is damaging to any business that needs a reliable supply for its own use or to develop residential or commercial properties.

For those that do not require water during low flow periods, an interruptible water right is an option under both the current practices and proposed rules.

In order to have water available during low flow periods under the baseline, businesses would need to obtain water through purchase, lease, transfers, or on-site storage. On-site storage for a low flow period costs about \$0.75 per gallon for small water systems<sup>4</sup>. The proposed rules avoid this cost for those using the reservations. For other users, the cost of storage would likely preclude it as an option.

Currently, businesses needing water right permits in many areas must purchase or lease water. This can mean some cost for every low flow season. This analysis assumes that water would be readily available for purchase or lease. If not the case, then prices would likely be very high.

**Quantification of Costs and Ratios:** It is the purpose of this section to evaluate whether:

- Compliance with the proposed rules will cause businesses to lose sales or revenue.
- The proposed rules will have a disproportionate impact on small businesses.

**Revenue Impacts:** As noted previously, the most likely significant impacts of the proposed rules would be from

decreased flows in the river and the creation of the reservation.

- The reduction of flows in the river is unlikely to significantly affect any firms within the basins.
- Those firms that will now be able to access water from the reservation will experience a benefit from being able to access reliable water supplies more easily. We estimate that summer flows will not meet the proposed minimum instream flows in a majority of years. New permits issued with stream flow conditions would be interruptible under the baseline, as under the proposed rules. Storage would likely be required for all uses absent the rules. In that sense, the rules will represent a negative cost (net benefit) to firms.

The net benefit to firms is the value of avoiding expensive storage, purchasing or leasing water rights, or other mitigation options to access water during periods of low flow. This will likely lower costs to some potential water users and to that extent, may increase revenues.

Existing water right holders might see some loss in the value of existing water rights and this could lower revenues. However, as mentioned above, this effect is likely to be relatively small and so we do not consider it further.

**Distribution of Compliance Costs:** No business is required to access water from the reservations or comply with the proposed rules.

It is possible that small businesses could have costs under the proposed rules if they pursue water rights outside the reservations and regional supply areas. Still, the cost should be similar or less to the expense now incurred, as ecology is likely to issue only interruptible rights if sufficient mitigation is not proposed. The rules, for the most part, only clarify the conditions for granting a new water right that exist in current practice. Ecology is unable to determine this cost as it would be very small and are unsure if future permitted water rights will be processed.

**Known Costs:** No businesses are required to comply with the rules. Businesses that choose to qualify for the benefits of the reservations must meet the criteria for accessing the reservation.

Ecology was unable to determine any measurable costs to small businesses from the proposed rules. If there were known costs to those required to comply with the proposed rules, it may impose disproportionate costs to small businesses. However, there is clearly a very large net benefit to those who qualify for the reservations. The rules identify various water purveyors and permit-exempt well users as qualifying for the reservations. Except for select businesses that will be served by a permit-exempt well, small businesses cannot access the reservations directly.

**Conclusions:** No businesses are required to access the reservations. Only those businesses pursuing a new water right will be subject to conditions of the rules, and they are unlikely to experience a significant effect. Ecology was unable to determine any costs to small businesses from these proposed rules. Businesses of all sizes that qualify to use the reservation, directly or indirectly through a water purveyor, will experience net benefits from the rules. If there are

known costs, the rules could have disproportional costs to small businesses. Ecology was unable to determine measurable costs.

**Actions Taken to Reduce the Impact of the Rules on Small Business:** As noted above, it is unlikely that there will be significant adverse impacts on businesses (small or large) as part of this rule making versus the baseline. Therefore, the proposed rules take no specific measures to reduce or mitigate these rule impacts. In general, [a] small business seeking reservation water through a permit-exempt well may have hypothetical advantages over a larger business with needs too large to be satisfied through a permit-exempt well.

**Small Business Involvement in Developing the Proposed Rules:** The proposed rules have been developed as an outcome of the Grays/Elochoman and Cowlitz watershed planning process (WRIAs 25 and 26). This was an open process allowing for all entities to comment and take part as the project proceeded. Members in the planning unit included small businesses and organizations representing small businesses. Ecology will also hold public hearings after the filing of the CR-102s to allow small businesses to provide further input.

**The Standard Industrial Codes (SIC) Codes of Potentially Impacted Industries:** No industries are required to comply with the proposed rules unless they seek to obtain new water right permits or permit-exempt water rights in the covered area. The following list shows SIC codes for existing developable properties in the Grays-Elochoman and Cowlitz basins<sup>5</sup>. This serves as a representative sample of potential future businesses that may be affected.

**Table 1. Industries potentially affected by proposed rules**  
(North American Industry Classification System<sup>6</sup>)

Storage/packing agricultural produce	Code 1151
Deciduous tree fruits	Code 0175
Horticulture nurseries	Code 1114
Manufacturing	Code 33
Fresh fruits and vegetables	Code 5148
Commercial greenhouses	Code 1114
Hatcheries	Code 1129
Mining, mineral extraction	Code 21
Residential building construction	Code 2361
Nonresidential building construction	Code 2362
Produce market	Code 445230
Construction	Code 23
Fruit farming	Code 111339
Accommodation & food services	Code 722310
Golf facility	Code 713910
Stables	Code 713990
Animal production	Code 115210

**Expected Jobs Created or Lost/Impacts on Jobs:** Ecology expects the proposed reservations to serve 17,320 households over the twenty-year period. If water from the reservations is fully utilized and assuming household incomes of \$40,000, total annual labor income of approxi-

mately \$693 million can be realized for the basin. This could create 12,476 new supporting jobs in the Grays/Elochoman and Cowlitz watershed basins.

Office of financial management's NAICS based input/output model<sup>7</sup> provides estimates of interdependence among industrial sectors in the state. Each sector not only produces and sells goods or services, but also purchases goods or services for use within its production process. Ecology expects jobs created through the proposed rules in these areas:

**Table 2. Potential jobs created by the rules**

	Employment
Crop production	171
Animal production	64
Forestry and fishing	18
Logging	6
Mining	12
Electric utilities	58
Gas utilities	9
Other utilities	23
Construction	206
Food manufacturing	141
Textiles and apparel	24
Wood product manufacturing	18
Paper manufacturing	16
Printing	59
Petroleum and products	6
Chemical manufacturing	3
Nonmetallic mineral products manufacturing	16
Primary metals	1
Fabricated metals	14
Machinery manufacturing	5
Computer and electronic product	10
Electrical equipment	1
Aircraft and parts	0
Ship and boat building	4
Other transportation equipment	2
Furniture	23
Other manufacturing	33
Wholesale trade	282
Retail trade	2,770
Transportation and warehousing	265
Information	232
Finance and insurance	529
Real estate	573
Professional services and management	1,444
Educational services	245
Health services	2,439
Arts, recreation, and accommodation	405

	Employment
Food services and drinking places	1,288
Other services	1,059
Total Employment	12,476

<sup>1</sup>Due to size limits for filing documents with the code reviser, the SBEIS does not contain the appendices that further explain ecology's analysis. Nor does it contain the raw data used in this analysis, or all of ecology's analysis of this data. However, the rule-making file contains this information and it is available upon request.

<sup>2</sup>In the state ground water code, the "ground water permit exemption" allows for certain uses of small quantities of ground water; including domestic, industrial, stockwatering, and noncommercial irrigation of less than one-half acre of land. RCW 90.44.040, *See also* Washington Attorney General Opinion (2005 Op. Atty. Gen. Wash. No. 17).

<sup>3</sup>Talks with local interests show few commercial activities in the basin depend on instream flows.

<sup>4</sup><http://www.doh.wa.gov/ehp/dw/Publications/331-134-4-30-08.pdf>.

<sup>5</sup>Data provided by the Clark, Cowlitz and Skamania county assessor and by the Washington state employment security department was the basis for this table.

<sup>6</sup>Ecology has used NAICS codes rather than SIC. It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

<sup>7</sup><http://www.ofm.wa.gov/economy/io/default.asp>.

A copy of the statement may be obtained by contacting Department of ecology water resources web page at [http://www.ecy.wa.gov/programs/wr/instream-flows/ge\\_cowlitz.html](http://www.ecy.wa.gov/programs/wr/instream-flows/ge_cowlitz.html) or Barbara Anderson, Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98504, phone (360) 407-6607, fax (360) 407-7162, e-mail [btov461@ecy.wa.gov](mailto:btov461@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting department of ecology water resources web page at [http://www.ecy.wa.gov/programs/wr/instream-flows/ge\\_cowlitz.html](http://www.ecy.wa.gov/programs/wr/instream-flows/ge_cowlitz.html) or Barbara Anderson, Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98504, phone (360) 407-6607, fax (360) 407-7162, e-mail [btov461@ecy.wa.gov](mailto:btov461@ecy.wa.gov).

April 19, 2010  
Polly Zehm  
Deputy Director

**Chapter 173-525 WAC**

**WATER RESOURCES MANAGEMENT PROGRAM FOR THE GRAYS-ELOCHOMAN BASIN, WRIA 25**

**PART A  
GENERAL**

**NEW SECTION**

**WAC 173-525-010 Authority, purpose and applicability.** (1) The department of ecology (ecology) adopts this chapter under the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Water code (chapter 90.03 RCW), Regulation of public groundwaters (chapter 90.44 RCW), RCW 43.21A.-064(9), and 43.21A.080.

(2) This chapter shall not affect existing water rights, including perfected riparian rights, or other appropriative right, unless otherwise stated in the conditions of the water right in question. An existing permit-exempt withdrawal is not subject to the rule to the extent it has been put to beneficial use on the subject property for the purpose of use in question. This chapter shall not affect federal Indian and non-Indian reserved rights.

(3) This chapter does not limit ecology's authority to establish flow requirements or conditions under other laws, including hydropower licensing under RCW 90.48.260.

(4) Ecology reserves the right to require new and existing water users to install, maintain, and report data from a measuring device (water meter) as indicated in chapter 173-173 WAC.

(5) The Grays-Elochoman and Cowlitz watershed management plan (plan) recommendations were approved in 2006 by the Grays-Elochoman and Cowlitz planning unit (planning unit) in accord with RCW 90.82.130. The planning unit is a group made up of Lewis, Wahkiakum, Cowlitz, and Skamania county commissioners and a broad range of water use interests. Ecology shall use the plan as the framework for making future water resource decisions in the Grays-Elochoman watershed. Ecology shall rely upon the plan as a primary consideration in determining the public interest related to such decisions, including this rule adoption.

(6) Ecology shall initiate a review of this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions. Ecology and the planning unit should periodically evaluate the effectiveness of this chapter.

#### NEW SECTION

**WAC 173-525-020 Definitions.** For purposes of this chapter, the following definitions shall be used:

"Allocation" means the designation of specific amounts of water for specific beneficial uses.

"Appropriation" means a beneficial use of waters of the state, authorized by and consistent with all applicable laws and regulations.

"Community water supplier" means an entity that supplies water for fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year.

"Consumptive use" means a use of water whereby there is diminishment of the amount or quality of the water source.

"Cubic feet per second (cfs)" means a rate of flow commonly measured or calculated in streams or rivers. One "cfs" is equal to 7.48 gallons of water flowing a distance of one foot in one second.

"Ecology" means the Washington state department of ecology.

"Environmental restoration project" or "ERP" means a project with a primary purpose of restoring salmonids, requiring a temporary use of water.

"Habitat-forming function" means a physical, chemical, or biological function that is necessary to create and maintain natural or desired habitat conditions that benefit fish and

other aquatic life. Habitat forming functions include but are not limited to creating and maintaining the following: Channel migration, gravel and sediment transport, water quality, nutrients, large woody material recruitment, flood plain flows, and riparian habitat.

"Habitat-related action" means improving desirable riparian, stream, wetland, or flood plain functions and related biological, chemical, and physical processes.

"Instream flow" means a level of stream flow, established under chapters 90.03, 90.22, 90.54 and 90.82 RCW, necessary in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values. The term instream flow is synonymous with "minimum flow" as used in chapters 90.03 and 90.22 RCW, "base flow" as used in chapter 90.54 RCW, and "minimum instream flow" as used in chapter 90.82 RCW.

"Interruptible use" means a type of water use that relies upon periodic or seasonal withdrawals that if interrupted would not cause substantial hardship or health or safety concerns, or that is highly unlikely to be interrupted during the expected period of use. For the purposes of this chapter, interruptible uses are subject to the instream flows set in WAC 173-525-060.

"Nonconsumptive use" means a type of water use where either there is no diversion or withdrawal from a source or where there is no diminishment of the amount or quality of the water source.

"Overall stream flow depletion" means the depletion of water from a subbasin without accounting for offsetting actions, as required under WAC 173-525-100(3).

"Permit-exempt withdrawal" or "permit exemption" means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but otherwise subject to surface and ground water statutes and other applicable laws.

"Planning unit" means the Grays-Elochoman and Cowlitz watershed planning unit, established under chapter 90.82 RCW, and all successors, formally designated by the Grays-Elochoman and Cowlitz watershed planning initiating governments.

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pre-treatment storage facilities not under control of the purveyor but primarily used in connection with the system.

"Reservation" means a one time, finite allocation of water for future beneficial uses. For the purposes of this chapter, the reservation is not subject to instream flows set in WAC 173-525-060, nor to closures set in WAC 173-525-070. The reservation is senior to the instream flow water rights set in WAC 173-525-060.

"Water-related action" means an offsetting activity that provides a quantity of water during certain times and at certain places that essentially replaces water at or upstream of where a proposed water right would impact surface flow. Water-related actions include but are not limited to acquiring

an active water right or donating a water right to the trust water right program under chapter 90.42 RCW.

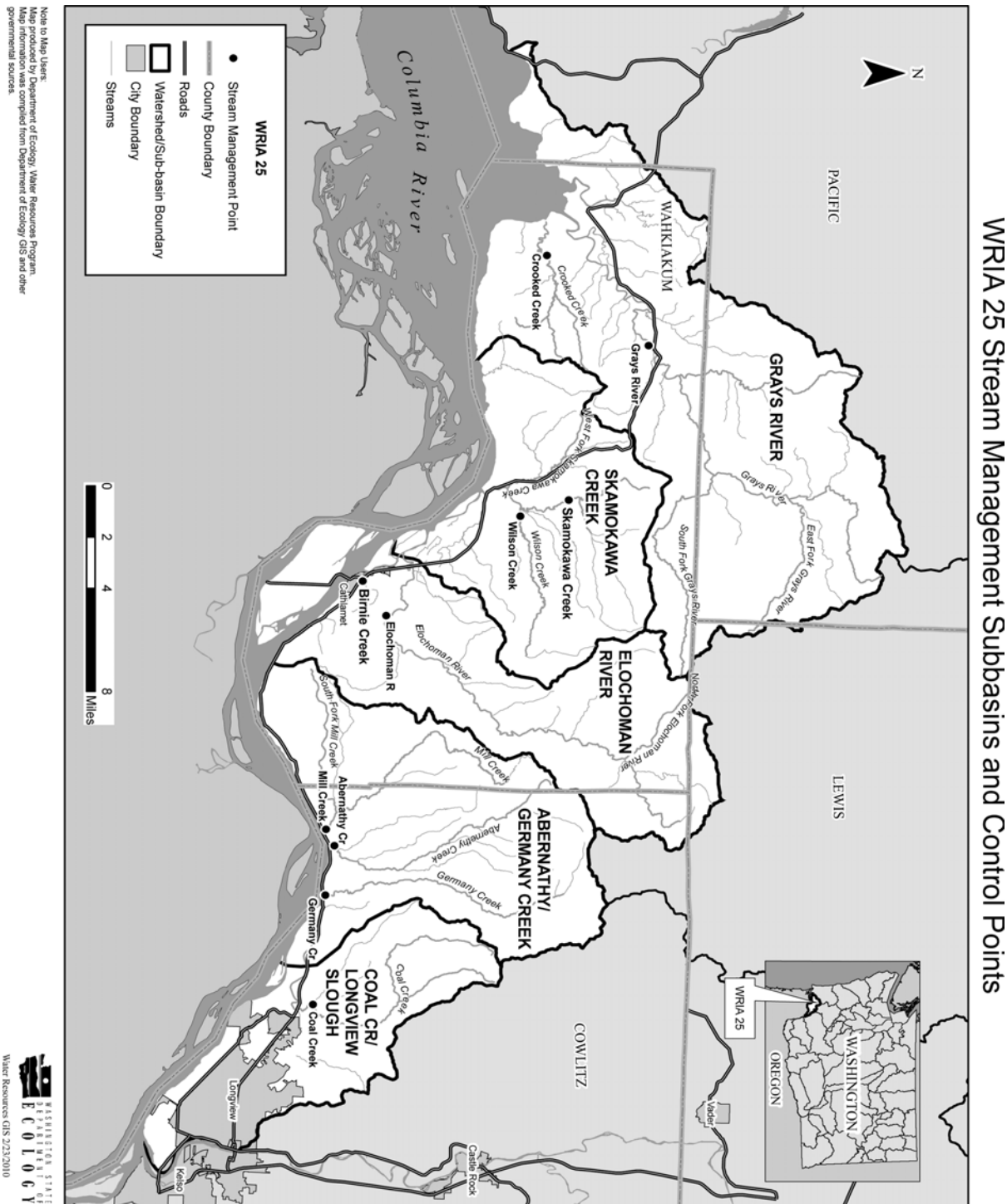
"Water right" means a right to make beneficial use of public waters of the state, including any water right established for instream flow purposes or a permit-exempt ground water withdrawal.

"Watershed plan" means the Grays-Elochoman and Cowlitz watershed management plan, adopted on July 21, 2006, by the Cowlitz, Lewis, Skamania, and Wahkiakum county commissioners.

"Withdrawal" means the extraction of ground water or the diversion of surface water for a beneficial use.

NEW SECTION

**WAC 173-525-030 Map.**



Note to Map Users:  
Map produced by Department of Ecology, Water Resources Program.  
Map information was compiled from Department of Ecology GIS and other governmental sources.

WASHINGTON STATE  
DEPARTMENT OF  
E C O L O G Y  
Water Resources GIS 2/23/2010

NEW SECTION

**WAC 173-525-040 Compliance and enforcement.** (1)

Ecology shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.

(2) When ecology determines that a violation of this chapter has occurred:

(a) Ecology shall first attempt to achieve voluntary compliance, except in appropriate cases involving potential harm to other water rights or the environment. An approach to achieving voluntary compliance is to offer information and technical assistance to a violator. The information or technical assistance identifies, in writing, one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, ecology has the authority to issue a notice of violation, a formal administrative order under RCW 43.27A.-190, assess penalties under RCW 43.83B.336 and 90.03.600, or may seek criminal enforcement under RCW 90.03.400, 90.03.410, and 90.44.120.

**PART B  
INSTREAM FLOWS AND CLOSURES**

NEW SECTION

**WAC 173-525-050 Stream management control points.** Ecology hereby establishes the following stream management control points shown in Table I. Management point locations are shown in WAC 173-525-030.

**Table I  
Stream Management Control Point Information**

<b>Stream Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>
Coal Creek (at Harmony Drive)	RM 0.9; 46°11'12"N, 123°2'9"W
Germany Creek (at Germany Creek Road)	RM 0.6; 46°11'46"N, 123°7'36"W
Abernathy Creek (at Abernathy Road)	RM 0.3; 46°11'43"N, 123°9'56"W
Mill Creek (at Mill Creek Road, past bridge)	RM 0.3; 46°11'26"N, 123°10'43"W
Birnie Creek (at SR 4)	RM 0.4; 46°12'17"N, 123°22'55"W
Elochoman River (at Highway 407 bridge)	RM 4.3; 46°13'7"N, 123°21'13"W
Skamokawa Creek (at Peterson Road)	RM 4.4; 46°18'51"N, 123°27'10"W
Wilson Creek (at East Valley Road)	RM 0.3; 46°17'20"N, 123°26'19"W

<b>Stream Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>
Crooked Creek (at Eden Valley Road)	RM 2.3; 46°17'51"N, 123°39'7"W
Grays River (at covered bridge)	RM 10.5; 46°21'17"N, 123°34'52"W

NEW SECTION

**WAC 173-525-060 Establishment of instream flows.**

(1) The instream flows established in this chapter are based on the recommendations of the planning unit; consultation with the department of fish and wildlife, department of agriculture, and department of commerce; and public input received during the rule-making process. The planning unit recommended these instream flow levels by unanimous vote.

(2) Instream flows established in this chapter are water rights, which protect instream values and functions from future appropriations. The priority date of the instream flows is the effective date of this chapter. In accordance with RCW 90.82.080, this priority date received unanimous approval from the planning unit.

(3) Instream flow rights shall be protected from impairment by any new water rights put to beneficial use after the effective date of this chapter and by all future changes and transfers of senior and junior water rights, including both surface and ground water rights. The following water rights are not subject to the instream flows:

(a) A water right put to beneficial use before the effective date of this chapter, unless stated in the conditions of the water right or change authorization.

(b) Water rights appropriated from the reservation of water established in WAC 173-525-100.

(c) Water rights for environmental restoration purposes under WAC 173-525-120, unless included as a permit condition.

(4) Instream flows, expressed in cubic feet per second (cfs), are measured at the stream management control points in WAC 173-525-050. Stream management points apply to stream reaches as follows:

(a) Instream flows apply to all stream reaches that contribute to flow at stream management control points, as shown in Table II of this section;

(b) For reaches that are downstream of all management points, the flows established for the nearest upstream management control point shall apply; and

(c) If a point of withdrawal is downstream of the confluence of two or more branches, each having a designated management point, both management points shall apply to that withdrawal.



**Table II**  
**Instream Flows in the Grays-Elochoman Basin (cubic feet per second)**

Month	Stream Management Control Point				
	Coal Creek, RM 0.9	Germany Creek, RM 0.2	Abernathy Creek, RM 0.3	Mill Creek, RM 0.3	Birnie Creek, RM 0.4
January	76	81	97	105	13
February	98	103	123	132	13
March	98	103	123	132	25
April	98	103	123	132	25
May	98	103	123	132	25
June	65	68	81	87	17
July	65	68	81	87	17
August	25	28	35	38	5
September	114	121	145	157	5
October	114	121	145	157	13
November	114	121	145	157	13
December	76	81	97	105	13

Month	Stream Management Control Point				
	Elochoman River, RM 4.3	Skamokawa Creek, RM 4.4	Wilson Creek, RM 0.3	Crooked Creek, RM 2.3	Grays River, RM 10.5
January	237	71	33	9	344
February	283	71	44	19	401
March	283	91	44	19	401
April	283	91	44	19	401
May	283	91	44	19	401
June	189	61	29	13	267
July	89	61	29	13	267
August	65/72*	24	10	3	147
September	155	106	49	3	227/516**
October	355	106	49	9	516
November	355	106	49	9	516
December	355	71	33	9	516

\* The Elochoman River, RM 4.3 instream flow right is for 65 cubic feet per second (cfs) from August 1 to August 14, and 72 cfs from August 15 to August 31.

\*\* The Grays River, RM 10.5 instream flow right is for 227 cfs from September 1 to September 15, and 516 cfs from September 16 to September 30.

#### NEW SECTION

**WAC 173-525-070 Surface and ground water closed to further consumptive appropriations.** (1) Based on historical and current low flows and the water withdrawals by existing water right holders, ecology has determined that no waters are reliably available for new consumptive uses from certain surface water sources in the basin. Therefore, all surface waters listed in Table III are closed to any further consumptive appropriation, except as provided in WAC 173-525-080.

**Table III**  
**Surface Water Closures**

Subbasin Name*	Affected Reach
Abernathy/Germany Creek	Abernathy Creek from mouth at Columbia River to headwaters, including tributaries. Germany Creek from mouth at Columbia River to headwaters, including tributaries. Mill Creek from mouth at Columbia River to headwaters, including tributaries.

Subbasin Name*	Affected Reach
Elochoman River	Elochoman River from river mile 2.2 (46°13'35"N, 123°22'41"W) to headwaters, including tributaries.
Skamokawa Creek	Skamokawa Creek from river mile 0.5 (46°16'34"N, 123°27'34"W) to headwaters, including tributaries.
Grays River	Grays River from river mile 5 (16°20'8"N, 123°37'54"W) to headwaters, including tributaries.

\* Subbasin boundaries are shown in WAC 173-525-030, and are consistent with the boundary descriptions used in the watershed plan.

(2) Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, there is a high likelihood that future ground water withdrawals would capture water that affects closed surface waters. Therefore, the basin is closed to new withdrawals of ground water (including any new permit-exempt withdrawals) that would affect closed surface waters, except as provided in WAC 173-525-080.

(3) Applications for a withdrawal that would not affect the closed reaches, listed in Table III, shall be evaluated on a case-by-case basis under applicable law.

**PART C  
FUTURE WATER RIGHTS**

NEW SECTION

**WAC 173-525-080 Future water rights, generally.** A new surface or ground water appropriation (including any permit-exempt withdrawal) may be commenced only if consistent with the surface and ground water statutes and other applicable requirements of law and if any one of the following seven conditions (subsections (1) through (7) of this section) apply:

- (1) The proposed water use is nonconsumptive.
- (2) The proposed surface water diversion is not located on any of the surface waters closed in WAC 173-525-070, Table III.

(3) The proposed ground water withdrawal is located where it would not affect any of the surface waters closed in WAC 173-525-070, Table III. A person or entity seeking to commence such a withdrawal must show, through scientifically sound studies and technical analysis, that the proposed withdrawal would not affect any of the closed surface waters identified in WAC 173-525-070, Table III.

(4) The person or entity seeking to commence the new appropriation submits a scientifically sound mitigation plan, approved by ecology. A mitigation plan shall be approved if the proponent can demonstrate to ecology's satisfaction that when the mitigation is implemented the proposed withdrawal(s) will not impair senior water rights, including instream flow rights, adversely impact instream resources, or

diminish water quality. A mitigation plan can be submitted to mitigate for an individual withdrawal or to mitigate for multiple withdrawals in a defined region.

An approved mitigation plan shall include a monitoring and reporting plan. It shall also include conditions that the plan be implemented as long as the associated water right is used and that any water provided for mitigation purposes be prohibited from being applied to any other purpose. If monitoring of a mitigation plan shows the mitigation is not effective, ecology's approval of the mitigation plan shall be suspended and the water use shall cease until ecology approves a new or revised mitigation plan.

(5) The proposed water use qualifies as an interruptible use as defined in WAC 173-525-020, and meets the criteria in WAC 173-525-090.

(6) The proposed water use qualifies for the reservation established and as conditioned in WAC 173-525-100.

(7) The proposed use is for an environmental restoration project and meets the criteria in WAC 173-525-120.

NEW SECTION

**WAC 173-525-090 Future appropriations for interruptible use.** (1) Ecology finds there may be water available above existing water rights and instream flows, which may be captured for interruptible use. This water is only available from such water sources and during periods as specified in Table IV.

(2) Prior to commencing use, the person or entity seeking a new interruptible appropriation must demonstrate a seasonal need and provide assurances that any effects on surface water that may result from withdrawals will be limited to the periods and locations specified in Table IV.

(3) Ecology shall deny an appropriation for interruptible use if such use, or the cumulative effects of such uses, would compromise habitat-forming functions provided by high flows. In no case shall new individual or cumulative allocations exceed the values indicated in Table XX as specified for each water source. However, ecology may lower these allocation limits on a case-by-case basis whenever more protection of habitat-forming functions is needed.

(4) Interruptible uses are subject to existing water rights and instream flows set in WAC 173-525-060.

**Table IV  
Interruptible uses - periods and limits  
on future allocation**

Water Source Name	Period Available (date)	Allocation Limit* (cubic feet per second)
Grays River	November 16 to April 30	50
Elochoman River	November 16 to April 15	50

\* Due to case-by-case determinations of flow for habitat forming function needs, the maximum allocation may be less.

NEW SECTION

**WAC 173-525-100 Reservations of surface and ground water for future uses.** (1) Ecology has weighed the public interest that supports the reservation of a limited amount of water for future consumptive uses against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by limited reservations clearly overrides the small potential for negative impacts on instream resources.

(2) Based on this finding, ecology hereby allocates an amount and rate of water withdrawal for specific water users and subbasins, as indicated in Table V. The reservations are a one time, finite resource. When and if water is fully appropriated from the reservations established in this section, all remaining waters in closed areas are hereby appropriated for instream flow use.

A reservation is available to a user only if the conditions set forth in subsection (3) or (7) of this section are met, as well as any applicable requirements of law, including but not limited to all water resource laws and regulations. Prior to the appropriation of a water right from a reservation, ecology must receive written confirmation from the county with jurisdiction where a reservation applies. Such confirmation must provide assurances that the county will issue building permits and subdivision approvals consistent with this chapter, including rule provisions affecting permit-exempt ground water supplies.

The designation of specific municipal suppliers in a reservation does not create a right for these entities to use such water. Such a right will arise only if a permit is applied for by such municipal suppliers to use water under the reservation and approved by ecology after applying the legal tests for a new appropriation. With respect to any water for which a permit has not been granted, ecology reserves the right to modify in all respects or rescind a reservation by future rule making.

(3) Ecology will approve a water right application for water from a reservation if all of the following conditions in (a), (b), (c), and (d) of this subsection are met:

**Alternatives analysis**

(a) The applicant demonstrates that no practicable supply alternatives to the reservation are available. In order to satisfy this condition, an applicant must demonstrate consideration of other regional water sources to supply water for the same use now being proposed, including:

- (i) Existing public water system supply;
- (ii) Water from a ground or surface water source, which may be withdrawn without affecting any of the surface waters closed in WAC 173-525-070, such as water from a hydraulically disconnected deep aquifer source or tidally influenced areas near the Columbia River;
- (iii) Supply options from surface and ground water storage;
- (iv) Water savings from conservation techniques, such as reuse of waste water; and
- (v) Mitigation and minimization considerations to the extent required in (d) of this subsection, impact analysis.

**Water-related offset**

(b) The applicant demonstrates it will offset the overall streamflow depletion(s) through water-related actions to the

maximum extent practicable. Applicants should offset at least one-half of the overall streamflow depletion(s) through water-related actions.

(i) In evaluating the adequacy of water-related actions to offset depletions, ecology will evaluate the action based on the degree of aquatic benefit it would provide. A water-related offset may have a greater or lesser benefit due to the timing, location, or quality of water provided. The level of benefit will be used to determine if any additional offsets will be required of the applicant.

(ii) Ecology will consider water-related offsets only to the extent that reasonable assurance exists that such offsets will be successfully delivered, such as a donation to the trust water right program under chapter 90.42 RCW where delivery is legally guaranteed.

**Habitat-related offset**

(c) After satisfying the water-related offset requirement in (b) of this subsection, an applicant must offset any remaining streamflow depletion through habitat-related actions that create or improve habitat. Habitat-related offsets must compensate for the habitat loss or degradation that will result from the streamflow depletion permitted from the reservation.

An applicant must provide adequate assurances that a habitat-related action in fact occurs. Ecology, as appropriate, shall condition use of the reservation with performance standards and monitoring requirements, or require financial assurance mechanisms prior to reservation use.

**Impact analysis**

(d) In keeping with the findings of the watershed plan, ecology finds that the public interest supports avoidance and minimizing impacts to tributaries. The applicant must demonstrate one of the following:

- (i) The proposed withdrawal does not impact tributaries to subbasin mainstems; or
- (ii) An impact to a tributary to a subbasin mainstem is unavoidable, as demonstrated by an impact analysis, included as part of the alternatives analysis under (a) of this subsection. In addition to demonstrating the necessary considerations under (a) of this subsection, the impact analysis must demonstrate consideration of water supply options that avoid and minimize the impact to the tributary.

Ecology, in consultation with the department of fish and wildlife, may require an applicant to monitor effects of a ground water withdrawal as a condition of water use.

**Application review and permitting**

(4) In determining practicability in subsection (3) of this section, ecology will consider both economic and logistic considerations, as well as guidance from the watershed plan.

(5) Ecology, in consultation with the department of fish and wildlife, will evaluate the adequacy of proposed offsets and alternatives analysis in subsection (3) of this section. The evaluation shall be consistent with the watershed plan and guidance documents approved by ecology. Ecology will also consider recommendations and technical advice received from the planning unit or by an advisory committee, formally designated by the planning unit.

(6) Ecology will issue a permit for use of water equal to the amount it determines from a reservation after applying the conditions of this subsection, and such amount will be

debited from the total reservation amount. The total quantity of water appropriated shall not exceed the amount and rate listed under the subtitle "Streamflow Depletion" in Table V. However, ecology will issue a permit for a quantity beyond the amount debited from the reservation for the following:

(a) Water-related offsets to the extent such offsets are water-for-water, to the satisfaction of RCW 90.03.380 or 99.44.100, any other applicable laws, and terms of an approved mitigation plan under WAC 173-525-080(4); and

(b) Water use to the extent closed water sources are not affected and to the satisfaction of applicable requirements of law, including but not limited to all water resource laws and regulations.

(7) In keeping with the findings of the watershed plan and in order to implement this rule, ecology may prioritize its decision making for a water right application for a new appropriation from a reservation under this subsection. Ecology will only approve such applications ahead of others when the new appropriation would not diminish the water available to earlier pending applicants for an appropriation from the same source of supply. Ecology's decision to prioritize an application under this subsection shall be made in conjunc-

tion with other priority processing decisions made by ecology under chapter 173-152 WAC.

**Permit-exempt ground water use**

(8) The requirements in subsection (3) of this section do not apply to permit-exempt withdrawals. However, permit-exempt withdrawals under RCW 90.44.050 are subject to both of the following conditions in order to occur under the reservation:

(a) Future permit-exempt well use may not occur where connection to an existing community water supplier can be provided in a timely and reasonable manner. Determinations of timely and reasonable shall be consistent with public water system plans, local ordinances, and state laws.

(b) Water use from a permit-exempt ground water well must be consistent with the allocation limits of a reservation, applicable county and municipal codes, and other applicable laws, including the statute on permit exemptions, RCW 90.44.050. Single or group domestic uses under the permit exemption shall not exceed five thousand gallons per day. Irrigation of lawn and noncommercial garden under the permit exemption shall not exceed one-half acre.

**Table V  
Allocation of Reservation**

Subbasin Name*	Water User**	Streamflow Depletion (cfs)
Abernathy/Germany Creek	Permit-exempt ground water wells in Wahkiakum County	0.07
	Permit-exempt ground water wells in Cowlitz County	0.36
Elochoman River	Other public water systems in Wahkiakum County	0.37
	Permit-exempt ground water wells in Wahkiakum County	0.02
Skamokawa Creek	Permit-exempt ground water wells	0.20
Grays River	Wahkiakum Public Utility District	0.30
	Other public water systems in Wahkiakum County	0.75
	Permit-exempt ground water wells in Wahkiakum County	0.20

\* Subbasin boundaries are shown in WAC 173-525-030, and are consistent with the boundary descriptions used in the watershed plan.

\*\* In the Grays-Elochoman and Cowlitz watershed management plan, the term "domestic wells" has the same meaning as "permit-exempt ground water wells" and the term "small community water systems" has the same meaning as "public water systems."

**NEW SECTION**

**WAC 173-525-110 Accounting for use under the reservation.** (1) Ecology shall maintain a record of all appropriations from the reservation.

(2) For an appropriation under a permit, ecology will account for water use under the reservation based on authorized quantities under water right permits or certificates, and according to WAC 173-525-100(6).

(3) For permit-exempt ground water appropriations, ecology will deduct a standard amount of two hundred forty gallons per day for each well. For a group domestic water system under the permit-exemption, the standard amount will

be applied for each domestic or residential service connection. The standard amount will be adjusted periodically to reflect actual use during low flow conditions. The standard amount assumes a rate of septic recharge from an on-site septic system. In the event that on-site septic recharge is known not to occur, ecology will deduct an additional five hundred sixty gallons per day. Additionally, ecology reserves the right to account for water use based on the best available information contained in well logs, approvals issued by local jurisdictions, or other documents.

(4) If a water user under the reservation subsequently abandons or relinquishes the withdrawal, ecology will credit back to the reservation the actual amount of water used

and/or debited from the reservation, upon demonstration to ecology that the well or surface water diversion has been decommissioned through written certification.

(5) Ecology shall notify the affected county and the planning unit, when it determines that fifty percent, seventy-five percent, and one hundred percent, respectively, of the reservation is appropriated for a water user in Table IV.

#### NEW SECTION

**WAC 173-525-120 Future surface water withdrawals for environmental restoration.** In keeping with the findings of the watershed plan, ecology finds that the public interest advanced by future withdrawals for environmental restoration projects (ERPs), as defined and conditioned in this section, clearly overrides the minimal negative impacts on instream flows.

(1) A future withdrawal for an ERP may be approved only if it meets all the following:

(a) The proposed water use is for a bypass flow for salmonid restoration or riparian planting project, and the primary purpose of the project is to restore salmonids.

(b) The proposed project will result in aquatic habitat benefits, and such benefits will exceed any detriment the reduced flow may have on aquatic habitat during the times and location of withdrawal(s) for the project.

(c) The proposed use qualifies for a temporary permit.

(2) Ecology, in consultation with the department of fish and wildlife, will evaluate proposed ERPs. ERPs approved by ecology are not subject to closures or instream flows set in this chapter, unless otherwise conditioned by the permit.

#### **WSR 10-09-072 PROPOSED RULES**

#### **DEPARTMENT OF ECOLOGY**

[Order 05-04—Filed April 19, 2010, 1:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-06-114.

Title of Rule and Other Identifying Information: Chapter 173-526 WAC, Water resources management program for the Cowlitz watershed (WRIA 26).

Hearing Location(s): Cowlitz County Training Center, 1900 1st Avenue, Longview, WA, on May 26, 2010, at 7:00 p.m.; and at the Morton School District, Lecture Room, 152 Westlake Avenue, Morton, WA, on May 27, 2010, at 7:00 p.m.

Date of Intended Adoption: July 15, 2010.

Submit Written Comments to: Travis Burns, Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-7207, e-mail [tburn461@ecy.wa.gov](mailto:tburn461@ecy.wa.gov), fax (360) 407-6574, by June 4, 2010, preferably via e-mail.

Assistance for Persons with Disabilities: Contact Judy Beitel by May 21, 2010, TTY (800) 833-6388 or (360) 407-6878. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In order to better manage water resources in WRIA 25 [26], the local watershed planning unit recommended that ecology adopt, in rule, a water resource management strategy for the basin. Recommendations were approved by Wahkiakum, Lewis, Cowlitz and Skamania county commissioners in July 2006.

The key rule elements include:

- Setting instream flow levels in the watersheds to protect aquatic resources, including habitat for threatened and endangered salmonids;
- Closing subbasins to future withdrawals with the exception of seasonal water use from the region's larger streams;
- Establishing limited reservations of water for future use; and
- Specifying conditions for accessing the water reserves to benefit instream resources and better manage limited supply.

Reasons Supporting Proposal: RCW 90.82.130(4) states when a watershed plan is approved by a watershed planning unit and the county legislative authority, ecology, as a participating member of the planning unit, is obligated to use the plan for making future water resource decisions for the watershed. The proposal also furthers ecology's water management goals and statutory obligations.

Statutory Authority for Adoption: Chapters 90.82, 90.54, 90.22, 90.03, and 90.44 RCW.

Statute Being Implemented: Chapters 90.03, 90.44, 90.54, and 90.82 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Travis Burns, Headquarters, Department of Ecology, (360) 407-7207; Implementation and Enforcement: Thomas Lorange, Southwest Regional Office, Department of Ecology, (360) 407-6058.

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

#### Small Business Economic Impact Statement

**Introduction:** The Washington state department of ecology (ecology) is proposing chapters 173-525 and 173-526 WAC, Water resource programs for the Grays/Elochoman and Cowlitz basins, water resources inventory areas (WRIA) 25 and 26.

The objective of this small business economic impact statement (SBEIS) is to identify and evaluate the various requirements and costs that the proposed rules might impose on businesses. In particular, the SBEIS examines whether the costs on businesses from the proposed rules impose a disproportionate impact on the state's small businesses. The RCW 19.85.040 describes the specific purpose and required contents of an SBEIS.<sup>1</sup>

Ecology is developing and issuing this SBEIS as part of its rule adoption process and to meet chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to

ensure that the proposed rules are consistent with legislative policy.

**Background/Rule Proposals:** The key elements of the proposed rules include:

- Setting instream flow levels in the watershed to protect aquatic resources, including habitat for threatened and endangered salmonids.
- Closing most subbasins to new year-round withdrawals.
- Onal interruptible water supplies from larger streams (Cowlitz, Coweeman, Grays, and Elochoman rivers).
- Creating water reservations to provide a reliable water supply for the twenty-year projected population growth in closed subbasins.
- Specifying conditions to access the reservations so as to benefit stream resources and better manage limited water supply.

The proposed instream flows are designed to protect stream habitat. This makes less water available for future uses during low-flow portions of the year (May through November). To provide a reliable, year-round supply of water for new future uses, it is necessary to reserve water that will be available even when the instream flows are not met. To do this, RCW 90.54.020 (3)(a) requires that ecology determine that the reservations would serve the overriding considerations of the public interest (OCPI).

Without reservations, only interruptible water rights are typically available to group domestic and municipal water suppliers to meet future demands within their service areas.

The proposed reservations give exempt uses, group domestic, and municipal systems more access to reliable water supplies, consistent with RCW 90.54.020(8) and the Growth Management Act (GMA). The reservations ensure a year-round, reliable water supply to meet demands estimated to occur through 2030. Future users from the reservations could obtain their water from either groundwater or surface water sources.

**Analysis of Compliance Costs for Washington Businesses:** We have assessed the proposed rules' impacts by analyzing and comparing water right management under the proposed rules in contrast to current practices. The current framework or "baseline" includes the use of water by permit-exempt wells (RCW 90.44.050) and any administrative procedures for considering applications for both new water rights and changes to existing water rights. Implementation of chapters 90.22, 90.54, and 90.82 RCW are also part of this baseline. The proposed reservations allot water for new water rights.

We provide a brief description of compliance requirements below. You can find further details of water management under existing practices and proposed rules in Appendices B and C.

**Water Rights Administration Under the Rules:** The proposed chapters 173-525 and 173-526 WAC will create "instream flows." Instream flows are water rights for instream resources and provide protection from impairment by "junior" water rights - those with a later priority date. This means junior water rights must stop use when stream flows

do not meet the minimum levels set by the senior instream flows.

The proposed rules also reserve water for future out-of-stream uses, which will not be subject to the instream flows. The reservations were recommended by the WRIA 25 and 26 watershed planning unit, a group representing a broad range of local interests. When negotiating the size of the reservations (see Appendix B), the planning unit considered both the office of fiscal management's regional population growth projections and the projected impacts to surface water flows. The reservations are also based on overriding considerations of the public interest. Water in the reservations would provide new noninterruptible water rights for those that qualify.

The reservations allot water on a subbasin basis. Within each subbasin, a specific amount of surface water or groundwater would be available to certain users, including:

- City and county systems.
- Public utility districts.
- Other public water systems.
- Permit-exempt well users.

As well as creating the instream flows and reservations for new uses, the proposed rules clarify other requirements that might affect future uses. We describe the expected changes to water management below. For more detail on changes to water right administration, see the cost-benefit analysis.

**Surface Water:** The decision process for issuing surface water rights will be similar after the proposed rules as before. Currently (baseline), ecology grants water rights subject to flow conditions or requires mitigation during low-flow periods in the areas proposed for closure. The most significant effect of the rules relates to the creation of reservations that allocate water for new uses. Through the reservations, new surface water uses may continue even during low stream flow conditions.

There may be minimal effects to water users not qualifying for the reservation. Certain nonpublic and larger scale water users (agriculture and industrial users) will not be able to qualify for direct access to the reservations. The proposed reservations do not provide for nonpublic uses of surface water. These businesses would not be able to withdraw water when water is not available (typically May through November). During such periods, water users wanting a new water right would need to either:

- Purchase or lease, and transfer an existing water right.
- Suspend water use during periods of low flows.
- Develop storage mechanisms.
- Develop strategies acceptable to ecology to mitigate their impacts.

However, we do not expect the rules to have a large effect on those that cannot directly access the reservations. These users face similar obstacles to gaining new water rights under current practices. Absent rule making, all new users would need to mitigate or use stored water during periods of low flow. Under the proposed rules, many will have increased access to water through a public water system that has gained rights through the reservation. We expect that

most needs from expected regional growth will be satisfied through public water systems and permit-exempt wells.

**Groundwater Permits:** As with surface water, ecology will also make decisions on groundwater right applications similar to the baseline, except for uses from the proposed reservations. New water right permits for groundwater in hydraulic continuity with rivers and streams in WRIsAs 25 and 26 would be subject to flow conditions under the baseline or to the instream flows under the proposed rules.

As with surface water, there may be minimal effects to those water users not qualifying for the reservation, but ecology does not expect such effects to change business practices. In particular, many small businesses may still be able to meet demands under the groundwater permit exemption<sup>2</sup>. Potential groundwater users under the proposed rules are also able to avoid interruption by showing that their use is not in hydraulic continuity with closed surface water bodies.

Overall, the change in groundwater permitting does not significantly affect businesses. However, the proposed rules reduce the administrative costs of groundwater permitting. The rules close certain groundwater areas, making case-by-case hydraulic connection determinations unnecessary.

**Permit-Exempt Groundwater:** Under the proposed rules, new users can gain an uninterrupted permit-exempt water use under the reservation. Permit-exempt users currently withdrawal [withdraw] water as authorized by local law and RCW 90.44.050. Although exempt from permitting, exempt wells remain subject to all other state water laws. Permit-exempt well use can be shut off if it impairs senior water rights. This has not yet occurred in WRIsAs 25 and 26. Nonetheless, they remain susceptible to future curtailment if withdrawals result in impairment of a senior water right.

The proposed rules reserve water for future permit-exempt wells and are not subject to interruption to protect the created instream flows. The rules provide added assurances to small businesses located outside the service area of municipal water suppliers and rely on year-round water from permit-exempt wells.

**Changes or Transfers of Water Rights:** Ecology will continue to process changes or transfers of existing water rights as permitted by chapters 90.03 and 90.44 RCW. The process is the same with the proposed rules as with the baseline.

**Reservations of Water:** The reservations of water and the conditions of use are part of the proposed rules. The reservations will allow eligible water users the benefit of having a continuous, reliable source of water during low flow periods, with a few limits. These limits include the finite quantity of the reservations and the conditions to accessing reservation water.

The proposed rules do not require permit-exempt uses to meter and report water use to ecology. However, local public water purveyors, the county, or a municipal government may require metering and reporting through ordinances adopted to implement the watershed plan. Ecology also has authority to require metering and reporting under RCW 90.03.360 in the future.

**Impacts to Businesses in WRIsAs 25 and 26:** Of the proposed rules' elements, the created reservations will have the greatest impact on businesses. Businesses that need water

only for potable use for employees and customers will receive benefits from the reservation. Businesses that also need water for commercial or industrial manufacturing processes and landscape or commercial irrigation will see both costs and benefits.

The proposed rules will not directly affect existing water right holders. In general, the economic costs and benefits to businesses are from the business impacts from having less water in a river, but more water available for out of stream use. Under the proposed rules, the reservations can provide water for public water systems and permit-exempt uses, even during low flow periods, for a projected twenty-year period. Having the reservation makes water predictably and reliably available for more out of stream uses than under the baseline. Therefore, it is likely the proposed rules will have a positive effect on most affected businesses. An exception to this would be businesses that use water in the river. The possible impacts are described below.

**Impacts to Businesses Dependant on Stream Flows:**

As stated above, the proposed rules create a series of reservations. Accessing the reservations will provide a reliable water supply for new uses during low flow periods. This will slightly reduce the amount of water in the river and could impact instream benefits such as ecosystem services, recreation, and so on. For businesses that provide guide services such as rafting, fishing, and bird watching; or those dependent on dilution for waste removal; there could be a very minor impact. However, discussions with local interests shows that the proposed flow reductions will result in little, if any, impact.

**Impacts to Existing Permitted Water Rights:** Allowing access to water through the reservation could affect the value of existing permitted water rights held by some businesses. The exact effect will depend on the allowable use, volume, and point of diversion of the existing rights, the existing and desired uses, and the volumes needed.

**Costs to Firms and Required Professional Services:**

As mentioned above, those businesses that depend on water in the river may experience costs from the proposed rules. Those businesses that would obtain water from the reservation are most likely to gain the benefits. The cost analyses required in chapter 19.85 RCW follow.

**Reporting and Recordkeeping:** The proposed rules add no reporting or record-keeping requirements for small businesses.

**Additional Professional Services:** Ecology anticipates no added professional services. For water users qualifying for the reservations, the proposed rules reduce the need for small businesses to obtain consulting services. The proposed reservations make a reliable water supply available, without the expense and uncertainty of demonstrating water exists on a case-by-case basis.

**Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:** We expect no additional equipment, supplies, labor, or administrative costs from the proposed rules.

**Other Compliance Requirements:** We expect no other compliance requirements from the proposed rules.

**Conclusions:** As mentioned above, firms that depend on instream activities and potentially those that hold existing permits could incur adverse impacts.

- The impacts to instream users would be specific to the firm, but is unlikely to be significant since few firms are dependent on instream flows<sup>3</sup>.
- Existing water right holders could be impacted if the proposed rules resulted in changes to the value of their water right. This would ultimately only affect those that want to sell or lease a right, and only for the period until the reservations are fully allocated to new uses. The exact cost is difficult to determine since it depends on many factors and very few if any transfers would happen in this fashion.

Creation of the reservation will be a net benefit for most businesses that need water. Water being unavailable during low flow periods is damaging to any business that needs a reliable supply for its own use or to develop residential or commercial properties.

For those that do not require water during low flow periods, an interruptible water right is an option under both the current practices and proposed rules.

In order to have water available during low flow periods under the baseline, businesses would need to obtain water through purchase, lease, transfers, or on-site storage. On-site storage for a low flow period costs about \$0.75 per gallon for small water systems<sup>4</sup>. The proposed rules avoid this cost for those using the reservations. For other users, the cost of storage would likely preclude it as an option.

Currently, businesses needing water right permits in many areas must purchase or lease water. This can mean some cost for every low flow season. This analysis assumes that water would be readily available for purchase or lease. If not the case, then prices would likely be very high.

**Quantification of Costs and Ratios:** It is the purpose of this section to evaluate whether:

- Compliance with the proposed rules will cause businesses to lose sales or revenue.
- The proposed rules will have a disproportionate impact on small businesses.

**Revenue Impacts:** As noted previously, the most likely significant impacts of the proposed rules would be from decreased flows in the river and the creation of the reservation.

- The reduction of flows in the river is unlikely to significantly affect any firms within the basins.
- Those firms that will now be able to access water from the reservation will experience a benefit from being able to access reliable water supplies more easily. We estimate that summer flows will not meet the proposed minimum instream flows in a majority of years. New permits issued with stream flow conditions would be interruptible under the baseline, as under the proposed rules. Storage would likely be required for all uses absent the rules. In that sense, the rules will represent a negative cost (net benefit) to firms.

The net benefit to firms is the value of avoiding expensive storage, purchasing or leasing water rights, or other mitigation options to access water during periods of low flow. This will likely lower costs to some potential water users and to that extent, may increase revenues.

Existing water right holders might see some loss in the value of existing water rights and this could lower revenues. However, as mentioned above, this effect is likely to be relatively small and so we do not consider it further.

**Distribution of Compliance Costs:** No business is required to access water from the reservations or comply with the proposed rules.

It is possible that small businesses could have costs under the proposed rules if they pursue water rights outside the reservations and regional supply areas. Still, the cost should be similar or less to the expense now incurred, as ecology is likely to issue only interruptible rights if sufficient mitigation is not proposed. The rules, for the most part, only clarify the conditions for granting a new water right that exist in current practice. Ecology is unable to determine this cost as it would be very small and are unsure if future permitted water rights will be processed.

**Known Costs:** No businesses are required to comply with the rules. Businesses that choose to qualify for the benefits of the reservations must meet the criteria for accessing the reservation.

Ecology was unable to determine any measurable costs to small businesses from the proposed rules. If there were known costs to those required to comply with the proposed rules, it may impose disproportionate costs to small businesses. However, there is clearly a very large net benefit to those who qualify for the reservations. The rules identify various water purveyors and permit-exempt well users as qualifying for the reservations. Except for select businesses that will be served by a permit-exempt well, small businesses cannot access the reservations directly.

**Conclusions:** No businesses are required to access the reservations. Only those businesses pursuing a new water right will be subject to conditions of the rules, and they are unlikely to experience a significant effect. Ecology was unable to determine any costs to small businesses from these proposed rules. Businesses of all sizes that qualify to use the reservation, directly or indirectly through a water purveyor, will experience net benefits from the rules. If there are known costs, the rules could have disproportional costs to small businesses. Ecology was unable to determine measurable costs.

**Actions Taken to Reduce the Impact of the Rules on Small Business:** As noted above, it is unlikely that there will be significant adverse impacts on businesses (small or large) as part of this rule making versus the baseline. Therefore, the proposed rules take no specific measures to reduce or mitigate these rule impacts. In general, [a] small business seeking reservation water through a permit-exempt well may have hypothetical advantages over a larger business with needs too large to be satisfied through a permit-exempt well.

**Small Business Involvement in Developing the Proposed Rules:** The proposed rules have been developed as an outcome of the Grays/Elochoman and Cowlitz watershed planning process (WRIAs 25 and 26). This was an open pro-



cess allowing for all entities to comment and take part as the project proceeded. Members in the planning unit included small businesses and organizations representing small businesses. Ecology will also hold public hearings after the filing of the CR-102s to allow small businesses to provide further input.

**The Standard Industrial Codes (SIC) Codes of Potentially Impacted Industries:** No industries are required to comply with the proposed rules unless they seek to obtain new water right permits or permit-exempt water rights in the covered area. The following list shows SIC codes for existing developable properties in the Grays-Elochoman and Cowlitz basins<sup>5</sup>. This serves as a representative sample of potential future businesses that may be affected.

**Table 1. Industries potentially affected by proposed rules**  
(North American Industry Classification System<sup>6</sup>)

Storage/packing agricultural produce	Code 1151
Deciduous tree fruits	Code 0175
Horticulture nurseries	Code 1114
Manufacturing	Code 33
Fresh fruits and vegetables	Code 5148
Commercial greenhouses	Code 1114
Hatcheries	Code 1129
Mining, mineral extraction	Code 21
Residential building construction	Code 2361
Nonresidential building construction	Code 2362
Produce market	Code 445230
Construction	Code 23
Fruit farming	Code 111339
Accommodation & food services	Code 722310
Golf facility	Code 713910
Stables	Code 713990
Animal production	Code 115210

**Expected Jobs Created or Lost/Impacts on Jobs:**

Ecology expects the proposed reservations to serve 17,320 households over the twenty-year period. If water from the reservations is fully utilized and assuming household incomes of \$40,000, total annual labor income of approximately \$693 million can be realized for the basin. This could create 12,476 new supporting jobs in the Grays/Elochoman and Cowlitz watershed basins.

Office of financial management's NAICS based input/output model<sup>7</sup> provides estimates of interdependence among industrial sectors in the state. Each sector not only produces and sells goods or services, but also purchases goods or services for use within its production process. Ecology expects jobs created through the proposed rules in these areas:

**Table 2. Potential jobs created by the rules**

	Employment
Crop production	171
Animal production	64

	Employment
Forestry and fishing	18
Logging	6
Mining	12
Electric utilities	58
Gas utilities	9
Other utilities	23
Construction	206
Food manufacturing	141
Textiles and apparel	24
Wood product manufacturing	18
Paper manufacturing	16
Printing	59
Petroleum and products	6
Chemical manufacturing	3
Nonmetallic mineral products manufacturing	16
Primary metals	1
Fabricated metals	14
Machinery manufacturing	5
Computer and electronic product	10
Electrical equipment	1
Aircraft and parts	0
Ship and boat building	4
Other transportation equipment	2
Furniture	23
Other manufacturing	33
Wholesale trade	282
Retail trade	2,770
Transportation and warehousing	265
Information	232
Finance and insurance	529
Real estate	573
Professional services and management	1,444
Educational services	245
Health services	2,439
Arts, recreation, and accommodation	405
Food services and drinking places	1,288
Other services	1,059
Total Employment	12,476

<sup>1</sup>Due to size limits for filing documents with the code reviser, the SBEIS does not contain the appendices that further explain ecology's analysis. Nor does it contain the raw data used in this analysis, or all of ecology's analysis of this data. However, the rule-making file contains this information and it is available upon request.

<sup>2</sup>In the state ground water code, the "ground water permit exemption" allows for certain uses of small quantities of ground water, including domestic, industrial, stockwatering, and noncommercial irrigation of less than one-half acre of land. RCW 90.44.040, See also Washington Attorney General Opinion (2005 Op. Atty. Gen. Wash. No. 17).

<sup>3</sup>Talks with local interests show few commercial activities in the basin depend on instream flows.

<sup>4</sup><http://www.doh.wa.gov/ehp/dw/Publications/331-134-4-30-08.pdf>.

<sup>5</sup>Data provided by the Clark, Cowlitz and Skamania county assessor and by the Washington state employment security department was the basis for this table.

<sup>6</sup>Ecology has used NAICS codes rather than SIC. It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

<sup>7</sup><http://www.ofm.wa.gov/economy/io/default.asp>.

A copy of the statement may be obtained by contacting Department of ecology water resources web page at [http://www.ecy.wa.gov/programs/wr/instream-flows/ge\\_cowlitz.html](http://www.ecy.wa.gov/programs/wr/instream-flows/ge_cowlitz.html) or Barbara Anderson, Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98504, phone (360) 407-6607, fax (360) 407-7162, e-mail [btov461@ecy.wa.gov](mailto:btov461@ecy.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting department of ecology water resources web page at [http://www.ecy.wa.gov/programs/wr/instream-flows/ge\\_cowlitz.html](http://www.ecy.wa.gov/programs/wr/instream-flows/ge_cowlitz.html) or Barbara Anderson, Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98504, phone (360) 407-6607, fax (360) 407-7162, e-mail [btov461@ecy.wa.gov](mailto:btov461@ecy.wa.gov).

April 19, 2010

Polly Zehm

Deputy Director

## Chapter 173-526 WAC

### WATER RESOURCES MANAGEMENT PROGRAM FOR THE COWLITZ BASIN, WRIA 26

#### PART A GENERAL

#### NEW SECTION

**WAC 173-526-010 Authority, purpose and applicability.** (1) The department of ecology (ecology) adopts this chapter under the Watershed Planning Act (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Water code (chapter 90.03 RCW), Regulation of public groundwaters (chapter 90.44 RCW), RCW 43.21A.064 (9), and 43.21A.080.

(2) This chapter shall not affect existing water rights, including perfected riparian rights, or other appropriative rights, unless otherwise stated in the conditions of the water right in question. An existing permit-exempt withdrawal is not subject to the rule to the extent it has been put to beneficial use on the subject property for the purpose of use in question. This chapter shall not affect federal Indian and non-Indian reserved rights.

(3) This chapter does not limit ecology's authority to establish flow requirements or conditions under other laws, including hydropower licensing under RCW 90.48.260.

(4) Ecology reserves the right to require new and existing water users to install, maintain, and report data from a measuring device (water meter) as indicated in chapter 173-173 WAC.

(5) The Grays-Elochoman and Cowlitz watershed management plan (plan) recommendations were approved in 2006 by the Grays-Elochoman and Cowlitz planning unit (planning unit) in accord with RCW 90.82.130. The planning unit is a group made up of Lewis, Wahkiakum, Cowlitz, and Skamania county commissioners and a broad range of water use interests. Ecology shall use the plan as the framework for making future water resource decisions in the Cowlitz watershed. Ecology shall rely upon the plan as a primary consideration in determining the public interest related to such decisions, including this rule adoption.

(6) Ecology shall initiate a review of this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions. Ecology and the planning unit should periodically evaluate the effectiveness of this chapter.

#### NEW SECTION

**WAC 173-526-020 Definitions.** For purposes of this chapter, the following definitions shall be used:

"Allocation" means the designation of specific amounts of water for specific beneficial uses.

"Appropriation" means a beneficial use of waters of the state, authorized by and consistent with all applicable laws and regulations.

"Community water supplier" means an entity that supplies water for fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year.

"Consumptive use" means a use of water whereby there is diminishment of the amount or quality of the water source.

"Cubic feet per second (cfs)" means a rate of flow commonly measured or calculated in streams or rivers. One "cfs" is equal to 7.48 gallons of water flowing a distance of one foot in one second.

"Ecology" means the Washington state department of ecology.

"Environmental restoration project" or "ERP" means a project with a primary purpose of restoring salmonids, requiring a temporary use of water.

"Habitat-forming function" means a physical, chemical, or biological function that is necessary to create and maintain natural or desired habitat conditions that benefit fish and other aquatic life. Habitat forming functions include but are not limited to creating and maintaining the following: Channel migration, gravel and sediment transport, water quality, nutrients, large woody material recruitment, flood plain flows, and riparian habitat.

"Habitat-related action" means improving desirable riparian, stream, wetland, or flood plain functions and related biological, chemical, and physical processes.

"Instream flow" means a level of stream flow, established under chapters 90.03, 90.22, 90.54 and 90.82 RCW, necessary in perennial streams to preserve wildlife, fish, scenic, aesthetic, and other environmental and navigational values. The term instream flow is synonymous with "minimum flow" as used in chapters 90.03 and 90.22 RCW, "base flow"

as used in chapter 90.54 RCW, and "minimum instream flow" as used in chapter 90.82 RCW.

"Interruptible use" means a type of water use that relies upon periodic or seasonal withdrawals that if interrupted would not cause substantial hardship or health or safety concerns, or that is highly unlikely to be interrupted during the expected period of use. For the purposes of this chapter, interruptible uses are subject to the instream flows set in WAC 173-526-060.

"Nonconsumptive use" means a type of water use where either there is no diversion or withdrawal from a source or where there is no diminishment of the amount or quality of the water source.

"Overall stream flow depletion" means the depletion of water from a subbasin without accounting for offsetting actions, as required under WAC 173-526-100(3).

"Permit-exempt withdrawal" or "permit exemption" means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but otherwise subject to surface and ground water statutes and other applicable laws.

"Planning unit" means the Grays-Elochoman and Cowlitz watershed planning unit, established under chapter 90.82 RCW, and all successors, formally designated by the Grays-Elochoman and Cowlitz watershed planning initiating governments.

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pre-treatment storage facilities not under control of the purveyor but primarily used in connection with the system.

"Reservation" means a one time, finite allocation of water for future beneficial uses. For the purposes of this chapter, the reservation is not subject to instream flows set in WAC 173-526-060, nor to closures set in WAC 173-526-070. The reservation is senior to the instream flow water rights set in WAC 173-526-060.

"Water-related action" means an offsetting activity that provides a quantity of water during certain times and at certain places that essentially replaces water at or upstream of where a proposed water right would impact surface flow. Water-related actions include but are not limited to acquiring an active water right or donating a water right to the trust water right program under chapter 90.42 RCW.

"Water right" means a right to make beneficial use of public waters of the state, including any water right established for instream flow purposes or a permit-exempt ground water withdrawal.

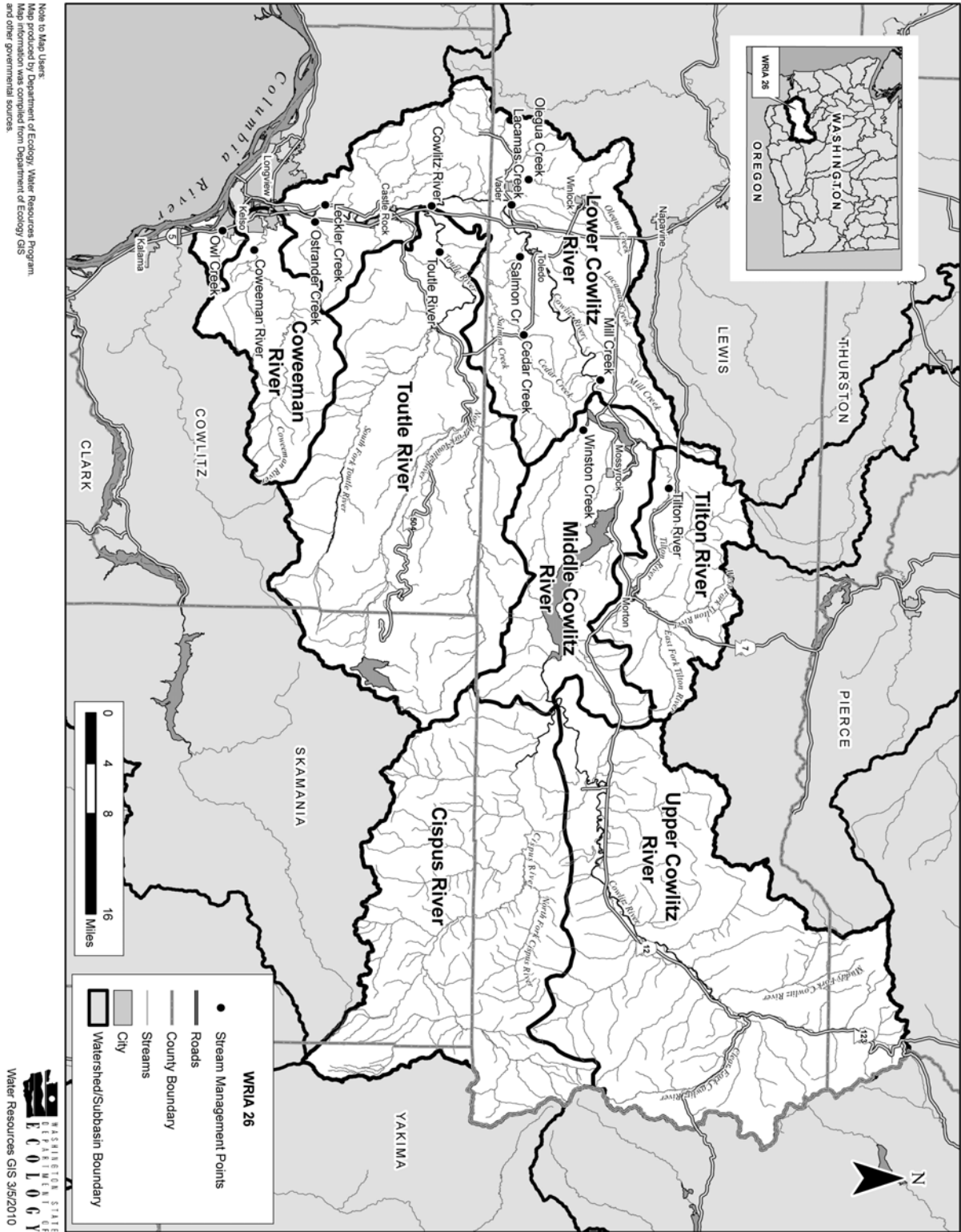
"Watershed plan" means the Grays-Elochoman and Cowlitz watershed management plan, adopted on July 21, 2006, by the Cowlitz, Lewis, Skamania, and Wahkiakum county commissioners.

"Withdrawal" means the extraction of ground water or the diversion of surface water for a beneficial use.

NEW SECTION

WAC 173-526-030 Map.

WRIA 26 Stream Management Subbasins and Control Points



NEW SECTION

**WAC 173-526-040 Compliance and enforcement.** (1)

Ecology shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws and rules.

(2) When ecology determines that a violation of this chapter has occurred:

(a) Ecology shall first attempt to achieve voluntary compliance, except in appropriate cases involving potential harm to other water rights or the environment. An approach to achieving voluntary compliance is to offer information and technical assistance to a violator. The information or technical assistance identifies, in writing, one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, ecology has the authority to issue a notice of violation, a formal administrative order under RCW 43.27A.190, assess penalties under RCW 43.83B.336 and 90.03.600, or may seek criminal enforcement under RCW 90.03.400, 90.03.410, and 90.44.120.

**PART B**

**INSTREAM FLOWS AND CLOSURES**

NEW SECTION

**WAC 173-526-050 Stream management control points.** Ecology hereby establishes the following stream management control points shown in Table I. Management point locations are shown in WAC 173-526-030.

**Table I**

**Stream Management Control Point Information**

<b>Stream Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>
Cedar Creek (at Highway 505 crossing)	RM 3.9; 46°25'47"N, 122°42'34"W
Lacamas Creek (at Highway 506 bridge)	RM 0.3; 46°24'42"N, 122°55'34"W
Leckler Creek (at Hazel Dell Road)	RM 0.5; 46°12'19"N, 122°55'1"W
Mill Creek (at Cowlitz Salmon Hatchery)	RM 0.0; 46°30'58"N, 122°38'15"W
Olequa Creek (at Coma/Kollock Road bridge)	RM 6.5; 46°25'47"N, 122°58'9"W
Ostrander Creek (at Ostrander Road)	RM 0.6; 46°11'41"N, 122°53'17"W
Salmon Creek (at Jackson Highway)	RM 1.7; 46°25'23"N, 122°50'24"W
Tilton River (above Bear Canyon)	RM 7.1; 46°35'43"N, 122°27'30"W

**Table I**

**Stream Management Control Point Information**

<b>Stream Management Point Name</b>	<b>Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)</b>
Toutle River (at Tower Road)	RM 6.5; 46°20'54"N, 122°50'33"W
Winston Creek (at Hadaller Road)	RM 0.2; 46°29'55"N, 122°33'12"W
Cowlitz River (just upstream of Toutle River)	RM 20.1; 46°19'23"N, 122°55'14"W
Coweeman River (at ecology stream gage)	RM 7.5; 46°7'41"N, 122°50'18"W
Owl Creek (at old Pacific Hwy crossing)	RM 1.0; 46°5'3"N, 122°52'11"W

NEW SECTION

**WAC 173-526-060 Establishment of instream flows.**

(1) The instream flows established in this chapter are based on the recommendations of the planning unit; consultation with the department of fish and wildlife, department of agriculture, and department of commerce; and public input received during the rule-making process. The planning unit recommended these instream flow levels by unanimous vote.

(2) Instream flows established in this chapter are water rights, which protect instream values and functions from future appropriations. The priority date of the instream flows is the effective date of this chapter. In accordance with RCW 90.82.080, this priority date received unanimous approval from the planning unit.

(3) Instream flow rights shall be protected from impairment by any new water rights put to beneficial use after the effective date of this chapter and by all future changes and transfers of senior and junior water rights, including both surface and ground water rights. The following water rights are not subject to the instream flows:

(a) A water right put to beneficial use before the effective date of this chapter, unless stated in the conditions of the water right or change authorization.

(b) Water rights appropriated from the reservation of water established in WAC 173-526-100.

(c) Water rights for environmental restoration purposes under WAC 173-526-120, unless included as a permit condition.

(4) Instream flows, expressed in cubic feet per second (cfs), are measured at the stream management control points in WAC 173-526-050. Stream management points apply to stream reaches as follows:

(a) Instream flows apply to all stream reaches that contribute to flow at stream management control points, as shown in Table II of this section;

(b) For reaches that are downstream of all management points, the flows established for the nearest upstream management control point shall apply; and

(c) If a point of withdrawal is downstream of the confluence of two or more branches, each having a designated man-

agement point, both management points shall apply to that withdrawal. However, if a withdrawal does not affect a stream reach located upstream of Mayfield Dam, none of the

control points located upstream of Mayfield Dam would apply.

**Table II**  
**Instream Flows in the Cowlitz Basin (cubic feet per second)**

Month	Stream Management Control Point						
	Cedar Creek, RM 3.9	Lacamas Creek, RM 0.3	Leckler Creek, RM 0.5	Mill Creek, RM 0.0	Olequa Creek, RM 6.5	Ostrander Creek, RM 0.6	Salmon Creek, RM 1.7
January	41	93	9	47	129	69	145
February	74	118	18	79	160	90	178
March	74	118	18	79	160	90	178
April	74	118	18	79	160	90	178
May	74	118	18	79	160	90	178
June	49	79	12	53	107	60	118
July	49	79	12	53	107	60	118
August	17	33	3	20	48	23	55
September	17	140	3	20	193	104	217
October	41	140	9	47	193	104	217
November	41	140	9	47	193	104	217
December	41	93	9	47	129	69	145

Month	Stream Management Control Point					
	Tilton River, RM 16.1	Toutle River, RM 6.5	Winston Creek, RM 0.2	Cowlitz River, RM 20.1	Coweeman River, RM 7.5	Owl Creek, RM 1.0
January	301	671	72	5,000	193	22
February	354	749	117	5,000	234	22
March	354	749	117	8,000	234	41
April	354	749	117	8,000	234	41
May	354	749	117	8,000	234	41
June	236	499	78	8,000	156	27
July	236	499	78	2,000	130	27
August	452	1,006	32	2,000/5,000*	76	9
September	452	1,006	32	5,000	76/203**	9
October	452	1,006	72	5,000	290	22
November	452	1,006	72	5,000	290	22
December	301	671	72	5,000	290	22

\* The Cowlitz River, RM 20.1 instream flow right is for 2,000 cubic feet per second (cfs) from August 1 to August 14, and 5,000 cfs from August 15 to August 31.

\*\* The Coweeman River, RM 7.5 instream flow right is for 76 cfs from September 1 to September 15, and 203 cfs from September 16 to September 30.

**NEW SECTION**

**WAC 173-526-070 Surface and ground water closed to further consumptive appropriations.** (1) Based on historical and current low flows and the water withdrawals by existing water right holders, ecology has determined that no waters are reliably available for new consumptive uses from certain surface water sources in the basin. Therefore, all surface waters listed in Table III are closed to any further consumptive appropriation, except as provided in WAC 173-526-080.

**Table III**  
**Surface Water Closures**

Subbasin Name*	Affected Reach
Lower Cowlitz River	Cowlitz River from RM 6.7 (46°10'10"N, 122°54'50"W) to Mayfield Dam (46°30'11"N, 122°35'17"W), including tributaries.

**Table III**  
**Surface Water Closures**

Subbasin Name*	Affected Reach
Middle Cowlitz River (Mayfield Dam)	Frost Creek from mouth (46°30'1"N, 122°11'1"W) to headwaters, including tributaries. Sulphur Creek from mouth (46°29'54"N, 122°23'43"W) to headwaters, including tributaries. Rainy Creek from mouth (46°29'51"N, 122°10'20"W) to headwaters, including tributaries.
Upper Cowlitz River	Cowlitz River from confluence with Cispus River (46°28'33"N, 122°5'43"W) to headwaters, including tributaries.
Cispus River	Cispus River from confluence with Cowlitz River (46°28'33"N, 122°5'43"W) to headwaters, including tributaries.
Tilton River	Tilton River from mouth at Mayfield Lake (46°34'35"N, 122°31'18"W) to headwaters, including tributaries.
Toutle River	Toutle River from confluence with Cowlitz River (46°18'34"N, 122°55'03"W) to headwaters, including tributaries.
Coweeman River	Coweeman River from RM 3.5 (46°08'31"N, 122°53'00"W)

\* Subbasin boundaries are shown in WAC 173-526-030, and are consistent with the boundary descriptions used in the watershed plan.

(2) Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, there is a high likelihood that future ground water withdrawals would capture water that affects closed surface waters. Therefore, the basin is closed to new withdrawals of ground water (including any new permit-exempt withdrawals) that would affect closed surface waters, except as provided in WAC 173-526-080.

(3) Applications for a withdrawal that would not affect the closed reaches, listed in Table III, shall be evaluated on a case-by-case basis under applicable law.

**PART C**  
**FUTURE WATER RIGHTS**

NEW SECTION

**WAC 173-526-080 Future water rights, generally.** A new surface or ground water appropriation (including any permit-exempt withdrawal) may be commenced only if consistent with the surface and ground water statutes and other applicable requirements of law and if any one of the following seven conditions (subsections (1) through (7) of this section) apply:

(1) The proposed water use is nonconsumptive.  
(2) The proposed surface water diversion is not located on any of the surface waters closed in WAC 173-526-070, Table III.

(3) The proposed ground water withdrawal is located where it would not affect any of the surface waters closed in WAC 173-526-070, Table III. A person or entity seeking to commence such a withdrawal must show, through scientifically sound studies and technical analysis, that the proposed withdrawal would not affect any of the closed surface waters identified in WAC 173-526-070, Table III.

(4) The person or entity seeking to commence the new appropriation submits a scientifically sound mitigation plan, approved by ecology. A mitigation plan shall be approved if the proponent can demonstrate to ecology's satisfaction that when the mitigation is implemented the proposed withdrawal(s) will not impair senior water rights, including instream flow rights, adversely impact instream resources, or diminish water quality. A mitigation plan can be submitted to mitigate for an individual withdrawal or to mitigate for multiple withdrawals in a defined region.

An approved mitigation plan shall include a monitoring and reporting plan. It shall also include conditions that the plan be implemented as long as the associated water right is used and that any water provided for mitigation purposes be prohibited from being applied to any other purpose. If monitoring of a mitigation plan shows the mitigation is not effective, ecology's approval of the mitigation plan shall be suspended and the water use shall cease until ecology approves a new or revised mitigation plan.

(5) The proposed water use qualifies as an interruptible use as defined in WAC 173-526-020, and meets the criteria in WAC 173-526-090.

(6) The proposed water use qualifies for the reservation established and as conditioned in WAC 173-526-100.

(7) The proposed use is for an environmental restoration project and meets the criteria in WAC 173-526-120.

NEW SECTION

**WAC 173-526-090 Future appropriations for interruptible use.** (1) Ecology finds there may be water available above existing water rights and instream flows, which may be captured for interruptible use. This water is only available from such water sources and during periods as specified in Table IV.

(2) Prior to commencing use, the person or entity seeking a new interruptible appropriation must demonstrate a sea-

sonal need and provide assurances that any effects on surface water that may result from withdrawals will be limited to the periods and locations specified in Table IV.

(3) Ecology shall deny an appropriation for interruptible use if such use, or the cumulative effects of such uses, would compromise habitat-forming functions provided by high flows. In no case shall new individual or cumulative allocations exceed the values indicated in Table IV as specified for each water source. However, ecology may lower these allocation limits on a case-by-case basis whenever more protection of habitat-forming functions is needed.

(4) Interruptible uses are subject to existing water rights and instream flows set in WAC 173-526-060.

**Table IV**

**Interruptible uses - periods and limits on future allocation**

Water Source Name	Period Available (date)	Allocation Limit* (cubic feet per second)
Cowlitz River	July 1 to August 15	357
	November 16 to February 29	832
Coweeman River	November 16 to May 15	50

\* Due to case-by-case determinations of flow for habitat forming function needs, the maximum allocation may be less.

**NEW SECTION**

**WAC 173-526-100 Reservations of surface and ground water for future uses.** (1) Ecology has weighed the public interest that supports the reservation of a limited amount of water for future consumptive uses against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by limited reservations clearly overrides the small potential for negative impacts on instream resources.

(2) Based on this finding, ecology hereby allocates an amount and rate of water withdrawal for specific water users and subbasins, as indicated in Table V. Ecology's finding under subsection (1) of this section also supports a reservation for future allocation hereby established under the terms and conditions of this section and as specifically addressed under subsection (8) of this section. The reservations are a one time, finite resource. When and if water is fully appropriated from the reservations established in this section, all remaining waters in closed areas are hereby appropriated for instream flow use.

A reservation is available to a user only if the conditions set forth in subsection (3) or (7) of this section are met, as well as any applicable requirements of law, including but not limited to all water resource laws and regulations. Prior to the appropriation of a water right from a reservation, ecology must receive written confirmation from the county with jurisdiction or named municipality where a reservation applies. Such confirmation must provide assurances that the county or municipality will issue building permits and subdivision

approvals consistent with this chapter, including rule provisions affecting permit-exempt ground water supplies.

The designation of specific municipal suppliers in a reservation does not create a right for these entities to use such water. Such a right will arise only if a permit is applied for by such municipal suppliers to use water under the reservation and approved by ecology after applying the legal tests for a new appropriation. With respect to any water for which a permit has not been granted, ecology reserves the right to modify in all respects or rescind a reservation by future rule making.

(3) Ecology will approve a water right application for water from a reservation if all of the following conditions in (a), (b), (c), and (d) of this subsection are met:

**Alternatives analysis**

(a) The applicant demonstrates that no practicable supply alternatives to the reservation are available. In order to satisfy this condition, an applicant must demonstrate consideration of other regional water sources to supply water for the same use now being proposed, including:

- (i) Existing public water system supply;
- (ii) Water from a ground or surface water source, which may be withdrawn without affecting any of the surface waters closed in WAC 173-526-070, such as water from a hydraulically disconnected deep aquifer source or tidally influenced areas near the Columbia River;
- (iii) Supply options from surface and ground water storage;
- (iv) Water savings from conservation techniques, such as reuse of waste water; and
- (v) Mitigation and minimization considerations to the extent required in (d) of this subsection, impact analysis.

**Water-related offset**

(b) The applicant demonstrates it will offset the overall streamflow depletion(s) through water-related actions to the maximum extent practicable. Applicants should offset at least one-half of the overall streamflow depletion(s) through water-related actions.

(i) In evaluating the adequacy of water-related actions to offset depletions, ecology will evaluate the action based on the degree of aquatic benefit it would provide. A water-related offset may have a greater or lesser benefit due to the timing, location, or quality of water provided. The level of benefit will be used to determine if any additional offsets will be required of the applicant.

(ii) Ecology will consider water-related offsets only to the extent that reasonable assurance exists that such offsets will be successfully delivered, such as a donation to the trust water right program under chapter 90.42 RCW where delivery is legally guaranteed.

**Habitat-related offset**

(c) After satisfying the water-related offset requirement in (b) of this subsection, an applicant must offset any remaining streamflow depletion through habitat-related actions that create or improve habitat. Habitat-related offsets must compensate for the habitat loss or degradation that will result from the streamflow depletion permitted from the reservation.

An applicant must provide adequate assurances that a habitat-related action in fact occurs. Ecology, as appropriate,



shall condition use of the reservation with performance standards and monitoring requirements, or require financial assurance mechanisms prior to reservation use.

**Impact analysis**

(d) In keeping with the findings of the watershed plan, ecology finds that the public interest supports avoidance and minimizing impacts to tributaries. The applicant must demonstrate one of the following:

(i) The proposed withdrawal does not impact tributaries to subbasin mainstems; or

(ii) An impact to a tributary to a subbasin mainstem is unavoidable, as demonstrated by an impact analysis, included as part of the alternatives analysis under (a) of this subsection. In addition to demonstrating the necessary considerations under (a) of this subsection, the impact analysis must demonstrate consideration of water supply options that avoid and minimize the impact to the tributary.

Ecology, in consultation with the department of fish and wildlife, may require an applicant to monitor effects of a ground water withdrawal as a condition of water use.

**Application review and permitting**

(4) In determining practicability in subsection (3) of this section, ecology will consider both economic and logistic considerations, as well as guidance from the watershed plan.

(5) Ecology, in consultation with the department of fish and wildlife, will evaluate the adequacy of proposed offsets and alternatives analysis in subsection (3) of this section. The evaluation shall be consistent with the watershed plan and guidance documents approved by ecology. Ecology will also consider recommendations and technical advice received from the planning unit or by an advisory committee, formally designated by the planning unit.

(6) Ecology will issue a permit for use of water equal to the amount it determines from a reservation after applying the conditions of this subsection, and such amount will be debited from the total reservation amount. The total quantity of water appropriated shall not exceed the amount and rate listed under the subtitle "Streamflow Depletion" in Table V, or "Water Available" in Table VI in the case of a future allocation. However, ecology will issue a permit for a quantity

beyond the amount debited from the reservation for the following:

(a) Water-related offsets to the extent such offsets are water-for-water, to the satisfaction of RCW 90.03.380 or 99.44.100, any other applicable laws, and terms of an approved mitigation plan under WAC 173-526-080(4); and

(b) Water use to the extent closed water sources are not affected and to the satisfaction of applicable requirements of law, including but not limited to all water resource laws and regulations.

(7) In keeping with the findings of the watershed plan and in order to implement this rule, ecology may prioritize its decision making for a water right application for a new appropriation from a reservation under this subsection. Ecology will only approve such applications ahead of others when the new appropriation would not diminish the water available to earlier pending applicants for an appropriation from the same source of supply. Ecology's decision to prioritize an application under this subsection shall be made in conjunction with other priority processing decisions made by ecology under chapter 173-152 WAC.

**Permit-exempt ground water use**

(8) The requirements in subsection (3) of this section do not apply to permit-exempt withdrawals. However, permit-exempt withdrawals under RCW 90.44.050 are subject to both of the following conditions in order to occur under the reservation:

(a) Future permit-exempt well use may not occur where connection to an existing community water supplier can be provided in a timely and reasonable manner. Determinations of timely and reasonable shall be consistent with public water system plans, local ordinances, and state laws.

(b) Water use from a permit-exempt ground water well must be consistent with the allocation limits of a reservation, applicable county and municipal codes, and other applicable laws, including the statute on permit exemptions, RCW 90.44.050. Single or group domestic uses under the permit exemption shall not exceed five thousand gallons per day. Irrigation of lawn and noncommercial garden under the permit exemption shall not exceed one-half acre.

**Table V  
Allocation of Reservation**

<b>Subbasin Name*</b>	<b>Water User**</b>	<b>Streamflow Depletion (cfs)</b>
Upper Cowlitz River	Public water systems within city limits of Randle	0.24
	Other public water systems in Lewis County	0.37
	Permit-exempt ground water wells in Lewis County	0.01
Cispus River	Other public water systems in Lewis County	0.37
	Other public water systems in Skamania County	0.37
	Permit-exempt ground water wells in Lewis County	0.01
	Permit-exempt ground water wells in Skamania County	0.01
Tilton River	Other public water systems in Lewis County	0.37
	Permit-exempt ground water wells in Lewis County	0.01
Middle Cowlitz River (Mayfield Dam)	Public water systems within city limits of Mossyrock	0.20

Subbasin Name*	Water User**	Streamflow Depletion (cfs)
	Other public water systems in Lewis County	0.37
	Permit-exempt ground water wells in Lewis County	0.01
Toutle River	Other public water systems in Lewis County	0.37
	Other public water systems in Cowlitz County	0.37
	Other public water systems in Skamania County	0.37
	Permit-exempt ground water wells in Lewis County	0.01
	Permit-exempt wells in Cowlitz County	0.01
	Permit-exempt wells in Skamania County	0.00
Coweeman River	Other public water systems in Cowlitz County	0.37
	Permit-exempt ground water wells in Cowlitz County	0.01
Lower Cowlitz River	Public water systems within city limits of Castle Rock	2.60
	Public water systems within city limits of Winlock	0.33
	Public water systems within city limits of Toledo	0.47
	Other public water systems in Cowlitz County	0.75
	Other public water systems in Lewis County	0.75
	Permit-exempt ground water wells in Cowlitz County	0.01
	Permit-exempt ground water wells in Lewis County	0.01

\* Subbasin boundaries are shown in WAC 173-526-030, and are consistent with the boundary descriptions used in the watershed plan.

\*\* In the Grays-Elochoman and Cowlitz watershed management plan, the term "domestic wells" has the same meaning as "permit-exempt ground water wells" and the term "small community water systems" has the same meaning as "public water systems."

**Water reserved for future allocation**

(9) Specific amounts of water are identified in the watershed plan for inclusion in a reservation that requires further allocation decisions at a later date. Consistent with the watershed plan, an amount and rate of use of water for specific subbasins and counties is reserved for future allocation, as indicated in Table VI and under the following terms:

(a) Water reserved under this subsection may only be appropriated at such time that an allocation scheme is approved through a public process by each county where a particular reservation would apply. A county shall consult with the planning unit prior to approving an allocation scheme. An allocation scheme should consider the existing demands of specific water users, available water supplies, and local land use planning at the time of scheme approval.

(b) Once an allocation scheme is approved, it shall be submitted to ecology and made available to the public by both ecology and the applicable county or counties.

(c) In addition to the limits of available water indicated in Table VI, future users of this reservation may also be limited by any other terms established under an approved allocation scheme.

(d) The appropriation of water under this reservation for future allocation must also conform to all other provisions under WAC 173-526-100, including the conditions under subsection (3) of this section for water right applications and subsection (7) of this section for permit-exempt ground water well uses.

**Table VI**  
**Water reserved for future allocation**

Subbasin Name*	County	Water Available (cfs)
Upper Cowlitz River	Lewis County	0.75
Cispus River	Lewis County	0.37
	Skamania County	0.37
Tilton River	Lewis County	0.37
Middle Cowlitz River (Mayfield Dam)	Lewis County	0.37
Toutle River	Lewis County	0.37
	Cowlitz County	0.37
	Skamania County	0.37
Lower Cowlitz River	Cowlitz County	0.75
	Lewis County	6.6

\* Subbasin boundaries are shown in WAC 173-526-030, and are consistent with the boundary descriptions used in the watershed plan.

NEW SECTION

**WAC 173-526-110 Accounting for use under the reservation.** (1) Ecology shall maintain a record of all appropriations from the reservation.

(2) For an appropriation under a permit, ecology will account for water use under the reservation based on authorized quantities under water right permits or certificates, and according to WAC 173-526-100(6).

(3) For permit-exempt ground water appropriations, ecology will deduct a standard amount of two hundred forty gallons per day for each well. For a group domestic water system under the permit-exemption, the standard amount will be applied for each domestic or residential service connection. The standard amount will be adjusted periodically to reflect actual use during low flow conditions. The standard amount assumes a rate of septic recharge from an on-site septic system. In the event that on-site septic recharge is known not to occur, ecology will deduct an additional five hundred sixty gallons per day. Additionally, ecology reserves the right to account for water use based on the best available information contained in well logs, approvals issued by local jurisdictions, or other documents.

(4) If a water user under the reservation subsequently abandons or relinquishes the withdrawal, ecology will credit back to the reservation the actual amount of water used and/or debited from the reservation, upon demonstration to ecology that the well or surface water diversion has been decommissioned through written certification.

(5) Ecology shall notify the affected county and the planning unit, when it determines that fifty percent, seventy-five percent, and one hundred percent, respectively, of the reservation is appropriated for a water user in Table V or Table VI.

#### NEW SECTION

**WAC 173-526-120 Future surface water withdrawals for environmental restoration.** In keeping with the findings of the watershed plan, ecology finds that the public interest advanced by future withdrawals for environmental restoration projects (ERPs), as defined and conditioned in this section, clearly overrides the minimal negative impacts on instream flows.

(1) A future withdrawal for an ERP may be approved only if it meets all the following:

(a) The proposed water use is for a bypass flow for salmonid restoration or riparian planting project, and the primary purpose of the project is to restore of salmonids.

(b) The proposed project will result in aquatic habitat benefits, and such benefits will exceed any detriment the reduced flow may have on aquatic habitat during the times and location of withdrawal(s) for the project.

(c) The proposed use qualifies for a temporary permit.

(2) Ecology, in consultation with the department of fish and wildlife, will evaluate proposed ERPs. ERPs approved by ecology are not subject to closures or instream flows set in this chapter, unless otherwise conditioned by the permit.

#### **WSR 10-09-076**

#### **PROPOSED RULES**

#### **WESTERN WASHINGTON UNIVERSITY**

[Filed April 19, 2010, 3:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-108.

Title of Rule and Other Identifying Information: Chapter 516-12 WAC, Parking and traffic regulations and chapter 516-14 WAC, Appeals from parking violations.

Hearing Location(s): Western Washington University, Main Campus, Board Room, Old Main 340, 516 High Street, Bellingham, WA 98225, on May 26, 2010, at 11 a.m.

Date of Intended Adoption: June 1, 2010.

Submit Written Comments to: Suzanne Baker, Rules Coordinator, 516 High Street, Old Main 335, Bellingham, WA 98225-9015, e-mail Suzanne.Baker@wwu.edu, fax (360) 650-6197, by May 26, 2010.

Assistance for Persons with Disabilities: Contact Suzanne Baker by May 25, 2010, or (360) 650-3117.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Western Washington University as part of a comprehensive review of its transportation rules, having recently amended the bicycle and skateboard regulations, proposes amendments to parking and traffic rules. The amended rules include: Updates to definitions; adds a new section on administrative responsibility; broadens the purpose and application section to encourage sustainable transportation; incorporates the appeals process into the parking chapter, rather than in a separate chapter (chapter 516-14 WAC, Appeals from parking violations will be repealed); and proposes a reduction in the number of members on the appeals review board to better expedite the appeal process.

Statutory Authority for Adoption: RCW 28B.35.120 (12), 28B.10.560.

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

Name of Proponent: Western Washington University, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Randy Stegmeier, Chief of WWU Police and Director of Public Safety, 516 High Street, Bellingham, WA, (360) 650-3555; and Enforcement: Kathy Wetherell, Interim Vice President for Business and Financial Affairs, 516 High Street, Bellingham, WA, (360) 650-3180.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapters 516-12 and 516-14 WAC do not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapters 516-12 and 516-14 WAC are not considered significant legislative rule by Western Washington University.

April 19, 2010

Suzanne M. Baker

Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

**WAC 516-12-400 Definitions.** As used in this chapter, (~~and chapters 516-13 and 516-14 WAC,~~) the following words and phrases mean:

(1) "All lot permit assignment." A parking lot assignment that allows the driver access to campus from a majority of all university parking lots with exceptions. Exceptions are

identified on the guidelines issued and are subject to change annually, unless impact to the lot or the campus warrants an earlier change.

(2) "Appeals board." The board that hears citation and notice of infraction appeals for parking, impoundment, bicycle, and skateboard violations.

(3) "Area designator." A tag affixed to a permit indicating a parking lot assignment for a vehicle.

((2)) (4) "Automobile." Any motorized vehicle having four or more wheels.

((3)) (5) "Board." The board of trustees of Western Washington University.

((4)) (6) "Campus." All state lands devoted to the educational or research activities of the university.

((5)) (7) "Disability space." A parking space identified with a sign bearing the international ~~(disabled)~~ disability symbol that is restricted at all hours to use by vehicles displaying both a valid WWU ~~(disabled)~~ parking permit and WWU disability parking permit.

((6) "Dismount zone." Any area designated by signs or symbols as a place where bicycles shall not be ridden but may be walked.

((7)) (8) "Electric personal assistive mobility device (EPAMD)." A self-balancing device with two wheels not in tandem, designed to transport only one person by an electric propulsion system with an average power of seven hundred fifty watts (one horsepower) having a maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator weighing one hundred seventy pounds, of less than twenty miles per hour. This term is intended to include other similar devices as defined in RCW 46.04.304 as now or hereafter amended.

(9) "Employee." Any individual appointed to the faculty, staff, or administration of the university.

((8)) (10) "Habitual offender." The driver of a vehicle license number or permit number accruing ~~(ten)~~ eight or more paid or unpaid parking citations within a twelve-month period.

((9)) (11) "Holiday" or "university holiday." A day ~~((when all university offices and/or facilities are closed (e.g., Thanksgiving Day, Christmas Day, New Year's Day)))~~ designated by the university as a holiday or university holiday. Intercession or quarter breaks are not considered holidays. See definition of intercession.

((10)) (12) "Impoundment." The status of a vehicle that has been seized and kept in legal custody by either being immobilized with a wheel lock device or towed from campus.

(13) "Intercession." A period of time in which classes or final exams are not in session. ~~((Except for holidays that may fall within this time period, the))~~ University business offices ~~((of the university))~~ are open during this time, except during holidays.

((11) "Impoundment": A state in which a vehicle has been seized and kept in legal custody by either being immobilized with a wheel lock device or towed from campus.

((12)) (14) "Loading zone." A space in which parking is allowed for a specific time period and which is identified by signage as a loading zone.

(15) "Meter feeding." Purchase of additional time beyond the time limit posted on the parking meters. This

practice is prohibited since use of meters is intended to serve short-term parking needs.

((13)) (16) "Metered parking." A parking space where drivers pay to park for a specified time period. Drivers pay to park in the space for a length of time by purchasing time at a meter or paybox.

(17) "Motor vehicle" or "vehicle." Every vehicle that is self-propelled; for example cars, trucks, and motorcycles. Motor vehicle includes a neighborhood electric vehicle as defined in RCW 46.04.357. Motor vehicle also includes a medium-speed electric vehicle as defined in RCW 46.04.295. Electric personal assistive mobility devices and power wheelchairs are not considered motor vehicles.

(18) "Motorcycle." ~~((— Any two or))~~ A motor vehicle designed to travel on not more than three ~~((wheeled motorized vehicle.~~

(14) "Motor vehicle" or "vehicle": Any automobile or motorcycle.

(15) "Parking appeals board": The board which hears parking citation appeals.

(16) "Public safety director": The person appointed public safety director of the university by the president or designee.

(17) "Parking space": A parking area designated by a sign, wheelstop, white-painted lines, and/or white traffic buttons) wheels in contact with the ground on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar, but excluding a farm tractor, a power wheelchair, an electric personal assistive mobility device, and a moped. Refer to chapter 516-13 WAC for further information.

(19) "Parking services." A unit of the public safety department responsible for the parking on campus property.

(20) "Pass." An event parking pass issued by the university, a university bus pass issued by Whatcom transportation authority and distributed by the university, or other valid parking pass issued by parking services.

(21) "Pay station." An automatic kiosk that issues parking permits from a free-standing, unattended machine.

(22) "Pedestrian." Any person who is afoot or who is using a wheelchair, a powered wheelchair, or a powered scooter for persons with disabilities.

((18)) (23) "Permit." ~~((— Any special or temporary))~~ An unexpired parking permit ~~((authorized))~~ issued by ~~((the public safety director))~~ parking services and properly displayed on a vehicle.

((19)) (24) "President." The president of Western Washington University.

((20)) (25) "Prohibited areas." ~~((— An area in which vehicular traffic and/or parking is prohibited according to the times posted.))~~ Areas other than those designated for parking or a roadway.

((21)) (26) "Public safety department." The ~~((university public safety department))~~ office consisting of parking services, university police, lockshop, and sustainable transportation.

((22)) (27) "Public safety director." The person appointed public safety director of the university by the president or designee.

(28) "Registered volunteer." An individual who is registered with the university's human resources department to perform assigned or authorized volunteer duties as determined by a department of the university.

(29) "Student,"(=) Any person enrolled in the university as a student.

~~((23) "Parking and transportation services": The parking and transportation services of the university.~~

(24) "Time limited parking space": A space in which parking is allowed for a specific time period.

~~(25)) (30) "University,"(=) Western Washington University.~~

~~((26) "Valid permit": An unexpired parking permit authorized by the public safety director, properly registered and displayed on the vehicle.~~

~~(27)) (31) "University business assignment." A parking assignment that allows the driver access to specific lots on campus. The specific lots are identified on the guidelines issued and are subject to change annually, unless impact to the lot warrants a change.~~

(32) "Visitors,"(= Persons) People physically present on campus who are (neither) not employees, registered volunteers, or students (and who visit the campus only on occasional basis).

~~((28)) (33) "Walk zone." Any area designated by signs or symbols as a place where bicycles, skateboards, and other regulated devices cannot be ridden during specified periods.~~

(34) "Wheelstop,"(=) A cement or metal barrier (approximately eight inches high and six feet long) used to define a parking space.

AMENDATORY SECTION (Amending Resolution No. 85-05, filed 7/2/85)

**WAC 516-12-410 Purpose and application.** The purpose of these regulations is to facilitate safety and access to and around campus by users. These regulations apply to any one seeking motor vehicle access to campus. Specifically these regulations are intended:

(1) To ((facilitate the work of the university.)) regulate parking by assigning limited parking space and hours of operation for the most efficient use;

(2) To ((assign the limited available space for the most effective use.)) regulate motor vehicles and minimize traffic disturbances on campus;

(3) To protect ((and control)) pedestrians ((and vehicular traffic.));

(4) To assure access at all times for emergency traffic(=);

~~(5) ((To regulate parking and minimize traffic disturbance during class hours.~~

~~(6) To provide funds to maintain suitable parking facilities.))~~ To facilitate the work of the university by allowing access for its vehicles given limited parking resources;

(6) To encourage sustainable transportation, including travel to the university by means other than single occupancy vehicles (SOV) due to the limited ability to park on campus; and

(7) To generate resources to establish and manage suitable, self-sustaining parking space and facilities through a principled and fairly administered process.

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

**WAC 516-12-420 Authority.** The board of trustees of Western Washington University is granted statutory authority under ((Title 28B of the Revised Code of Washington)) RCW 28B.10.560 to establish regulations to govern pedestrian and vehicular traffic and parking on the campus of the university. ((The administration of the parking regulations and moving violations is the responsibility of the public safety director.

~~(1) All regulations in this chapter and all motor vehicle and other traffic laws of the state of Washington will apply on the campus.~~

~~(2) The traffic code of the city of Bellingham will apply on city streets which cross the campus.~~

~~(3) The public safety director is authorized to:~~

~~(a) Issue and/or sell parking permits to employees, students, guests, visitors, and others when necessary, and to provide special parking for the physically disabled.~~

~~(b) Impose and/or suspend traffic and parking regulations and restrictions when appropriate to the mission of the university.~~

~~(c) Erect signs, barricades, and other structures to designate and mark the various parking or no parking areas on campus; and to paint marks and other directions on the streets and roadways for the regulation of traffic and parking.~~

~~(d) Establish procedures, including time schedules and deadlines, to govern the purchase of annual, academic year, and quarterly permits, and to assign the limited parking spaces.~~

~~(4) The authority conferred upon the public safety director under this chapter may be delegated by the public safety director to other personnel within parking and transportation services under guidelines established by business and financial affairs.~~

~~(5) The university reserves the right to change or close, either temporarily or permanently, any campus parking area. Notice of change will be provided whenever practical.))~~

NEW SECTION

**WAC 516-12-425 Administrative responsibility.** The administration of parking regulations and moving violations is the responsibility of the public safety director.

(1) The public safety director is authorized to:

(a) Issue and sell parking permits to employees, students, guests, visitors, and others when necessary, and to provide special parking for individuals with disabilities.

(b) Impose or suspend traffic and parking regulations and restrictions when appropriate to the mission of the university, such as commencement.

(c) Erect signs, barricades, and other structures to designate the various parking or no parking areas on campus; and to paint markers and other directions for the regulation of traffic and parking.

(d) Establish procedures to govern the purchase and distribution of annual, academic year, quarterly permits and other permits, and to assign parking spaces.

(e) Change or close, either temporarily or permanently, any campus parking area. Notice of change will be provided whenever practical.

(2) The authority of the public safety director under this chapter may be delegated to other personnel within the public safety department.

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

**WAC 516-12-430 General regulations.** (1) ~~((The registered owner(s) and operator of a vehicle or the person to whom a permit is issued involved in a violation of these regulations will be jointly and severally responsible for the violation.~~

(2) ~~All vehicles, attended or unattended, must display a valid Western Washington University parking permit when parked on the campus unless parked in a metered parking space (with meter payment) or a time-limited space.~~

(3) ~~Policy on assignments to parking lots will be established by the public safety director.~~

(4)) All regulations in this chapter and all motor vehicle and other traffic laws of the state of Washington apply on the campus.

(2) The traffic code of the city of Bellingham applies on city streets which cross the campus.

(3) All vehicles, attended or unattended, must display a valid Western Washington University parking permit or pass when parked on the campus, unless the vehicle is:

(a) Parked in a metered parking space with meter payment;

(b) Parked in a loading zone in compliance with posted limits; or

(c) Parked in a lot that does not require a permit during specified times as posted.

(4) The person who obtains a permit and the registered owner of the vehicle are responsible for assuring that the vehicle, regardless of who drives it, is parked in conformance with these regulations.

(5) If a parking permit holder cannot locate a parking space in the assigned lot, ((he/she)) the holder may park in the next nearest parking lot and then must call ((the)) parking ((and transportation)) services ((office)).

(6) Motorcycle permit holders ((will go to the next nearest)) must park in areas designated for motorcycles ((lot)).

((5)) (7) The university reserves the right to refuse parking privileges to anyone who has:

(a) Had a permit revoked.

(b) Falsified a parking application or registration.

(c) Counterfeited or altered an area designator or permit.

(d) Failed to pay outstanding citations.

(e) Been identified as a habitual offender.

(f) Been found to be in possession of or using a lost or stolen permit.

(g) Removed a wheel lock without authorization of parking ((and transportation)) services.

((6)) (h) Been trespassed from campus.

(i) Failed to comply with parking services directions.

(j) Damaged university property while driving or parking on campus.

(k) Verbally abused or assaulted staff.

(8) The speed limit on campus is ((10 mph)) ten miles per hour or as posted. ((Vehicles)) Drivers must ((be operated)) operate vehicles in a careful and prudent manner at all times and must ((be operated in compliance)) comply with established speed limits.

(9) Drivers of vehicles must obey all regulatory signs and comply with directions given by ((members of)) parking ((and transportation)) services and ((officers of the)) public safety ((department in the control and regulation of parking and traffic)) staff and their designees.

((7) The operator) (10) Drivers of ((a)) vehicles must yield the right of way to pedestrians ((crossing streets and roadways)) within the campus((-and)). This includes, but is not limited to, pedestrians crossing streets, roadways, and parking areas within the campus. Operators must also yield to pedestrians at intersections ((or), clearly marked crosswalks, or city streets which cross the campus((-Pedestrians must not cross any street or roadway except at an intersection or clearly marked crosswalk. Pedestrians must utilize side-walks where provided on streets and roadways. If no side-walk is provided, pedestrians will utilize the extreme left-hand side and move to their left and clear of the roadway or street upon meeting an oncoming vehicle)).

((8)) (11) Government-owned vehicles ((owned by or assigned on a permanent basis to administrative units on campus and)) bearing ((("E," "B" or "M")) government license plates ((or a university insignia)) may be parked in ((("G" or "C" lots)) nonreserved spaces for ((brief periods)) a maximum of two hours while the driver is on university business. Long-term parking is not permitted, nor is any parking allowed in reserved spaces except when a space is designated for that specific vehicle. ((University)) Such vehicles may be parked in metered spaces provided that meter regulations are observed. Violations incurred will be the responsibility of the driver. All operators of these or other ((state)) government-owned vehicles will abide by all traffic and parking regulations.

((9)) (12) No person may utilize any vehicle parked on campus as a living unit without specific approval from the public safety director. Violators will be cited ((and)) or towed.

((10)) (13) Vehicles are to be maintained in operating condition at all times on university property, except those in a garage, research facility, or automotive shop designated for parking such vehicles by the public safety director. Vehicle repairs or maintenance will not be made on campus unless authorization has been received in advance from the public safety director or designee.

(14) A vehicle which appears to be abandoned, with or without a current ((Western Washington University registration)) parking permit, pass, or license plates, may be impounded after an attempt is made to locate and notify the owner of the impending action.

((11)) (15) The university rents space to individuals who wish to park on campus and who are issued a parking permit or pass. The university assumes no responsibility or

liability under any circumstances for vehicles or bicycles parked on campus nor does it assume any personal liability in connection with its parking program. No bailment of any sort is created by the issuance of a permit or pass.

~~((12) The person who obtains a permit is responsible for assuring that the vehicle, regardless of who drives it, is parked in conformance with these regulations.))~~

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

**WAC 516-12-440 Parking areas.** (1) Parking is prohibited in any area not specifically marked as a parking space, designated by a sign, wheelstop, white(~~(f)~~) painted lines, and/or white traffic buttons.

(2) Vehicles (~~((will))~~) may not be parked in any parking area without a parking permit or pass for that area except as provided in WAC 516-12-430~~((2))~~ (3) or (11). Each parking area is posted to indicate the type of permit required and the times they are required.

(3) Parking in (~~(a time limited space))~~ loading zones is limited to the time posted (~~((or assigned))~~).

(4) Visitors (~~((will))~~) may park only where assigned by permit, pass, or in metered (~~((visitor))~~) areas with meter payment.

(5) Vehicles displaying valid permits (~~(for other parking areas on campus))~~ or passes may (~~((not))~~) park in metered (~~((visitor lots except as provided in WAC 516-12-430(4))~~) spaces with meter payment.

(6) Meters are available to serve short-term parking needs. (~~(They are in effect at the times posted at the location. During these times the meter must be paid the correct amount posted.))~~ "Feeding" meters is prohibited. That is, additional time cannot be purchased beyond the time limit posted on the meter (~~((e.g., a two-hour meter will allow a maximum of two hours of purchased time, and the driver may not pay the meter again to park longer than the maximum time provided))~~).

(7) Motorcycles (~~(and moped type vehicles will))~~ must only be parked in designated "M" (~~((motorcycle))~~) lots (~~((only and will))~~) or at metered spaces with payment. Motorcycles may not use space assigned to automobiles or bicycles, unless parked at a meter with payment.

(8) Automobiles (~~((will))~~) must not be parked in areas assigned to motorcycles.

(9) Bicycles must only be parked as provided in (~~((bicycle racks where provided.))~~) chapter 516-13 WAC, Bicycles, mopeds, and other powered devices.(~~((7))~~)

(10) Personal notes or business cards left on vehicles describing reasons for parking without a (~~((proper and))~~) valid permit or for parking in an unauthorized manner will not be accepted.

(11) Spaces designated for specific use are restricted for that designated purpose or to assigned vehicles (~~((all hours))~~).

(12) Resident student "R" lots are restricted to permit holders as assigned 24 hours per day.

(13) (~~((All parking spaces are defined by signs, painted surface lines, traffic "buttons," and/or wheelstops. All other areas are no parking zones. Using))~~) Vehicles must not use more than one space when parking ((is prohibited)).

(14) The (~~((fact that))~~) violation of any parking regulation by other vehicles ((are parked improperly)) does not constitute a valid excuse for violating these regulations. (~~((Should an individual parked in violation of any regulation not receive a citation, it does not indicate that such parking is authorized, that the regulation is no longer in effect, or that a future ticket is invalid.))~~

(15) The fact that one vehicle is parked in such a manner as to occupy more than one parking space is not an acceptable excuse for another operator to do the same.))

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

**WAC 516-12-450 Permits.** (1) Except as otherwise provided in this chapter, permits may be issued only to students, employees, and other members of the university community. Persons wishing to obtain parking permits are required to complete a registration form provided by parking (~~((and transportation))~~) services and pay the fee. Ownership of the parking permit remains with the university. Individuals are not allowed to transfer ownership.

(2) The loss or theft of a parking permit should be reported to parking services immediately. Upon recovery, all permits reported lost or stolen should be returned immediately to (~~((the))~~) parking (~~((and transportation))~~) services (~~((office immediately upon recovery))~~). Possession or use of a lost (~~((or))~~), stolen (~~((permit))~~), or (~~((a))~~) forged permit will result in a fine, the vehicle being (~~((wheel locked))~~) wheel locked or towed, and loss of parking privileges. (~~((Report the loss or theft of a parking permit to the parking and transportation services office immediately.))~~

~~((2))~~ (3) A stolen permit will be replaced the first time at no cost, provided a theft report has been filed with parking services. A fee will be charged for the replacement of subsequent stolen or lost permits.

(4) A valid permit means an unexpired parking permit (~~((authorized))~~) issued by (~~((the public safety director, properly registered))~~) parking services and properly displayed on (~~((the))~~) a vehicle. (~~((3))~~ Hanging) Parking permits are to be displayed (~~((from the rear view mirror))~~) according to instructions (~~((on the permit))~~) provided by parking services. (~~((Other types of permits are to be displayed according to instructions provided by parking and transportation services personnel. A parking permit is not considered valid unless it is correctly displayed on the vehicle.))~~

~~((4))~~ (5) Motorcycle permits (~~((will))~~) must be (~~((permanently attached to the top of the taillight. If taillight does not conform to current federal law, permits must be attached so as to be easily seen from the rear of the vehicle.))~~

(5) The theft or loss of a parking permit should be reported immediately upon discovery.

A stolen permit will be replaced the first time at no cost providing a theft report has been filed with the public safety department. The second time the replacement fee will be \$10.00; the third time \$20.00; and thereafter at the original cost of the highest priced permit plus \$5.00.

A lost permit will be replaced the first time for \$5.00; the second time \$10.00; the third time \$20.00; and thereafter at the original cost of the highest priced permit plus \$5.00.

~~Recovered lost or stolen permits should be returned to the parking services office immediately~~) affixed and easily visible from the rear fender.

(6) To enhance the business and operation of the university, ~~((all lots ((deals)) or university business permits may be issued and renewed by the public safety director. Initial requests for all lots ((deals)) and university business permits require ((an annual) a completed ((supplemental)) application and the signature of the dean, director, or chairperson of the department with ((which)) whom the person is associated. The approved arrangement may be renewed until the employee's job position or duties change. Issuance requires purchase of a ("G") WWU parking permit ((and permits will be in effect the same period of time)). ((These)) All lots and university business permits are valid for brief periods of time only when on university business and are not valid in metered lots, ((specifically)) reserved spaces, or small capacity lots.~~

(7) Persons with a temporary or permanent physical disability who require special parking consideration must obtain a state ~~((disabled))~~ disability parking permit as well as a valid WWU ~~((disabled))~~ disability parking permit.

(8) All permits are the property of the university and may be recalled by the public safety director under the following circumstances:

(a) When the purpose for which they were issued changes or ceases to exist.

(b) Falsification of an application or registration for parking.

(c) Violations of the regulations in this chapter.

(d) Counterfeiting or altering a permit.

(e) Failure to comply with a judgment of the ~~((parking))~~ appeals board.

(f) Failure to pay outstanding citations.

(g) Removed a wheel lock without authorization of parking ~~((and transportation))~~ services.

(h) For an unauthorized permit transfer.

(9) ~~((Annual, academic, and quarterly parking space))~~ The public safety director determines parking lot and space assignments ((will be available according to a schedule determined and publicized by the public safety director)).

(a) Annual permits are valid for twelve months.

(b) Academic permits are valid for nine months.

(c) Quarterly permits are valid from the first day of the quarter for which issued ~~((until))~~. Permits must be renewed on or before the first day of the ((succeeding)) quarter.

(d) Those persons ~~((desiring))~~ seeking to consecutively renew a quarterly permit for winter, spring, and summer quarters to the same parking lot as assigned for fall quarter may do so during the two weeks prior to finals week ~~((each quarter through the first two weeks of the next quarter))~~. Permits may not be renewed for fall quarter.

(10) Special permits may include, but are not limited to ~~((=))~~, guests, service((s)), vendors, temporary assignments, visitors, and loading permits authorized by the public safety director.

(11) University departments that sponsor functions such as athletic events, conferences, seminars, and dinners may arrange parking for their guests on a space available basis. Departments have the option of paying for guest parking;

otherwise, their guests will be responsible for the parking fee. Departments may also collect parking fees to facilitate pre-paid parking with the prior approval of parking services.

~~((12))~~ Faculty, staff, or students who have purchased a ~~((hanging))~~ parking permit but forget to place it on the vehicle they are driving to campus must obtain a temporary permit from ~~((the))~~ parking ~~((office or visitor information center))~~ services. Those who have not purchased a permit must obtain a temporary permit from ~~((the))~~ parking ~~((and transportation services office or the visitor information center at the cost of a daily visitor permit))~~ services. Temporary permits are issued for the lot assigned or, if no permit has been purchased, for available spaces.

~~((12))~~ (13) Emergency temporary permits may be issued for staff to park temporarily in locations where emergency call out requires attendance. Parking services may suspend enforcement during emergencies as declared by the president, vice-president of business and financial affairs, or designee.

(14) Faculty, staff, or students who purchase an annual, academic, or quarterly parking permit may use the permit on any vehicle they drive but may not transfer ownership of the permit. The individual to whom a permit is issued is jointly responsible with the registered owner for parking violations by any vehicle bearing the permit.

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

**WAC 516-12-460 Fees.** (1) Fee and citation schedules will be ~~((submitted))~~ approved by the president or his/her designee ~~((to the board of trustees for approval by motion))~~ and will ~~((thereafter))~~ be posted in ~~((the))~~ a public area of ~~((the))~~ parking ~~((and transportation))~~ services ~~((office))~~ and available on its web site.

(2) Cost of permits will be prorated throughout the year according to type and date purchased ~~((and will be posted in the parking and transportation services office)).~~

(3) Refunds ~~((may))~~ will be made based on the valid time remaining ~~((upon application by the permit holder or upon revocation of the permit by the public safety director. Unpaid citation fines will be deducted from any refund.))~~ according to the parking services refund schedule. Refunds may be made if unpaid fines and fees have been paid.

(a) The permit holder must return the permit to ~~((the))~~ parking ~~((and transportation))~~ services ~~((office))~~ before a refund will be authorized or a payroll deduction be terminated.

(b) ~~((A service charge will be assessed for any permit returned during the first ten days of fall quarter.~~

(c) ~~((A service charge will be assessed for quarterly permits returned during the first ten days of the quarter for which valid.~~

~~((d))~~ No refund will be made for a ~~((quarterly))~~ permit ~~((during the last two weeks of the quarter))~~ after the first thirty calendar days of any quarter. Unused quarters may be refunded in whole at respective rates.

~~((e))~~ No refund will be made for an academic permit during the last two weeks of spring quarter.



~~(f) No refund will be made for a summer permit or an annual permit after the six-week summer session-))~~ (c) Refunds will not be made upon permit revocation by the public safety director.

(4) A service charge will be assessed for:

(a) Change of permit when a lot transfer is requested by the permit holder and approved by the public safety director.

~~(b) ((Replacement of permits unless the old permit is returned in identifiable condition-))~~ Any permit returned for a refund.

(c) Change in hours issued on a part-time permit.

(5) Salaried employees have the option of paying for parking through payroll deduction.

~~(6) ((Prorated fees will be charged for part-time permits-~~

~~7))~~ The proper fee must be paid for all vehicles parked in metered lots unless otherwise authorized.

~~((8))~~ (7) For fees regarding lost or stolen permits, see WAC 516-12-450~~((5))~~ (3).

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

**WAC 516-12-470 Enforcement.** (1) General.

(a) A vehicle which is parked in a manner which endangers or potentially endangers members of the university community or their property, state property, and~~((or))~~ prevents a person having a valid permit from parking in their designated parking area, will be impounded on the first violation.

(b) Upon receiving two unpaid parking citations outstanding for more than seventy-two hours, a vehicle is subject to impound.

(c) A student with unpaid parking citations may not receive ~~((their))~~ his or her class registration and/or transcript until citations are paid.

(d) Parking permits will not be issued until all outstanding citations and fees are paid.

(e) After identifying the registered owner of any vehicle without a parking permit or a permit number which has one or more unpaid citations, ~~((the))~~ parking ~~((and transportation))~~ services ~~((office))~~ will contact the owner in writing that payment is required. If payment for outstanding citations is not made by the date required, the matter will be referred to the appropriate collection agent and/or civil court for resolution.

(f) The ~~((operator))~~ permit holder and registered owner(s) of a vehicle which is involved in a violation of the university's parking regulations are jointly and severally responsible for the violation. ~~((The person to whom a permit is issued is responsible for all citations issued to that permit number.))~~

(g) ~~((These))~~ Enforcement measures are cumulative; using one or more enforcement measures will not prohibit the use of additional measures.

(2) When regulations are in effect.

(a) Except as stated in (b) and (c) of this subsection, parking regulations are subject to enforcement throughout the calendar year but will not be enforced on official university holidays unless otherwise posted. For purposes of this section, intercession is not considered a university holiday.

(b) A vehicle which is parked in a manner which endangers or potentially endangers members of the university or their property or state property will be impounded on the first violation regardless of when the violation occurs.

(c) Intercession regulations will be determined and published by the public safety director as required.

~~(d) All lots have restrictions((Refer to)),~~ which are posted on regulatory signs at lot entrances.

(e) Should there be a conflict between these regulations, parking maps, and on-site posted signs regarding parking information and instructions, the on-site sign takes precedence.

(3) Citations. A vehicle which is in violation of the university's parking regulations will be issued a citation.

(4) Continued violations. A vehicle which remains in violation of any regulation~~((s))~~ may receive additional citations for every four hours of the violation.

(5) Impoundment by towing or wheel lock:

(a) All violators are subject to having their vehicles impounded through the use of towing or the wheel lock device at their own risk and expense.

(b) Any vehicle may be towed away if the vehicle:

(i) Has been immobilized by wheel lock for more than twenty-four hours; or

(ii) Is parked in such a manner as to endanger the university community; or

(iii) Is parked in a fire lane blocking traffic or other posted tow-away zone; or

(iv) Is parked so as to deprive a permit holder of space in his/her assigned lot, ~~((personally))~~ reserved space, or ~~((disabled))~~ disability space without a proper permit; or

(v) Is left under circumstances which indicate it has been abandoned; or

(vi) Is found displaying a forged ~~((or))~~ reported lost or stolen permit; or

(vii) Cannot be impounded with the wheel lock device;

or

(viii) When a university police officer has probable cause to believe the vehicle is stolen; or

(ix) When a university police officer has probable cause to believe that the vehicle contains or constitutes evidence of a crime, and in the police officer's judgment impoundment is necessary to obtain or preserve such evidence; or

(x) When a driver is arrested and/or deprived of the right to leave with the driver's vehicle, and the university police are responsible for the "safekeeping" of the vehicle; or

(xi) Is parked at any time on campus when parking privileges have been revoked.

(c) Any vehicle may be immobilized by use of a wheel lock device if the vehicle:

(i) Has an accumulation of two or more unpaid parking tickets (the second of which has been outstanding for more than seventy-two hours); or

(ii) Is parked at any time on campus when parking privileges have been revoked.

(d) The operator/owner of the impounded vehicle must pay all outstanding citations at ~~((the))~~ parking ~~((and transportation))~~ services ~~((office))~~ (or university public safety department when ~~((the))~~ parking ~~((and transportation))~~ services

((office)) is closed) and complete the required paperwork before a vehicle release is authorized.

(e) A fee will be assessed on vehicles immobilized by the wheel lock device.

(f) Any vehicle which remains immobilized by wheel lock for more than twenty-four hours in an area where towing is not practical or possible will be assessed a fee for each day or portion thereof over the twenty-four hours.

(g) An impound fee is charged if the driver of the tow truck or the wheel lock operator has performed any labor prior to the vehicle operator/owner returning to the vehicle before the impoundment is completed.

(h) An impounded vehicle shall be released to the operator/owner of the vehicle when:

(i) Positive identification and proof of ownership of the vehicle is provided;

(ii) All unpaid fines against the impounded vehicle or any other vehicle registered to the violator are paid at parking ((and transportation)) services (or university public safety department when parking ((and transportation)) services is closed);

(iii) A wheel lock fee is paid; and/or

(iv) All towing and storage fees are paid.

(i) The operator/owner of the towed vehicle must present an authorized release form to the towing company and pay all towing charges including any storage fees incurred.

(j) The university assumes no responsibility for damages which may result from use of the wheel lock device, towing, storage, or attempts to move a vehicle with a wheel lock device installed.

(k) A person wishing to challenge the validity of the impound or any fines or fees imposed under ((the impound policy)) these rules may appeal through the process provided in ((the) this chapter ((governing appeals (chapter 516-14 WAC))). However, in order to secure release of the vehicle, the driver or owner must pay the amount of fines and/or fees as a bond which will be refunded to the extent the appeal is approved.

(6) It is prohibited to park and citations may be issued to vehicles:

(a) Without a valid permit;

(b) Double parked;

(c) In reserved spaces without a proper permit;

(d) In no parking areas;

(e) In a ((disabled)) disability space without a proper permit;

(f) In fire lanes, service roads, fire exits or within ((15)) fifteen feet of a fire hydrant;

(g) In loading zones exceeding the time limit;

(h) In service entrances, construction sites, spaces reserved for maintenance vehicles, ((handicapped)) disability access areas, dumpster access;

(i) On lawns, sidewalks, walk zones, crosswalks, parking lot driveways, straddling painted lines or buttons, or angle parking where prohibited;

(j) Exceeding time in ((time-limited)) loading zones or metered spaces;

(k) In areas where a permit is not valid;

(l) Over or adjacent to yellow lines or curbs;

(m) Against the flow of traffic;

(n) In areas or spaces closed by barricades or other control devices.

(7) Payment of ((citations)) fine is due upon receipt of citation.

AMENDATORY SECTION (Amending WSR 02-07-045, filed 3/14/02, effective 4/14/02)

**WAC 516-12-480 Appeals and appeals board.** Any person who ((alleges being unjustly ticketed and who)) wishes to appeal a citation ((shall report to the parking and transportation services office)) must, within seven days from the date of the citation ((and)), complete an appeal form at the parking services office or appeal on-line at ((www.park.wvu.edu)) www.ps.wvu.edu. The person who appeals will be referred to as the appellant.

(1) The right to a hearing is forfeited seven days from the date of the citation.

(2) ((Any person dissatisfied with the decision of the public safety director or designee on appeal of a citation may request a hearing before the parking appeals board. (Chapter 516-14 WAC.)) The appeal form must include a full explanation of the basis for the appeal. The only proper basis for an appeal is a contention that the cited regulations were not violated.

(3) ((Requests for a parking appeals board review must be made in writing within fourteen days of the decision made by)) The public safety director or designee ((and after the appealed citation has been paid in full)) will review the appeal and issue a decision to the appellant within fourteen days of review. The public safety director may deny the appeal or grant the appeal in whole or in part by dismissing or reducing the citation.

(4) If dismissal or reduction is not granted, appellant may request the appeal be sent to the appeals board for review upon payment of the fine and the completion of an appeals board review request form. The public safety director has the authority to waive completion of the appeals board review request form and authorize delay of payment of the fine, pending review.

(5) Requests for an appeals board review must be made in writing within fourteen calendar days of the decision made by the public safety director or designee.

(6) The citation(s) must be paid in full before an appeals board review request form may be filled out and can only be delayed by written authority of the public safety director.

(7) Payment of a parking fine will not constitute a waiver of the right to a hearing with regard to the underlying violation.

(8) An appeals board has been established composed of one administrator, one faculty member, one staff member, and four students. Representation must be by the administrators, faculty union, staff unions, and associated students. Each member may be reappointed for a term. The appeals board will choose its own chairperson from its members.

(9) The appeals board will meet throughout the academic year dependent upon the volume of appeals. If an appeals board member has been notified of a meeting at least three days in advance and does not appear to participate, the other appeals board members may proceed with their duties in

reviewing appeals. At least three appeals board members are required to conduct a review.

(10) The appeals board has jurisdiction to hear and decide only those cases involving alleged violations of Western Washington University's regulations, chapters 516-12, 516-13, 516-15 WAC.

(11) Moving violations, violations of the motor vehicle and other traffic laws of the state of Washington, and traffic code of the city of Bellingham are referred to the appropriate court.

(12) The appeals board will consider appeals as follows:

(a) Should a personal appearance before the appeals board be desired it should be indicated on the appeals board review request form, otherwise the citation will be adjudicated on the basis of the written submission only.

(b) If a personal appearance is requested, and the appellant cannot appear on the date scheduled, the appellant must notify parking services in writing at least twenty-four hours before the scheduled time and request a new date. Only one such rescheduling is permitted. If the appellant does not appear at a scheduled hearing without notification, the appeal will be reviewed on the basis of the written appeal only.

(c) The appeals board operates according to the rights of due process of law. If desired, the appellant has the right to be represented by another person, the right to cross-examine witnesses, and the right to an open and impartial hearing.

(d) Parking services has the right to be represented at hearings and to cross-examine witnesses.

(e) The appeals board may examine witnesses for either side.

(f) At the conclusion of a hearing, and in an open session, the appeals board will specify the charge(s) against the appellant, declare judgment for each charge, and include a reason for each judgment. The appeals board has the authority to deny the appeal, waive, void or refund charge(s) in part or in full, according to the judgment.

(g) The decision of the appeals board will be in writing, sent immediately to the appellant and parking services, and will be final.

(h) Failure to comply with a decision of the appeals board constitutes a ground for revocation of campus parking privileges. Any unpaid fine will be deducted from any refund due as a result of revocation of parking privileges or a judgment of the appeals board.

(i) A written record of the judgment, reason, and fine imposed, if any, shall be furnished to parking services by the appeals board chairperson. These records will then be maintained by parking services.

(j) The appellant may appeal the appeals board decision to parking services within ten days after the final decision has been issued. Parking services shall immediately forward documents to the district court which has jurisdiction to hear the appeal de novo. No appeal may be taken unless the citation has been contested as provided in these rules.

(13) The appeals board chairperson may submit written recommendations about the parking system to the vice-president for business and financial affairs by May 31st of each year.

## REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 516-14-200

Policy and procedure.

## **WSR 10-09-082**

### **PROPOSED RULES**

### **HIGHER EDUCATION FACILITIES AUTHORITY**

[Filed April 20, 2010, 12:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-002.

Title of Rule and Other Identifying Information: Amending chapter 253-02 WAC, Organizations, operations and procedures and chapter 253-16 WAC, Procedures and fees for preparation and processing of applications for authority assistance.

Hearing Location(s): Washington Higher Education Facilities Authority, Conference Room, 1000 Second Avenue, Suite 2700, Seattle, WA 98104, on June 1, 2010, at 10:00 a.m.

Date of Intended Adoption: June 15, 2010.

Submit Written Comments to: Mr. Paul R. Edwards, Deputy Director, Washington Higher Education Facilities Authority, 1000 Second Avenue, Suite 2700, Seattle, WA 98104-1046, e-mail paul.r.edwards@wshfc.org, fax (206) 587-5113, by May 28, 2010.

Assistance for Persons with Disabilities: Contact Cody Field by May 24, 2010, at (206) 254-5363.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 253-02 WAC the authority is proposing amendments to WAC 253-02-010 to reflect the recodification of chapter 34.04 RCW and WAC 253-02-050 to update the technology available for authority meetings and to clarify the requirements for quorum and authority action.

Chapter 253-16 WAC, the amendments to WAC 253-16-010 clarify the purpose of the chapter and require the authority to adopt guidance policies. Amendments to WAC 253-16-040 clarify the annual fees for applicants and eliminate references to specific fees. The amendments to WAC 253-16-050 and the repeal of WAC 253-16-060 and 253-16-070 streamline the application review and acceptance process. The amendments to WAC 253-16-090 streamline the selection process of underwriters for authority bonds.

Reasons Supporting Proposal: The authority is proposing the rules in order to ensure its operations and procedures for conducting meetings reflect current technology and revisions to the RCW, to streamline the application process and underwriter selection process and to clarify application fees.

Statutory Authority for Adoption: RCW 28B.07.040(1).

Statute Being Implemented: RCW 28B.07.040(1).

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

Name of Proponent: Washington higher education facilities authority, governmental.

Name of Agency Personnel Responsible for Drafting: Carol Johnson, 1000 Second Avenue, Suite 2700, Seattle, WA 98104-1046, (206) 287-4403; Implementation and Enforcement: Paul R. Edwards, 1000 Second Avenue, Suite 2700, Seattle, WA 98104-1046, (206) 287-4462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule changes are not subject to chapter 19.85 RCW pursuant to RCW 19.85.025(3) because the rules are of the type described in RCW 34.05.310 (4)(c), (d), and (g)(i).

A cost-benefit analysis is not required under RCW 34.05.328. The authority is not subject to RCW 34.05.328 per RCW 34.05.328 (5)(a)(i), nor has the authority voluntarily made the rules subject to RCW 34.05.328 per RCW 34.05.328 (5)(a)(ii).

April 19, 2010  
Paul R. Edwards  
Deputy Director

AMENDATORY SECTION (Amending Order 3, filed 11/27/84)

**WAC 253-02-010 Purpose.** The purpose of this chapter shall be to ensure compliance by the Washington higher education facilities authority with the provisions of chapter 42.17 RCW (Initiative 276), and chapter ~~((34.04))~~ 34.05 RCW.

AMENDATORY SECTION (Amending WSR 95-19-025, filed 9/11/95, effective 10/12/95)

**WAC 253-02-050 Operations and procedures.** (1) Uniform procedure rules: Practice and procedure in and before the authority are governed by the uniform procedural rules codified in the Washington Administrative Code, WAC 1-08-005 through 1-08-590, as now or hereafter amended, which rules the authority adopts as its own, subject to any additional rules the authority may add from time to time. The authority reserves the right to make whatever determination is fair and equitable should any question not covered by its rules come before the authority, said determination to be in accordance with the spirit and intent of the law.

(2) Authority meetings: The meetings of the authority shall all be "regular" or "special meetings" as those designations are applied in chapter 42.30 RCW. They may be called at any time and place by the chairman or a majority of the members of the authority. Notice of all special meetings shall be given by delivering personally, or by mail, fax or electronic mail, to each member a written notice specifying the time and place of the meeting and a copy of the agenda prepared by the executive director in consultation with the chairman, and by giving such notice to the public as may be required by law. If an emergency is deemed to exist, the chairman may shorten the notice period to not less than twenty-four hours. An executive session may be called by the chairman or by a majority of all members of the authority to consider the appointment, employment or dismissal of an officer or employee, and such other matters as are permitted by RCW 42.30.110.

(3) Quorum: Four members shall constitute a quorum, and the act of a majority of the members present at any meeting, if there is a quorum, shall be deemed the act of the authority except as specified hereafter in subsection (7) of this section. Members participating in a meeting through the use of any means of communication by which all members participating can hear each other during the meeting shall be deemed to be present in person at the meeting for all purposes.

(4) Chairperson's or secretary's voting rights: The chairperson or the chairperson's designee and the secretary shall have the right to vote on all matters before the authority, just as any other authority member.

(5) Minutes of meetings: Minutes shall be kept of the proceedings of the authority.

(6) Rules of order: The authority shall generally follow *Robert's Rules of Order*, newly revised, in conducting its business meetings.

(7) Form of authority action: The authority may act on the basis of a motion except when authorizing issuance of bonds pursuant to WAC 253-16-070 and when otherwise taking official and formal action with respect to the creation of special funds and the issuance and sale of bonds for a project of a participant, in which case the authority shall act by resolution. Such resolutions shall be adopted upon the affirmative vote of ~~((a majority of the))~~ four or more members of the authority and shall be signed by a majority of the members of the authority. Motions shall be adopted upon the affirmative vote of a majority of a quorum of members present at any meeting. All bonds and coupons shall bear either the manual or the facsimile signatures of the governor and executive director.

(8) Public participation. The presiding officer may grant permission to any person or organization to make a presentation at any of the authority's public meetings. The presiding officer may limit any remarks addressed to the authority.

AMENDATORY SECTION (Amending WSR 95-19-025, filed 9/11/95, effective 10/12/95)

**WAC 253-16-010 Purpose.** The purpose of this chapter shall be ~~((to establish fees for the authority's operations and))~~ to set forth ~~((procedures relating to))~~ the principles governing the authority's financing process and the designation of underwriters and bond counsel. In addition, the authority shall adopt policies to provide guidance to applicants, authority staff and finance team.

AMENDATORY SECTION (Amending Order 3, filed 11/27/84)

**WAC 253-16-040 Fees.** (1) ~~((Authorization to charge fees:))~~ The authority, pursuant to chapter 28B.07 RCW, shall require applicants to pay fees and charges to the authority to provide it with funds for expenses of issuance and sale of bonds, and other charges for services provided by the authority in connection with projects undertaken, as well as the operating and administrative expenses of the authority. ~~((In accordance with this authorization, an applicant shall pay to the authority such fees and charges as are necessary to meet any and all expenses incurred by the authority in connection~~

with the processing of the application of the applicant, together with an annual service fee to defray expenses of the authority in administering and servicing the financing provided to the applicant and other allocable expenses of the authority.) The ~~((authority shall assess an))~~ annual service fee ~~((of one-tenth of one percent of))~~ shall be based on the outstanding and unredeemed bonds of each applicant. The initial annual fee shall be paid to the authority on the date of closing of each tax exempt note or bond issue and ~~((in every anniversary date))~~ annually thereafter ~~((: Provided, however, That))~~. The authority ~~((by an adopted motion may))~~ shall set ~~((a different))~~ fee schedules and may waive or credit all or any part of the annual or application fee ~~((:~~

~~(2) Fee obligations of the applicants: An applicant shall submit with its application an initial remittance of: (a) A three thousand seven hundred fifty dollar fee which shall accompany each application for a bond anticipation note; or (b) a seven thousand five hundred dollar fee which shall accompany all other applications for assistance. The authority shall, in its discretion make the final determination whether any application is for a bond anticipation note. The applicant shall pay such fees and charges as they are billed to it from time to time by the authority. These expenses may be reimbursed to the applicants from the bond proceeds if financing is consummated. In addition, the application shall contain an appropriate legal commitment to indemnify the authority against any expenses or costs incurred by it in connection with the processing of the applicant's application and the completion of any project or plan and system subsequently approved and undertaken by the authority, as well as to pay the authority an annual service fee to defray expenses of the authority in administering and servicing the financing provided to the applicant and other allocable expenses of the authority, which annual fee shall be imposed so long as financing is being provided by the authority to the applicant.~~

~~(3) Refund of excess fees: The authority may from time to time, at its discretion refund any surplus fees paid or deposited by an applicant or participant which the authority believes exceeds the actual application processing expenses and authority determined pro-rata administrative and operating costs of the authority.~~

~~(4)) by motion. Authority fee schedules shall be contained in the authority's policies.~~

(2) All the costs and expenses of the authority shall be paid from fees assessed pursuant to this section. No moneys of the state of Washington shall be expended for such purposes.

AMENDATORY SECTION (Amending Order 3, filed 11/27/84)

**WAC 253-16-050 Processing of application.** An application will be reviewed and accepted by the executive director and such authority staff as he or she determines. ~~((Upon completion of authority staff analysis and recommendations, such staff analysis and recommendations and the application shall be presented to the authority for appropriate action.))~~ Such review will be based upon the stated legislative intent to enable the building, providing, and utilization of modern, well-equipped, efficient and reasonably priced higher educa-

tional facilities, as well as the improvement, expansion, and modernization of such facilities, in a manner that will minimize the capital cost of construction, financing and use of such facilities. Proposed facilities should improve and ensure the quality and range of educational services available to the citizens of this state. The authority will adopt policies to implement this intent and will review applications based on such policies.

AMENDATORY SECTION (Amending WSR 95-19-025, filed 9/11/95, effective 10/12/95)

**WAC 253-16-090 Selection of investment banking firms as underwriters.** (1) The authority shall create and maintain a roster of underwriters who the authority believes possess the requisite special expertise and professional standing to provide bond marketing services which would be accepted by bondholders and other members of the financial community, and which would be in furtherance of the public interest in marketing the authority's bonds at the lowest possible costs in Washington state as well as nationally.

(2) Any underwriter may apply to have its name placed on the roster. Each underwriter placed on the roster must be able to demonstrate current competence and experience in the structuring and sale of higher educational facility bond financing ~~((: In addition the underwriter must meet the following minimum standards:~~

~~(a) The firm must have a minimum equity capital of five million dollars; and~~

~~(b) The firm must currently possess the competence and ability to underwrite a higher education facility bond issue) by demonstrating, among other things ~~((: that))~~:~~

~~(a) The firm or ~~((it's))~~ its key underwriting personnel have either managed or comanaged two higher educational facility bond issues within the last three calendar years; ~~((or~~~~

~~(e) The firm has served as a credit facility for a higher education facility within the past three years; ~~or))~~ and~~

~~((d)) (b) The firm meets other criteria as the authority may adopt from time to time which establish a firm's ability to prepare for issuance, underwrite and market bonds to be issued by the authority.~~

(3)(a) As permitted by RCW 28B.07.130(2), the authority may adopt rules permitting applicants to select an underwriter in lieu of the authority. Whenever the ~~((authority))~~ applicant decides that it needs the services of an underwriter, it shall provide all underwriters on the roster with a notice of its intentions and shall invite each of them to submit to the ~~((authority))~~ applicant an itemization of its fees and other charges for providing underwriting services on the issue. The ~~((authority))~~ applicant shall have wide discretion in selecting the underwriter it considers to be most appropriate to provide the services, but in the exercise of this discretion the ~~((authority))~~ applicant shall consider the underwriter's fees and other charges and the public interest in achieving issuance of bonds on terms most favorable to the authority and the applicant.

~~((b) The applicant may, at its option, exercise the notice and selection procedures regarding underwriters set forth in (a) of this subsection. In such circumstances))~~ The applicant shall supply the authority with written verification that it has complied with the provisions of ~~((a) of))~~ this subsection and

the applicant shall obtain the authority's prior approval of the actual selection of the underwriter.

~~((4)(a) To provide balanced management knowledge and sale distribution and to assure the most realistic bond terms and interest, the authority reserves the right to name investment banking firms as eomanagers of any authority bond issue(s) in the same manner that a senior manager is selected.~~

~~(5) For private placements)) (b) Whenever an applicant intends to select an underwriter pursuant to competitive bidding, the applicant, with the consent of the executive director, shall solicit bids notifying each underwriter on the roster of underwriters.~~

~~(4) Whenever an applicant intends to privately place bonds, the applicant((s)) may select a firm as placement agent for its proposed financing, subject to review and approval by the executive director of the authority. ((In every instance,)) The placement agent selected must be able to demonstrate a familiarity with, and competence and experience in, the structuring and sale of higher education facility bonds. ((The applicant shall notify the authority in writing of its proposed placement agent selection fifteen days prior to the date it intends to enter into a formal contractual agreement. The authority will notify the applicant of its acceptance or rejection of the applicant's placement agent selection no later than ten days after receipt of the applicant's notification. If rejected, the authority will set forth the reasons for rejection, and the applicant will then propose another placement agent subject to authority approval in the same manner. The authority shall, in its discretion, make the final determination whether an issue is a private placement.))~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 253-16-060	Priorities regarding applicant funding.
WAC 253-16-070	Authority action on applications.

**WSR 10-09-090**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed April 20, 2010, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-17-068.

Title of Rule and Other Identifying Information: Chapter 296-135 WAC, Leave for victims of domestic violence, sexual assault, or stalking.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA, on May 25, 2010, at 9:00 a.m.

Date of Intended Adoption: July 6, 2010.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov), fax (360) 902-5292, by May 25, 2010.

Assistance for Persons with Disabilities: Contact Sally Elliott by May 10, 2010, at [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov) or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is a result of SHB 2602, chapter 286, Laws of 2008, which became effective on April 1, 2008. The law requires employers to provide employees who are victims of domestic violence, sexual assault, or stalking, or whose family members are victims, with reasonable or intermittent leave from work, upon advance notice except in emergencies, for seeking or obtaining legal or law enforcement assistance, medical treatment, social services, or counseling, or for safety planning or relocation. The law prohibits employers from discriminating against employees who exercise rights protected by this bill and it creates administrative and civil causes of action for violation of the provisions of the bill. Rules are needed to administer and enforce this law. The legislature directed the adoption of rules through the passage of this bill.

The new rules will:

- Clarify the meaning of terms; and
- State the scheme of administration and enforcement.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 49.76 RCW and chapter 286, Laws of 2008 (SHB 2602).

Statute Being Implemented: Chapter 49.76 RCW and chapter 286, Laws of 2008 (SHB 2602).

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: Elizabeth Smith, Tumwater, Washington, (360) 902-5310; Implementation and Enforcement: Steve McLain, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined the proposed rules do not require a small business economic impact statement because the rules do not impose more than minor costs on business, pursuant to RCW 19.85-030(1). In addition, many of the rules adopt or incorporate by reference without material change the language of other Washington state statutes and regulations. See RCW 19.85-025(3), referencing RCW 34.05.310 (4)(c).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov).

April 20, 2010

Judy Schurke

Director

## Chapter 296-135 WAC

LEAVE FOR VICTIMS OF DOMESTIC VIOLENCE,  
SEXUAL ASSAULT, OR STALKINGNEW SECTION

**WAC 296-135-001 Purpose.** The purpose of these rules is to administer and enforce the provisions of chapter 49.76 RCW, leave for victims of domestic violence, sexual assault, or stalking.

NEW SECTION

**WAC 296-135-010 Definitions.** (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries, or the director's designated representative.

(3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. See RCW 49.12.005.

(4) "Employee" means an employee who is employed in the business of the employee's employer, whether by way of manual labor or otherwise. See RCW 49.12.005.

(5) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is:

(a) Under eighteen years of age; or

(b) Eighteen years of age or older and incapable of self-care because of a mental or physical disability. See RCW 49.12.265(1).

(6) "Spouse" means a husband or wife, as the case may be. See RCW 49.12.265(6).

(7) "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child. See RCW 49.12.265(3).

(8) "Parent-in-law" means a parent of the spouse of an employee. See RCW 49.12.265(4).

(9) "Grandparent" means a parent of a parent of an employee. See RCW 49.12.265(2).

(10) "Sick leave and other paid time off" means "sick leave or other paid time off." "Sick leave or other paid time off" means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for illness, vacation, and personal holiday. If paid time is not allowed to an employee for illness, "sick leave or other paid time off" also means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for disability under a plan, fund, program, or practice that is:

(a) Not covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.; and

(b) Not established or maintained through the purchase of insurance. See RCW 49.12.265(5).

(11) "Dating relationship" means a social relationship of a romantic nature. Factors for consideration in making this determination include:

(a) The length of time the relationship has existed;

(b) The nature of the relationship; and

(c) The frequency of interaction between the parties. See RCW 26.50.010.

(12) "Family member" means any individual whose relationship to the employee can be classified as a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship. See RCW 49.76.020(5).

(13) "Intermittent leave" means leave taken in separate blocks of time due to a single qualifying reason. See RCW 49.78.020(9).

(14) "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee. See RCW 49.78.020(15).

(15) "Domestic violence" means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(b) Sexual assault of one family or household member by another; or

(c) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member. See RCW 26.50.010.

(16) "Sexual assault" means any sexual assault as defined in RCW 70.125.030.

(17) "Stalking" means stalking as defined in RCW 9A.46.110.

(18) "Victim" means a person against whom domestic violence, sexual assault, or stalking has been committed. See RCW 41.04.655(9).

(19) "Health care provider" means:

(a) A person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW;

(b) A person licensed as an advanced registered nurse practitioner under chapter 18.79 RCW; or

(c) Any other person determined by the director to be capable of providing health care services. See RCW 49.78.020(8).

(20) "Advocate for victims of domestic violence, sexual assault, or stalking" includes, but is not limited to:

(a) A sexual assault advocate under RCW 5.60.060(7)(a); and

(b) A domestic violence advocate under RCW 5.60.060(8)(a).

(21) "Filed" or to "file" means actual receipt of the document during office hours at the office of the director, or at such other place designated by the department for filing of the document.

(22) "Service," "served," or to "serve" means service under RCW 34.05.010(19).

(23) "Issue" or "issuance" means service under RCW 34.05.010(19).

NEW SECTION

**WAC 296-135-020 Reasons for taking leave.** An employee may take leave under these rules to:

(1) Seek legal or law enforcement assistance or remedies to ensure the employee's or family member(s)' health and safety including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking. "Related to or derived from" means any civil or criminal legal proceeding that is triggered, in whole or in part, by an act of domestic violence, sexual assault, or stalking against any employee or family member covered by these rules.

Example 1: An employee or a family member seeks marital dissolution. The individual does not allege domestic violence, sexual assault, or stalking in any written document or oral statement at any stage during the proceedings. The marital dissolution proceeding is not "related to or derived from" an act of domestic violence, sexual assault, or stalking.

Example 2: An employee who is a victim of domestic violence needs to participate in witness preparation and trial of the perpetrator. Time spent in these activities is covered by these rules because the legal proceeding is "related to or derived from" domestic violence.

**Note:** Whether a legal proceeding is "related to or derived from" domestic violence, sexual assault, or stalking depends on the facts and must be reviewed on an individual basis.

(2) Seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking.

(3) Attend to health care treatment for a victim who is the employee's family member.

(4) Obtain, or assist the employee's family member(s) in obtaining, services from:

- (a) A domestic violence shelter; or
- (b) A rape crisis center; or
- (c) A social services program for relief from domestic violence, sexual assault, or stalking.

(5) Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking.

(6) Participate, for the employee's own self or for the employee's family member(s), in:

- (a) Safety planning; or
- (b) Temporary or permanent relocation; or
- (c) Other actions to increase the safety from future incidents of domestic violence, sexual assault, or stalking.

NEW SECTION

**WAC 296-135-030 Types of activities for which leave is allowed.** To qualify for leave and protections under these rules, an employee must engage in one or more of the activities described in WAC 296-135-020, regardless of when the employee or family member became a victim.

Example 1: An employee's family member becomes a victim of domestic violence and suffers physical injuries. The employee takes time off from work to take the family

member to the hospital for treatment for the injuries. The employee is covered by these rules.

Example 2: An employee's family member becomes a victim of domestic violence. The employee takes time off from work to comfort the family member but does not engage in any of the activities described in WAC 296-135-020. The employee is not covered by these rules.

NEW SECTION

**WAC 296-135-040 Choice and manner of leave allowed.** (1) An employee may choose to take any of the following types of leave under these rules:

- (a) Unpaid leave; or
  - (b) Paid leave, including sick leave and other paid time off and compensatory time available to the employee.
- (2) An employee may choose to take leave, whether unpaid or paid, in any manner as follows:
- (a) Intermittent leave; or
  - (b) Leave on a reduced leave schedule.

NEW SECTION

**WAC 296-135-050 Duration of leave allowed.** An employee is allowed to take leave that is reasonable in duration. The reasonableness of duration of leave must be determined on a case-by-case basis considering the reasons for taking leave under RCW 49.76.030 and WAC 296-135-020.

NEW SECTION

**WAC 296-135-060 Advance notice and timing.** (1) **Advance notice for foreseeable leave.** As a condition of taking foreseeable leave, an employee shall give advance oral or written notice of the employee's intention to take leave under RCW 49.76.030 and these rules, subject to subsection (2) of this section.

(a) If the employer has a stated policy that requires advance notice for foreseeable leave then the employee shall follow that policy. A "stated policy" means a written policy communicated to the employee prior to the employee requesting leave under these rules.

(b) If the employer does not have a stated policy that requires advance notice for foreseeable leave under these rules by a certain time, then the employee must give five calendar days' notice for the leave requested.

(2) **Exemption from advance notice for unforeseeable leave.** When an employee is unable to give advance notice to the employer because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or his or her designee must give oral or written notice to the employer no later than the end of the first day that the employee takes such leave.

NEW SECTION

**WAC 296-135-070 Verification.** (1) An employer may require an employee requesting leave to verify that:

- (a) The employee or the employee's family member is a victim; and



(b) The leave taken was for one of the activities described in RCW 49.76.030 and WAC 296-135-020.

(2) Timing of verification:

(a) An employee must provide verification in a timely manner from when the employee receives the request for verification.

(b) When an employee is unable to give advance notice because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, and the employer requires verification, an employee must provide verification to the employer within a reasonable time period during or after the leave.

(3) An employer cannot request that an employee submit a specific type of document to verify the need for leave under these rules. An employee may submit his or her choice of any of the following documents, or any combination thereof, to satisfy an employer's request for verification:

(a) A police report indicating that the employee or employee's family member was a victim; or

(b) A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking; or

(c) Other evidence from the court or the prosecuting attorney showing that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking; or

(d) Documentation that the employee or employee's family member is a victim from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking:

(i) An advocate for victims of domestic violence, sexual assault, or stalking; or

(ii) An attorney; or

(iii) A member of the clergy; or

(iv) A medical or other professional, such as a social services provider, paralegal, realtor, or other professional determined by the director to be capable of assisting with a protected activity as described in RCW 49.76.030 and WAC 296-135-020; or

(e) An employee's written statement that the employee or family member is a victim and that the leave was taken for one of the activities described in RCW 49.76.030 and WAC 296-135-020.

(4) Verification of familial relationship. An employee may verify a victim is a family member by providing:

(a) A written statement from the employee;

(b) A birth certificate;

(c) A court document; or

(d) Other similar documents showing a familial relationship between the employee and the victim.

#### NEW SECTION

**WAC 296-135-080 Employee's duty to provide information to the employer.** (1) An employee is required to provide only the information required under RCW 49.76.040(2) and WAC 296-135-070 to establish that the leave is protected under RCW 49.76.030.

(2) An employer is prohibited from requiring any information that is beyond the scope of RCW 49.76.040(2) and WAC 296-135-070.

(3) An employee is not required to produce or discuss with the employer, and the employer is prohibited from requiring, any information that would compromise the employee's or employee's family member's safety in any way.

#### NEW SECTION

**WAC 296-135-090 Employer's duty to keep information confidential.** For purposes of this section, designated representatives include supervisors, human resource and payroll personnel, members of a safety team, and other personnel whose job duties require them to act on requests for leave by employees.

(1) An employer and designated representatives shall maintain the confidentiality of all information provided by the employee, including:

(a) The fact that the employee or a family member is a victim; and

(b) That the employee requested or obtained leave; and

(c) Any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

(2) An employer may disclose information given by an employee to third parties, including other employees, only if:

(a) The employee requests or consents that the employer disclose the information; or

(b) A court or administrative agency orders disclosure of the information; or

(c) Federal or state law otherwise requires the employer to disclose the information.

Example 1: The owner of a company discloses to the company's bookkeeper that an employee is taking leave under these rules and should be given access to available sick leave and other paid time off. This disclosure is permissible.

Example 2: A manager holds a staff meeting and reports to all workers, without consent of the employee requesting leave under these rules, that the employee or his or her family member is a victim. This disclosure is not permissible.

**Note:** **Safety plans at work.** Employees should work cooperatively with their employer to permit communication of information, including safety plans, necessary to protect the safety of the employee and others.

#### NEW SECTION

**WAC 296-135-100 Maintaining pay and benefits accrued before taking leave.** When an employee takes leave under RCW 49.76.030 and these rules, the employee shall not lose any pay or benefits that accrued to the employee before the date on which the leave started.

#### NEW SECTION

**WAC 296-135-110 Employer's duty after employee returns from leave.** (1) Upon an employee's return from leave under RCW 49.76.030 and these rules, an employer shall either:

(a) Restore the employee to the position of employment held by the employee when the leave commenced; or

(b) Restore the employee to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) The provisions of subsection (1) of this section do not apply if:

(a) The employee works for a staffing company and is assigned to work on a temporary basis for another organization that directs and supervises the employee to:

(i) Support or supplement the other organization's workforce; or

(ii) Provide assistance in special work situations such as, but not limited to:

(A) Employee absences; and

(B) Skill shortages; and

(C) Seasonal workloads; and

(D) Special assignments and projects; or

(b) The employee:

(i) Was hired for a specific term, or only to perform work on a discrete project; and

(ii) The employment term or project is over, and the employer would not otherwise have continued to employ the employee.

#### NEW SECTION

**WAC 296-135-120 Health insurance during leave.** To the extent allowed by law and unless prohibited by an employer's health plan, an employer must maintain coverage under any health insurance plan for an employee who takes leave under RCW 49.76.030 and these rules. Coverage must be for the duration of the leave and at the level and under the conditions coverage would have been provided if the employee had not taken the leave.

#### NEW SECTION

**WAC 296-135-130 Rights are in addition to other rights.** (1) The rights under chapter 49.76 RCW and this chapter are in addition to any other rights provided by state and federal law.

(2) An employer may adopt policies that provide greater leave rights to employees who are or who have family members who are victims.

(3) These rules do not diminish an employer's obligation to comply with any collective bargaining agreement, or any employment benefit program or plan, that provides greater leave rights to employees than the rights provided under chapter 49.76 RCW and these rules.

#### NEW SECTION

**WAC 296-135-140 Complaints—Investigation—Notice of infraction—Determination of compliance.** (1) Upon complaint by an employee of an employer's violation of chapter 49.76 RCW and these rules, the director shall investigate the complaint.

(2) If the director determines that an employer has violated chapter 49.76 RCW and these rules, the director shall issue a notice of infraction and may:

(a) Impose a fine of up to five hundred dollars for the first infraction; and

(b) Impose a fine of up to one thousand dollars for each subsequent infraction committed within three years of a previous infraction; and

(c) Order an employer to restore the employee to a position of employment under RCW 49.76.050(2) and WAC 296-135-110(1), except as limited by RCW 49.76.050(3) and WAC 296-135-110(2).

(3) If the director determines that an employer has not violated chapter 49.76 RCW and these rules, the director shall issue a determination of compliance.

#### NEW SECTION

**WAC 296-135-150 Appeals from notices of infraction and determinations of compliance.** (1) Except as otherwise provided in chapter 49.76 RCW and these rules, appeal from the director's decision is governed by the Administrative Procedure Act, chapter 34.05 RCW and the model rules of procedure, chapter 10-08 WAC. An employer or employee may file an appeal from a notice of infraction or determination of compliance under chapter 49.76 RCW and these rules within twenty days of issuance of the decision. The appealing party shall file two copies of its notice of appeal with the department at the office designated on the notice of infraction or determination of compliance. If no party files an appeal from the notice of infraction or determination of compliance within twenty days of its issuance, the notice of infraction or determination of compliance is final and binding and not subject to further appeal.

(2) Upon receipt of a timely appeal of a notice of infraction or determination of compliance, the department must:

(a) Notify the employer and employee of the receipt of the appeal; and

(b) Conduct a hearing in accordance with chapter 34.05 RCW and chapter 10-08 WAC.

(3) Appeals shall be assigned to the office of administrative hearings. The burden of proof at hearing shall be on the party alleging violation of chapter 49.76 RCW and these rules. The standard of proof is by a preponderance of the evidence. The administrative law judge will issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate, any penalty for infraction. The employee, employer, and/or department may appeal to the director within thirty days after the date of issuance of the proposed decision. The director may also determine that the proposed decision be reviewed. If none of the parties files an appeal within thirty days of issuance of a proposed decision, and the director does not order review within such time, the proposed decision shall become final without further action and may not be appealed either to the director or the courts.

(4) An appellant must file with the director an original and two copies of its notice of appeal from a proposed decision. The notice of appeal must:

(a) Specify which findings and conclusions are erroneous;

(b) Attach written arguments supporting the appeal; and

(c) Be served upon all other parties or their representatives at the time the notice of appeal is filed.

(5) The respondent parties must file with the director and serve upon all other parties or their representatives their

responsive written arguments within thirty days after the date the notice of appeal from a proposed decision and the arguments of the appellant were served upon them.

(6) The director or the director's designee will review the administrative law judge's proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision. In addition, the director may:

(a) Allow the parties to present oral arguments as well as the written arguments;

(b) Require the parties to specify the portions of the record on which the parties rely;

(c) Require the parties to submit additional information by affidavit or certificate;

(d) Remand the matter to the administrative law judge for further proceedings; or

(e) Require a departmental employee to prepare a summary of the record for the director to review.

(7) The director or the director's designee will serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to the Administrative Procedure Act, chapter 34.05 RCW. If no party files an appeal within thirty days of service of the final decision, the final decision is conclusive and binding on all parties.

#### NEW SECTION

**WAC 296-135-160 Civil actions—Right to file; exhaustion of administrative remedies not required.** (1) An employee aggrieved by any act in violation of chapter 49.76 RCW and these rules has the right to file a civil action in court for an injunction, actual damages, costs, and reasonable attorneys' fees.

(2) An employee need not exhaust administrative remedies before filing a civil action.

(3) The right to file a civil action under RCW 49.76.100 is in addition to any common law remedy or any other remedy that may be available to an employee.

#### NEW SECTION

**WAC 296-135-170 Effect of administrative actions and resulting legal proceedings on any civil action by employee.** Regardless of whether the prior administrative action was between the same or related parties or involved the same facts, any finding, determination, conclusion, declaration, notice of infraction, or determination of compliance (collectively called "administrative actions") resulting from a complaint by an employee against an employer to the department under chapter 49.76 RCW and these rules is neither conclusive nor binding in any civil suit by an employee against an employer. Such administrative actions are actions by the director, an appeal tribunal, an administrative law judge, or a reviewing officer, to include a member of the judiciary upon judicial review under chapter 34.05 RCW.

#### NEW SECTION

**WAC 296-135-180 Confidentiality of information.**

(1) Information and records of employees contained in the

department's complaint files under chapter 49.76 RCW and these rules are confidential and shall not be open to public inspection, except as provided in subsection (2) of this section.

(2) Except as limited by federal or state statutes or regulations:

(a) The department may provide information and records in subsection (1) of this section to public employees in the performance of their official duties; and

(b) A complainant, or a representative of a complainant, whether it is an individual or an organization, may review a complaint file or receive specific information after providing a signed authorization of the complainant to the department.

#### NEW SECTION

**WAC 296-135-190 Prohibited acts.** An employer cannot discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee:

(1) Exercised or attempted to exercise the right to take leave under RCW 49.76.030;

(2) Filed or communicated to the employer an intent to file a complaint with the department under RCW 49.76.070 or a civil action under RCW 49.76.100; or

(3) Participated or assisted, as a witness or otherwise, in another employee's attempt to exercise rights under RCW 49.76.030, 49.76.070, or 49.76.100.

#### NEW SECTION

**WAC 296-135-200 Posting requirement.** (1) The department shall include notice of the provisions under chapter 49.76 RCW in its posters under RCW 49.78.340.

(2) Employers shall post the notice as required by RCW 49.78.340.

#### NEW SECTION

**WAC 296-135-210 Notice to employees—Prosecutors—Victims' advocates.** Prosecuting attorney and victim/witness offices are encouraged to make information regarding chapter 49.76 RCW and these rules available for distribution at their offices.

### **WSR 10-09-095**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

(Medical Quality Assurance Commission)

[Filed April 20, 2010, 5:22 a.m.]

Supplemental Notice to WSR 09-24-109.

Preproposal statement of inquiry was filed as WSR 07-03-178.

Title of Rule and Other Identifying Information: WAC 246-919-601 Safe and effective analgesia and anesthesia

administration in office-based surgical settings (supplemental).

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Tumwater, WA 98501, on June 3, 2010, at 6:00 p.m.

Date of Intended Adoption: June 3, 2010.

Submit Written Comments to: Beverly A. Teeter, Deputy Executive Director, P.O. Box 47866, Olympia, WA 98504, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2795, by May 25, 2010.

Assistance for Persons with Disabilities: Contact Julie Kitten, program manager, by May 25, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed supplemental rule is to establish rules consistent with the current standard of care in particular specialties, while keeping the focus on patient safety. The commission is proposing the following amendments to the standards in the original proposal: Definition of "local infiltration," utilization of general anesthesia, facility accreditation and certification, advanced cardiac life support requirements, competency requirements, sedation assessment and management requirements, and separation of surgical and monitoring functions.

Reasons Supporting Proposal: The commission received many reasonable comments and suggestions from practitioners in different specialties and decided to make changes to the proposed rule based on these comments. In order for the stakeholders to have an opportunity to provide comments on the new draft language, the commission will conduct a second public hearing prior to adopting rules. RCW 18.71.017 authorizes the commission to adopt rules. Rules are needed to establish enforceable standards to reduce the risk of substandard care, inappropriate anesthesia, and serious complications by medical physicians.

Statutory Authority for Adoption: RCW 18.71.017 and 18.130.050.

Statute Being Implemented: RCW 18.71.017(2).

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

Name of Proponent: Department of health, medical quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Beverly A. Teeter, 243 Israel Road S.E., Mailstop 47866, Tumwater, WA 98501, (360) 236-2758.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Beverly A. Teeter, 243 Israel Road S.E., Mailstop 47866, Tumwater, WA 98501, phone (360) 236-2758, fax (360) 236-2795, e-mail [beverly.teeter@doh.wa.gov](mailto:beverly.teeter@doh.wa.gov).

April 20, 2010  
Maryella E. Jansen  
Executive Director

## OFFICE-BASED SURGERY RULES

### Medical Quality Assurance Commission

#### NEW SECTION

**WAC 246-919-601 Safe and effective analgesia and anesthesia administration in office-based surgical settings.** (1) Purpose. The purpose of this rule is to promote and establish consistent standards, continuing competency, and to promote patient safety. The medical quality assurance commission establishes the following rule for those physicians licensed under this chapter who perform surgical procedures and use anesthesia, analgesia or sedation in office-based settings.

(2) Definitions. The following terms used in this subsection apply throughout this rule unless the context clearly indicates otherwise:

(a) "Commission" means the medical quality assurance commission.

(b) "Deep sedation" or "analgesia" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(c) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Sedation that unintentionally progresses to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(d) "Local infiltration" means the process of infusing a local anesthetic agent into the skin and other tissues to allow painless wound irrigation, exploration and repair, and other procedures, including procedures such as retrobulbar or peri-orbital ocular blocks only when performed by a board eligible or board certified ophthalmologist. It does not include procedures in which local anesthesia is injected into areas of the body other than skin or muscle where significant cardiovascular or respiratory complications may result.

(e) "Major conduction anesthesia" means the administration of a drug or combination of drugs to interrupt nerve impulses without loss of consciousness, such as epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. Major conduction anesthesia does not include isolated blockade of small peripheral nerves, such as digital nerves.

(f) "Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected. Minimal sedation is limited to unsupplemented oral and intramuscular medications.

(g) "Moderate sedation" or "analgesia" means a drug-induced depression of consciousness during which patients

respond purposefully to verbal commands, either alone or accompanied by tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(h) "Office-based surgery" means any surgery or invasive medical procedure requiring analgesia or sedation, including, but not limited to, local infiltration for tumescent liposuction, performed in a location other than a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(i) "Physician" means an individual licensed under chapter 18.71 RCW.

(3) Exemptions. This rule does not apply to physicians when:

(a) Performing surgery and medical procedures that require only minimal sedation (anxiolysis), or infiltration of local anesthetic around peripheral nerves.

(b) Performing surgery in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(c) Performing surgery utilizing general anesthesia. Facilities in which physicians perform procedures in which general anesthesia is a planned event are regulated by rules related to hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(d) Performing oral and maxillofacial surgery, and the physician:

(i) Is licensed both as a physician under chapter 18.71 RCW and as a dentist under chapter 18.32 RCW;

(ii) Complies with dental quality assurance commission regulations;

(iii) Holds a valid:

(A) Moderate sedation permit; or

(B) Moderate sedation with parenteral agents permit; or

(C) General anesthesia and deep sedation permit; and

(iv) Practices within the scope of his or her specialty.

(4) Application of rule.

This rule applies to physicians practicing independently or in a group setting who perform office-based surgery employing one or more of the following levels of sedation or anesthesia:

(a) Moderate sedation or analgesia; or

(b) Deep sedation or analgesia; or

(c) Major conduction anesthesia.

(5) Accreditation or certification. Within three hundred sixty-five calendar days of the effective date of this rule, a physician who performs a procedure under this rule must ensure that the procedure is performed in a facility that is appropriately equipped and maintained to ensure patient safety through accreditation or certification and in good standing from one of the following:

(a) The Joint Commission;

(b) The Accreditation Association for Ambulatory Health Care;

(c) The American Association for Accreditation of Ambulatory Surgery Facilities;

(d) The Centers for Medicare and Medicaid Services; or

(e) In lieu of accreditation or certification by one of the above-listed entities, facilities limiting office-based surgery to abortions or abortion-related services may be accredited or certified by either the Planned Parenthood Federation of America or the National Abortion Federation.

(6) Competency. When an anesthesiologist or certified registered nurse anesthetist is not present, the physician performing office-based surgery and using a form of sedation defined in subsection (4) of this section must be competent and qualified both to perform the operative procedure and to oversee the administration of intravenous sedation and analgesia.

(7) Qualifications for administration of sedation and analgesia may include:

(a) Completion of a continuing medical education course in conscious sedation;

(b) Relevant training in a residency training program; or

(c) Having privileges for conscious sedation granted by a hospital medical staff.

(8) At least one licensed health care practitioner currently certified in advanced resuscitative techniques appropriate for the patient age group (e.g., ACLS, PALS or APLS) must be present or immediately available with age-size-appropriate resuscitative equipment throughout the procedure and until the patient has met the criteria for discharge from the facility.

(9) Sedation assessment and management.

(a) Sedation is a continuum. Depending on the patient's response to drugs, the drugs administered, and the dose and timing of drug administration, it is possible that a deeper level of sedation will be produced than initially intended.

(b) If an anesthesiologist or certified registered nurse anesthetist is not present, a physician intending to produce a given level of sedation should be able to "rescue" a patient who enters a deeper level of sedation than intended.

(c) If a patient enters into a deeper level of sedation than planned, the physician must return the patient to the lighter level of sedation as quickly as possible, while closely monitoring the patient to ensure the airway is patent, the patient is breathing, and that oxygenation, heart rate and blood pressure are within acceptable values. A physician who returns a patient to a lighter level of sedation in accordance with this subsection (c) does not violate subsection (10) of this section.

(10) Separation of surgical and monitoring functions.

(a) The physician performing the surgical procedure must not administer the intravenous sedation, or monitor the patient.

(b) The licensed health care practitioner, designated by the physician to administer intravenous medications and monitor the patient who is under minimal or moderate sedation, may assist the operating physician with minor, interruptible tasks of short duration once the patient's level of sedation and vital signs have been stabilized, provided that adequate monitoring of the patient's condition is maintained. The licensed health care practitioner who administers intravenous medications and monitors a patient under deep sedation or analgesia must not perform or assist in the surgical procedure.

(11) Emergency care and transfer protocols. A physician performing office-based surgery must ensure that in the event of a complication or emergency:

(a) All office personnel are familiar with a written and documented plan to timely and safely transfer patients to an appropriate hospital.

(b) The plan must include arrangements for emergency medical services and appropriate escort of the patient to the hospital.

(12) Medical record. The physician performing office-based surgery must maintain a legible, complete, comprehensive and accurate medical record for each patient.

(a) The medical record must include:

- (i) Identity of the patient;
- (ii) History and physical, diagnosis and plan;
- (iii) Appropriate lab, X ray or other diagnostic reports;
- (iv) Appropriate preanesthesia evaluation;
- (v) Narrative description of procedure;
- (vi) Pathology reports;
- (vii) Documentation of which, if any, tissues and other specimens have been submitted for histopathologic diagnosis;

(viii) Provision for continuity of postoperative care; and

(ix) Documentation of the outcome and the follow-up plan.

(b) When moderate or deep sedation, or major conduction anesthesia is used, the patient medical record must include a separate anesthesia record that documents:

- (i) The type of sedation or anesthesia used;
- (ii) Drugs (name and dose) and time of administration;
- (iii) Documentation at regular intervals of information obtained from the intraoperative and postoperative monitoring;
- (iv) Fluids administered during the procedure;
- (v) Patient weight;
- (vi) Level of consciousness;
- (vii) Estimated blood loss;
- (viii) Duration of procedure; and
- (ix) Any complication or unusual events related to the procedure or sedation/anesthesia.

### WSR 10-09-096

#### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed April 21, 2010, 7:59 a.m.]

Original Notice.

Expedited rule making—Proposed notice was filed as WSR 10-01-124.

Title of Rule and Other Identifying Information: Revision of WAC 308-300-160 Total fee payable—Handling of fees. Deletion of WAC 308-300-075 Handling fee.

Hearing Location(s): Washington State Department of Licensing, 405 Black Lake Boulevard S.W., Room 209, Olympia, WA 98502, on June 3, 2010, at 1:00 to 3:00 p.m.

Date of Intended Adoption: June 8, 2010.

Submit Written Comments to: Jim Dick, Department of Licensing, MLS, P.O. Box 9034, Olympia, WA 98507-9034, e-mail [jdick@dol.wa.gov](mailto:jdick@dol.wa.gov), fax (360) 570-7875, by June 1, 2010.

Assistance for Persons with Disabilities: Contact Jim Dick by May 24, 2010, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revision of WAC 308-300-160 Total fee payable—Handling of fees. Deletion of WAC 308-300-075 Handling fee. WAC 308-300-160, to add credit and debit card payment options when submitting a master business application on-line or in person. To align rule with current business practices. WAC 308-300-075, to remove an obsolete rule that contains inaccurate policy and handling fee inconsistent with RCW 19.02.075.

Reasons Supporting Proposal: WAC 308-300-160, this is part of an agency-wide customer service initiative to provide greater convenience to customers. WAC 308-300-075, this removes a rule that contains inaccuracies, inconsistent with chapter 19.02 RCW and department policy.

Statutory Authority for Adoption: RCW 19.02.030(3).

Statute Being Implemented: RCW 19.02.070, 19.02.-075.

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

Name of Proponent: Washington state department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Skewis, Department of Licensing, Olympia, Washington, (360) 664-1446.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the department of licensing.

April 21, 2010

Walt Fahrner

Rules Coordinator

AMENDATORY SECTION (Amending Order 476-DOL, filed 12/30/77)

**WAC 308-300-160 Total fee payable—Handling of fees.** (1) The ~~((total))~~ fee payable ~~((shall))~~ will be the total amount of all individual license fees, late filing fees, other penalty fees, ~~((and the industrial insurance premium deposit on original application, if applicable. Payment shall be by check or money order, payable to the department of licensing at the time of application))~~ and handling fees, and may include additional fees charged to cover credit or debit card processing.

(2) ~~((The total fee payments in subsection (1) will be deposited within one working day of receipt by the department into an undistributed receipts account. The amount of the total fee payment attributable to the assigned initial risk classification and resulting industrial insurance premium deposit will be transferred to the account of the department of labor and industries. An itemization of the amounts received from each applicant and pertinent application information will be transmitted to the department of labor and industries.~~

~~((3))~~ The department will distribute the fees received for individual licenses issued or renewed ~~((at least once a month))~~ to the appropriate agencies on an established sched-

ule. ((Liquor license fees and fees received for other licenses for which the appropriate agency has withheld notification of approval or denial will be held in the undistributed receipts account of the department until those licenses are issued or denied.

(4)) (3) The master license will not be issued until the full amount of the total fee payable is collected. When the fee payment received is less than the total fee payable, the department will bill the applicant for the balance.

((5)) (4) The master license service application and renewal handling fees collected under RCW 19.02.075 are not refundable. When ((an individual)) a license is denied or when an applicant withdraws an application, a refund ((shall)) of any other refundable portion of the total payment will be made ((if authorized by the appropriate agency)) in accordance with the applicable licensing laws.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-300-075 Handling fee.

WSR 10-09-098
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed April 21, 2010, 8:55 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on June 10, 2010, at 9:30 a.m.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by June 3, 2010.

Assistance for Persons with Disabilities: Contact Shawna Erickson by June 7, 2010, (206) 515-3647.

AMENDATORY SECTION (Amending WSR 09-13-058, filed 6/15/09, effective 8/1/09)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours August 1, ((2009)) 2010, through 2400 hours July 31, ((2010)) 2011.

CLASSIFICATION

RATE

Charges for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:

Draft and Tonnage Charges:

Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.

Draft

\$100.12 per meter

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a 2010-2011 Grays Harbor pilotage district annual tariff.

The proposed rule reflects an effective overall increase to the tariff of 0.8% or \$45 per pilotage job, as specified in the following tariff category:

Pension Charge: It is proposed that the charge per pilotage assignment, including cancellations, be increased by \$45.00 from \$226.00 to \$271.00 per assignment.

Reasons Supporting Proposal: RCW 88.16.035 requires that tariff be set annually.

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Grays Harbor pilotage district expire on July 31, 2010. New rates must be set accordingly.

All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested parties.

Name of Proponent: Port of Grays Harbor, public.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual revision to the rates charged for pilotage services. The application of the proposed increases is clear in the description of the proposal and its anticipated effects as well as the attached proposed tariff.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adoption. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

April 20, 2010
Peggy Larson
Administrator

CLASSIFICATION	RATE
	or
	\$30.51 per foot
Tonnage	\$0.287 per net registered ton
Minimum Net Registered Tonnage	\$1,004.00
Extra Vessel (in case of tow)	\$562.00

Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged \$5,562.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage charges listed above.

**Boarding Charge:**

Per each boarding/deboarding from a boat or helicopter \$1,030.00

**Harbor Shifts:**

For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage \$699.00

Delays per hour \$164.00

Cancellation charge (pilot only) \$274.00

Cancellation charge (boat or helicopter only) \$822.00

**Two Pilots Required:**

When two pilots are employed for a single vessel transit, the second pilot charge shall include the harbor shift charge of \$699.00 and in addition, when a bridge is transited the bridge transit charge of \$301.00 shall apply.

**Pension Charge:**

Charge per pilotage assignment, including cancellations \$((~~226.00~~) 271.00)

**Travel Allowance:**

Transportation charge per assignment \$100.00

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$931.00 for each day or fraction thereof, and the travel expense incurred.

**Bridge Transit:**

Charge for each bridge transited \$301.00

Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam \$833.00

**Miscellaneous:**

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

**WSR 10-09-100**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Disability Services)  
 [Filed April 21, 2010, 9:09 a.m.]

845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0055, 388-845-0065, 388-845-0100, 388-845-0111, 388-845-0120, 388-845-0200, 388-845-0500, 388-845-0505, 388-845-0900, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1110, 388-845-1150, 388-845-1200, 388-845-1300, 388-845-1400, 388-845-1600, 388-845-1605, 388-845-1620, 388-845-1650, 388-845-1700, 388-845-1800, 388-845-1900, 388-845-2000, 388-845-2005, 388-845-2100, 388-845-2200, 388-845-3000, 388-845-3085, and 388-845-4005.

Original Notice.  
 Preproposal statement of inquiry was filed as WSR 08-19-112.

Title of Rule and Other Identifying Information: The department is amending the following rules in order to implement the children's intensive in-home behavioral supports: WAC 388-845-0001, 388-845-0015, 388-845-0020, 388-

Hearing Location(s): Office Building 2, Auditorium DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at: <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions>.)



html or by calling (360) 664-6094), on June 8, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 9, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 8, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 25, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making is necessary to implement chapter 194, Laws of 2009, and the Centers for Medicare and Medicaid Services approval to begin the new HCBS waiver May 1, 2009. A CR-101 was filed as WSR 10-01-204 on April 22, 2010.

Reasons Supporting Proposal: This proposed rule making is necessary to implement chapter 194, Laws of 2009, and the Centers for Medicare and Medicaid Services approval to begin the new HCBS waiver May 1, 2009. A CR-101 was filed as WSR 08-19-112 on September 17, 2008.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120, chapter 194, Laws of 2009; and section 205 (1)(i), chapter 329, Laws of 2008.

Statute Being Implemented: RCW 71A.12.030, RCW 71A.12.120, chapter 194, Laws of 2009; and section 205 (1)(i) chapter 329, Laws of 2008.

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

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

Name of Agency Personnel Responsible for Drafting: Meredith Kelly, 640 Woodland Square Loop S.E., (360) 725-3524; Implementation: Christie Seligman, 640 Woodland Square Loop S.E., (360) 725-3448; and Enforcement: Don Clintzman, 640 Woodland Square Loop S.E., (360) 725-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.025(3) states that a small business economic impact statement is not required for several other types of rules including: (1) Emergency rules; (2) internal governmental rules; (3) rules adopting or incorporating, by references without material change, any of the following: Federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs unless they govern shorelines of state-wide significance or are referenced by state law or national consensus codes that establish generally accepted industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(ii) rules with content dictated by statute are not required to submit a cost-benefit analysis. This rule was directed chapter 194, Laws of 2009,

and the Centers for Medicare and Medicaid Services approval to begin the new HCBS waiver.

April 15, 2010  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-10 issue of the Register.

**WSR 10-09-104**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed April 21, 2010, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-126 on February 3, 2010.

Title of Rule and Other Identifying Information: Hunting rules and falconry management.

Hearing Location(s): Red Lion Inn at the Park, 303 West North River Drive, Spokane, WA 99201, on June 4-5, 2010, at 8:00 a.m.

Date of Intended Adoption: August 6-7, 2010.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by May 14, 2010.

Assistance for Persons with Disabilities: Contact Susan Yeager by May 25, 2010, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 232-12-068, Nontoxic shot requirements. The department is recommending two sites be added to the list of sites where the public is required to possess only nontoxic shot - Davis Creek (Koopman) Unit and Chehalis Unit of the South Puget Sound Wildlife Area. While waterfowl hunters are already required to use nontoxic shot, this change will require all users, including upland bird hunters, dog trainers, field trial participants, and target shooters, to use nontoxic shot.

Chapter 232-30 WAC, revise existing and create new state falconry regulations to conform with new federal falconry regulations. Update and amend existing state regulations to reflect changes in conservation needs, add simplicity, and eliminate irrelevant language and inconsistencies. Staff time to administer falconry will be reduced by new rules. The new regulations will be easier for falconers to read and understand.

A new chapter is created to consolidate amended existing and new regulations into a better organized series of grouped sections and subsections.

WAC 232-16-690, the purpose of the proposal is to repeal the Bayview Game Reserve rule, eliminating a reserve that is not functioning as designed.

Reasons Supporting Proposal: WAC 232-12-068, both the Davis Creek (Koopman) and Chehalis Units of the South Puget Sound Wildlife Area have substantial wetlands that act as feeding areas for waterfowl. To avoid potential lead shot

ingestion and to protect waterfowl resources, users should be required to utilize nontoxic shot.

Chapter 232-30 WAC, falconry and management of birds of prey are jointly regulated by the United States Fish and Wildlife Service (USFWS) and the Washington department of fish and wildlife (WDFW). A state may promulgate its own falconry regulations; however, they must be consistent with federal regulations' minimum standards. State regulations may be more restrictive than federal regulations. In order for the WDFW to continue falconry as a legally permitted activity and in order to be certified as a state in which falconry is permitted by the USFWS, the WDFW falconry regulations must be revised to be consistent and in compliance with federal regulations.

WAC 232-16-690, the Bayview Game Reserve was established on the east shore of Padilla Bay (Skagit County) in 1983 to benefit brant geese. Since that time, brant have shifted their use patterns and utilize the reserve only infrequently. Repeal of the Bayview Game Reserve rule would allow for increased public duck hunting access to shoreline in the Padilla Bay area.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.210.

Statute Being Implemented: RCW 77.12.047, 77.12.-210.

Rule is necessary because of federal law, C.F.R. Title 50, Part 21, Subpart C, Section 21.29; Migratory Bird Treaty Act.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Previous rule making for falconry has had no impact on small businesses. This is primarily a nonprofit recreational activity for two hundred thirty falconers. For the small number of commercial raptor propagators, there will be reduced state regulation involvement with them, because the WDFW will be eliminating the requirement for a state falconry permit. Currently there is a redundant legal requirement for both state and federal propagation permits. When the new state regulations are adopted, propagation permits and propagation administration in Washington will be the sole responsibility of the USFWS.

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

April 20, 2010

Lori Preuss  
Rules Coordinator

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

**WAC 232-12-068 Nontoxic shot requirements.** (1) It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot when hunt-

ing for waterfowl, coot, or snipe. Nontoxic shot includes the following approved types:

Approved Nontoxic Shot Type*	Percent Composition by Weight
bismuth-tin	97 bismuth, 3 tin
iron (steel)	iron and carbon
iron-tungsten	any proportion of tungsten, >=1 iron
iron-tungsten-nickel	>=1 iron, any proportion of tungsten, up to 40 nickel
tungsten-bronze	51.1 tungsten, 44.4 copper, 3.9 tin, 0.6 iron; and 60 tungsten, 35.1 copper, 3.9 tin, 1 iron
tungsten-iron-copper-nickel	40-76 tungsten, 37 iron, 9-16 copper, 5-7 nickel
tungsten-matrix	95.9 tungsten, 4.1 polymer
tungsten-polymer	95.5 tungsten, 4.5 nylon 6 or 11
tungsten-tin-iron	any proportions of tungsten and tin, >=1 iron
tungsten-tin-bismuth	any proportions of tungsten, tin, and bismuth
tungsten-tin-iron-nickel	65 tungsten, 21.8 tin, 10.4 iron, 2.8 nickel

\*Coatings of copper, nickel, tin, zinc, zinc chloride, and zinc chrome on approved nontoxic shot types also are approved.

The director may adopt additional nontoxic shot types consistent with federal regulations.

(2) It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot in the following areas:

- Well's Wildlife Area (Bridgeport Bar Unit)
- Cowlitz Wildlife Area (all units)
- Whatcom Wildlife Area (all units)
- Shillapoo Wildlife Area (all units)
- Skagit Wildlife Area (all units)
- Snoqualmie Wildlife Area (all units)
- Sunnyside-Snake River Wildlife Area (Headquarters, Byron and Windmill Ranch units)
- Sinlahekin Wildlife Area (Driscoll Island, Hegdahl, and Kline Parcel units)

~~((John's River))~~ Olympic Wildlife Area (Chinook and Chehalis units)

South Puget Sound Wildlife Area (Davis Creek (Koopman) Unit).

(3) It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading), other than nontoxic shot, when hunting for upland game birds (pheasants, quail, chukar, or gray partridge), mourning doves, band-tailed pigeons, or game animals in the following areas:

- Chehalis River pheasant release site
- Dungeness Recreation Area
- Hunter Farms pheasant release site
- Raymond Airport pheasant release site

Two Rivers and Wallula Units of the U.S. Fish and Wildlife Service's McNary National Wildlife Refuge

All Whidbey Island pheasant release sites

(4) Beginning in 2011, it is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading), other than nontoxic shot, when hunting for upland game birds (pheasant, quail, chukar, and gray partridge), mourning doves, band-tailed pigeons, on areas where pheasants are released, to include:

Asotin Wildlife Area (Hartsock Unit)	Chelan Wildlife Area (Chelan Butte and Swakane units)	Columbia Basin Wildlife Area (Banks Lake, Gloyd Seeps, Lower Crab Creek, Quincy Lakes, Warden units)
Sinlahekin Wildlife Area (Chiliwist Unit)	Colockum Wildlife Area (Headquarters Unit)	Wenas Wildlife Area (Wenas Unit)
Klickitat Wildlife Area (Hill Road Unit)	Scatter Creek Wildlife Area	Sherman Creek Wildlife Area
Skookumchuck Wildlife Area	Steamboat Rock, Fish-trap, John Henley, Willow Bar, Rice Bar, Hartsock, Mill Creek, Wallula, Peninsula, Hollebeke/Lost Island, Buckshot, Big Flat, and Ringold Pheasant Release sites	Fort Lewis Belfair Woodland Creek and Lincoln Creek Pheasant Release sites

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 232-12-064 Live wildlife.
- WAC 232-12-066 Revocation, modification, or suspension of a permit to hold wild animals, wild birds, or game fish in captivity.
- WAC 232-12-101 Falconry and captive propagation of raptors permitted.
- WAC 232-12-104 Falconry definitions.
- WAC 232-12-106 Provisions for accidental take by falconers.
- WAC 232-12-107 Falconry permit license required.
- WAC 232-12-114 Permit required for capture of raptors.
- WAC 232-12-117 Marking and identification of raptors required.
- WAC 232-12-121 Reporting requirements for capture, importation, exportation, transfer, or other disposal of raptors.

- WAC 232-12-124 Methods of capture and prohibitions in taking raptors.
- WAC 232-12-127 Revocation, modifications or suspension of falconry permits.
- WAC 232-12-129 Captive propagation of raptors—Sale, records, reports and inspection.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

- WAC 232-16-690 Bayview Game Reserve.

**Chapter 232-30 WAC**

**FALCONRY REGULATIONS**

**NEW SECTION**

**WAC 232-30-100 Falconry and captive propagation of raptors permitted.** (1) The director may issue permits for the taking and possession of a raptor for the purpose of falconry, captive live propagation, and for the possession, transfer, use and disposition of adult birds, except for those species restricted by the state or that appear on the federal endangered species list. However, progeny of a federally threatened or endangered raptor held legally before November 10, 1978, may be retained for falconry use under these regulations.

(2) It is unlawful to take or possess a raptor or raptor eggs without a permit from the director and/or the U.S. Fish and Wildlife Service. It is unlawful to violate the conditions of a permit issued under this rule.

**NEW SECTION**

**WAC 232-30-110 Revocation, modifications or suspension of falconry permits.** A permit issued hereunder may be revoked, modified, or suspended by the director for cause. Cause shall include, but is not limited to, the failure to provide adequate falconry facilities and equipment or the failure to provide adequate care, feed, or maintenance for a raptor or for inhumane treatment of a raptor.

**NEW SECTION**

**WAC 232-30-120 Falconry definitions.** "Abatement" is the use of trained raptors to abate depredation problems caused by migratory birds and other wildlife.

"Captive-bred raptor" means the progeny of a mating of raptors in captivity.

"Falconry" means the possession and use of raptors for the purpose of hunting or free flight training.

"Hacking" is the release, sometimes temporary, of a raptor held for falconry to the wild so that it must survive on its own.

"Hybrid" means offspring of birds of two or more distinct species listed in the U.S. Fish and Wildlife 50 C.F.R. § 10.13 or offspring of birds recognized by ornithological authorities as two or more distinct species listed in the U.S. Fish and Wildlife 50 C.F.R. § 10.13.

"Imp" is to cut a broken or damaged feather and replace it with an undamaged feather.

"Imprint" for the purposes of falconry, means a bird that is hand-raised in isolation from the sight of other raptors from two weeks of age until it has fledged. An imprinted bird is considered to be so for its entire lifetime.

"Raptor" means a migratory bird of the Order Falconiformes or the Order Strigiformes listed in the U.S. Fish and Wildlife 50 C.F.R. § 10.13, including the bald eagle (*Haliaeetus leucocephalus*) or a golden eagle (*Aquila chrysaetos*).

"Take" means to trap or capture or attempt to trap or capture a raptor from the wild.

#### NEW SECTION

**WAC 232-30-130 Permits to practice falconry.** (1) Applicants for a Washington falconry permit must complete and submit an application form from the department. An applicant must meet state residency requirements for Washington.

(2) The temporary possession and short-term handling of a raptor, such as letting any other person hold or practice flying a raptor possessed under a Washington falconry permit, is not possession for the purposes of this section if the handler is under the permitted falconer's supervision. Falconry observers are not required to possess a falconry permit or a hunting license.

(3) For determining possession and take of raptors for falconry, a regulatory year is the calendar year starting January 1st and ending the following December 31st.

(4) A resident of Washington must have a valid Washington falconry permit to take, possess raptors for falconry, or to engage in the practice of falconry. In order to release a falconry raptor to pursue or hunt, depending on the type of game hunted, a resident falconer will need resident state and tribal hunting licenses, permits, stamps, and a Federal Migratory Bird Hunting and Conservation Stamp (a "Duck Stamp").

(5) Falconry permits shall be valid from the date issued until the date of expiration on the permit. The permit will be valid for a maximum period of two years to expire on December 31st. For determining possession and take of raptors for falconry, a year is the calendar year starting January 1st and ending the following December 31st.

(6) A falconer must have permit(s) or legible copies of them in immediate possession if he/she is not at the location of his/her falconry facilities and are trapping, transporting, displaying, or engaging in falconry.

#### NEW SECTION

**WAC 232-30-140 Reporting falconry activities.** (1) Throughout this chapter, reporting of falconry activities is a requirement of regulations. All raptor acquisitions, captures, purchases, gifting, sales, transfers, releases, escapes, loss by death, and all other changes in raptor status are to be reported

to the department and the U.S. Fish and Wildlife Service. Reporting will be done by filing a U.S. Fish and Wildlife Service Form 3-186A with both agencies.

(2) The form may be submitted directly to the U.S. Fish and Wildlife Service to a national computer electronic reporting system on-line via the web site <http://permits.fws.gov/186A>. The department accesses information from that data base to satisfy the state reporting requirement. For those who do not wish to submit electronic reports, the department will accept paper forms with a charge for an administrative processing fee per paper form and will enter the falconry transaction into the U.S. Fish and Wildlife Service data base.

(3) A falconer is required to keep copies of all electronic data base submissions or paper forms documenting take, transfer, loss, rebanding, or microchipping of each falconry raptor until five years after a falconry raptor transaction.

#### NEW SECTION

**WAC 232-30-151 Apprentice falconer classes of permit and permitted raptors.** (1) An applicant for an apprentice falconry permit must be at least twelve years of age. If under eighteen years of age, a parent or legal guardian must sign the application and will be legally responsible for the apprentice falconer's activities.

(2) An applicant must correctly answer at least eighty percent of the questions on an examination administered by the department, or provide proof of having previously held a valid apprentice falconry permit. The examination will cover care and handling of falconry raptors, state and federal regulations relevant to falconry, and other appropriate subject matter.

(3) An applicant must submit a letter to the department from a general falconer or a master falconer, who is at least eighteen years of age with at least two years experience at the general falconer level, stating that he/she has agreed to be a sponsor to assist the applicant in learning about the husbandry and training of raptors held for falconry, relevant wildlife laws and regulations, and in deciding what permitted raptor species is appropriate to possess while an apprentice falconer.

(4) The applicant must submit an original, signed certification incorporated into the department application form, and is worded as follows: *I certify that I have read and am familiar with Washington and U.S. Fish and Wildlife Service falconry regulations, and the federal Migratory Bird Treaty Act, and that the information I have submitted is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to cancellation of the application and/or criminal penalties.*

(5) An apprentice falconer may not intentionally capture a raptor species that this permit classification does not allow to possess for falconry. Any raptor captured, that an apprentice falconer is not permitted to take must be released immediately.

(6) Regardless of the number of state, tribal, or territorial falconry permits an apprentice falconer may have, no more than one raptor may be possessed for use in falconry.

(7) An apprentice falconer may take a red-tailed hawk (*Buteo jamaicensis*) or a kestrel (*Falco sparverius*) from the

wild in Washington. An apprentice may possess a red-tailed hawk (*Buteo jamaicensis*), kestrel (*Falco sparverius*), or a Harris' hawk (*Parabuteo unicinctus*) for falconry.

(8) An apprentice falconer may use captive-bred individuals of the species permitted to possess.

(9) A wild raptor may be transferred to an apprentice.

(10) An apprentice falconer may not possess a nestling raptor taken from the wild and may not possess a bird that is imprinted on humans.

(11) An apprentice falconer may take a free flying permitted raptor species less than one year of age from the wild during any period.

(12) Exotic, nonnative North American species of raptors that are not listed in the federal Migratory Bird Treaty Act are not covered under these regulations; however, apprentice falconers may not practice falconry or hunt with exotic raptors. Possession, import, and export of exotics may be subject to other state and federal regulations.

(13) Raptor facilities must pass inspection by the department or its designee before an apprentice falconer applicant is granted a permit.

#### NEW SECTION

**WAC 232-30-152 General falconer classes of permit and permitted raptors.** (1) An applicant for a general falconry permit must be at least sixteen years of age. If sixteen or seventeen years of age, a parent or legal guardian must sign the application and will be legally responsible for the general falconer's activities until the age eighteen years.

(2) An applicant must submit a document from a general falconer or master falconer (preferably an apprentice's sponsor to the department stating that the applicant has practiced falconry at the apprentice falconer level or equivalent for at least two years, including maintaining, training, flying, or hunting the raptor(s) for at least four months in each year. That practice may include capture and release of falconry raptor(s). The applicant may provide proof of a previously held valid general falconry permit. Falconry school program or education is not acceptable to shorten the period of two years at the apprentice falconer level.

(3) A general falconer may not intentionally capture a raptor species that this permit classification does not allow to possess for falconry. Any raptor captured, that a general falconer is not permitted to take must be released immediately.

(4) A general falconer, may take raptors less than one year of age from the wild during any period. However, an American kestrel or owl of any age may be taken from the wild during any period.

(5) Regardless of the number of state, tribal, or territorial falconry permits a general falconer may have, no more than three raptors may be possessed for use in falconry.

(6) A general falconer may take the following species of raptors from the wild in Washington: Red-tailed hawk (*Buteo jamaicensis*), kestrel (*Falco sparverius*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), gyrfalcon (*Falco rusticolus*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), goshawk (*Accipiter gentilis*), great horned owl (*Bubo virginianus*), barred owl (*Strix varia*).

(7) A general falconer may possess any species of Falconiform or Strigiform lawfully taken from out-of-state, except a golden eagle (*Aquila chrysaetos*), a bald eagle (*Haliaeetus leucocephalus*), a white-tailed eagle (*Haliaeetus albicilla*), or a Steller's sea-eagle (*Haliaeetus pelagicus*). A general falconer may use captive-bred individuals or hybrids of the species you are allowed to possess.

(8) Exotic, nonnative North American species of raptors that are not listed in the federal Migratory Bird Treaty Act are not covered under these regulations; however, general falconers may practice falconry or hunt with exotic raptors unless otherwise prohibited. Possession, import, and export of exotics may be subject to other state and federal regulations.

#### NEW SECTION

##### **WAC 232-30-153 Master falconer classes of permit.**

(1) An applicant for a master falconry permit must attest and/or provide evidence of having practiced falconry with his/her own raptor(s) at the general falconer level for at least five years, or provide proof of previously holding a valid master falconry permit.

(2) A master falconer may not intentionally capture a raptor species that this permit classification does not allow to possess for falconry. Any raptor captured, that a master falconer is not permitted to take, must be released immediately.

(3) A master falconer, may take raptors less than one year of age from the wild during any period. However, an American kestrel or owl of any age may be taken from the wild during any period.

(4) Regardless of the number of state, tribal, or territorial falconry permits a master falconer may have, no more than five raptors may be possessed for use in falconry, including golden eagles (*Aquila chrysaetos*). A master falconer may possess any number of captive-bred raptors; however, the master falconer must train them in the pursuit of wild game and use them in hunting.

(5) A master falconer may take the following species of raptors from the wild in Washington: Red-tailed hawk (*Buteo jamaicensis*), kestrel (*Falco sparverius*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii*), goshawk (*Accipiter gentilis*), great horned owl (*Bubo virginianus*), barred owl (*Strix varia*).

(6) Nestling, post fledgling, or passage peregrine falcons may be taken by a master falconer who possesses, at the time of capture, a permit from the department authorizing such capture in accordance with federal regulations and implementation guidance set forth by the U.S. Fish and Wildlife Service regarding the falconry take in the United States. The number and age class of peregrine falcons to be captured in Washington will be determined by the director in accordance with federal regulations or implementation guidance, may vary annually in response to population and productivity data, and as a participant in actions of the Pacific Flyway Council. The director will establish permit issuance procedures, capture monitoring requirements, and open areas for the capture of nestling peregrine falcons.

(7) A master falconer may possess any species of Falconiform or Strigiform lawfully taken from out-of-state, except a bald eagle (*Haliaeetus leucocephalus*).

(8) A master falconer who meets the requirements in this section may possess up to three eagles of the following species for use in falconry: Golden eagle (*Aquila chrysaetos*), white-tailed eagle (*Haliaeetus albicilla*), or Steller's sea-eagle (*Haliaeetus pelagicus*). A master falconer may possess any captive-bred individuals, or hybrids of any species.

(9) The department must have the following documented by a master falconer before approving a request to possess an eagle to use in falconry:

(a) Experience in handling large raptors, such as eagles, ferruginous hawks (*Buteo regalis*), goshawks (*Accipiter gentilis*), great horned owls (*Bubo virginianus*), red-tailed hawks (*Buteo jamaicensis*), or others. Include information about which species have been handled, the type, and duration of the activity in which experience was gained.

(b) At least two letters of reference from people with experience handling and/or flying large raptors. Each must contain a concise history of the author's experience with large raptors, which can include, but is not limited to, falconry, propagation, abatement, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors. Each letter must also assess the master falconer's capability to care for eagles and fly them in falconry.

(10) A golden eagle, white-tailed eagle, or Steller's sea-eagle in possession will count as one of the five raptors a master falconer is allowed to possess for use in falconry.

(11) Exotic, nonnative North American species of raptors that are not listed in the federal Migratory Bird Treaty Act are not covered under these regulations; however, master falconers may practice falconry or hunt with exotic raptors unless otherwise prohibited. Possession, import, and export of exotics may be subject to other state and federal regulations.

#### NEW SECTION

**WAC 232-30-160 Reinstatement of an expired falconry permit.** (1) If a permit has expired for less than five years, it will be reinstated at the level held previously.

(2) If a permit has expired for five years or more, the permittee must correctly answer at least eighty percent of the questions on the Washington falconry examination. If the falconer passes the test, his/her permit may be reinstated at the previously held level. The reinstated falconer's facilities must pass inspection by the department or its delegate prior to possession of a falconry raptor.

#### NEW SECTION

**WAC 232-30-171 New Washington residents from outside the United States.** (1) A new Washington resident from outside the United States may qualify for a falconry permit appropriate for his/her experience. The falconer must demonstrate knowledge of state and federal falconry laws and regulations by correctly answering at least eighty percent of the questions on the Washington falconry examination. If the new falconer passes the test, the department will decide for which level of falconry permit he/she is qualified, consistent

with the class requirements for a falconry permit in these regulations.

(2) In addition to passing the examination, the department will base its decision for permit issuance on documentation of the falconer's experience and any other pertinent material and supportive documents provided by the falconer or a third party. The falconer's facilities must meet the standards in these regulations and be inspected prior to receiving a Washington falconry permit.

#### NEW SECTION

**WAC 232-30-172 Nonresident falconers in Washington.** (1) Nonresident falconers may be authorized to practice falconry in Washington. The nonresident falconer must present legal proof to the department demonstrating their possession of a valid permit to possess raptors and practice falconry in their home state, tribe, or country. The nonresident may possess, transport through the state, fly, practice falconry, or hunt with legal raptors held under the authority of such permit in Washington.

A falconer from another country may need federal permits to bring a raptor into the United States to be legally possessed in Washington.

(2) Falconry raptors may be imported into the state if a health certificate is in the possession of the importer. When flown free, any raptor brought into Washington temporarily must have two attached radio transmitters.

(3) In order to release a falconry raptor to pursue game, or hunt, depending on the type of game hunted, a nonresident falconry permit holder is required to purchase appropriate nonresident state hunting licenses, permits, tags, Washington Bird Stamp, migratory bird validation, and a federal Migratory Bird Hunting and Conservation Stamp.

(4) Nonresident falconers may be authorized to capture one legal raptor per year in Washington with the requirement to purchase a nonresident raptor capture permit. A premium Class 1 nonresident raptor capture permit may authorize a nonresident falconer to capture a peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), or goshawk (*Accipiter gentilis*). A basic Class 2 nonresident raptor capture permit may authorize a nonresident falconer to capture any other raptor authorized for capture in Washington.

(5) The taking of a legal raptor by a nonresident must comply with Washington regulations for the appropriate class of falconer. The nonresident raptor capture permit shall be valid for one year.

#### NEW SECTION

#### **WAC 232-30-173 Falconers moving to Washington.**

(1) If a falconer with a valid falconry permit issued by another state, territory, or tribe moves to Washington with the intent to establish residency, he must notify the department to apply for a falconry permit after ninety days of residency in Washington.

(2) Prior to being issued a Washington falconry permit, the falconer may continue to hold all birds which were legally held prior to his move. The department will issue an appropriate class of permit based on the out-of-state permit and experience the applicant has possessed.

(3) Until the falconer has established official residency and a Washington permit has been issued, or until the permit expiration date occurs, the department will continue to recognize a valid permit issued from another state.

#### NEW SECTION

**WAC 232-30-174 Falconers moving out of Washington.** The department will continue to recognize as valid, a Washington falconer's permit for a falconer who has moved out-of-state until he/she has established official residency in the new state.

#### NEW SECTION

**WAC 232-30-175 A resident Washington falconer may take a falconry raptor out-of-state or to another state or country.** If the raptor dies or is lost, the falconer must report the loss to the department immediately upon return to Washington.

#### NEW SECTION

**WAC 232-30-210 Take from the wild.** (1) A falconer is responsible for reporting take of a raptor from the wild no later than ten days after the capture of the bird.

(2) A falconer may take no more than two raptors from the wild each year to use in falconry during any period of the year.

(3) The number of wild-caught or captive-bred raptors transferred is not restricted, but a falconer may not exceed the possession limit of his/her class of falconry.

(4) A falconer may recapture a falconry bird that he/she lost at any time. The recapture will not be considered a new take of a wild bird.

(5) If a falconer transfers a raptor taken from the wild to another permittee in the same year in which it is captured, the raptor will count as one of the raptors the falconer is allowed to take from the wild that year. It will not count as a capture by the recipient, though it will always be considered a wild bird.

#### NEW SECTION

**WAC 232-30-215 Capture of marked raptors.** (1) A raptor wearing falconry equipment or a captive-bred bird at any time may be captured even if the falconer capturing it is not authorized to possess the species. The falconer must report the capture of a bird wearing equipment or a captive-bred bird that is not his/her own to the department no more than five working days after the capture.

(2) The recaptured falconry bird must be returned to the person who lost it, if that person is authorized to possess it. If that person cannot possess the bird or does not wish to possess it, it may be kept by the falconer who captured it without it counting as a wild take, but he/she must be authorized to possess it.

(3) Disposition of a bird whose legal possession cannot be determined will be at the discretion of the department. While the falconer who captured the raptor may hold a raptor

for return to the person who lost it, the raptor will not count against his/her possession limit.

(4) With the exception of a banded peregrine falcon, a falconer may take any raptor authorized for his/her possession from the wild if the raptor is banded with a Federal Bird Banding Laboratory aluminum band.

(5) If a falconer captures a peregrine falcon with a research band, such as a colored band with alphanumeric codes, or a research marker attached to it, it must be immediately released. If the falcon has a transmitter attached to it, the capturing falconer is authorized to possess the bird up to thirty days to allow time to contact the researcher to determine if he/she wants to replace the transmitter or its batteries. If the researcher wants to do so, or to have the transmitter removed, the researcher or his or her designee may make the change or allow the capturing falconer to do so before the bird is released. If the researcher does not want to keep the transmitter on the falcon, the raptor may be kept if it was captured in circumstances in which capture of wild peregrines is allowed.

(6) If a falconer captures any other species of raptor that has any band, research marker, or transmitter attached to it, the band numbers and all other relevant information must be promptly reported to the Federal Bird Banding Laboratory at 1-800-327-2263. If the raptor has a transmitter attached to it, the capturing falconer is authorized to possess the bird up to thirty days to allow time to contact the researcher to determine if he/she wants to replace the transmitter or its batteries. If the researcher wants to do so, or to have the transmitter removed, the researcher or his or her designee may make the change or allow the capturing falconer to do so before the bird is released. If the researcher does not want to keep the transmitter on the raptor, the raptor may be kept if it was captured in circumstances in which capture of that species of wild raptor is allowed.

#### NEW SECTION

**WAC 232-30-220 Designation as a wild raptor.** Raptors removed from the wild for falconry are always considered "wild" taken raptors. No matter how long the raptor is held in captivity or whether it is transferred to another permittee or permit type, its status is always a "wild" taken raptor. It is considered to be taken from the wild only by the person who originally captured it for the purposes of the number of wild raptors a falconer may take in a year. For the purposes of the number of wild raptors a falconer may take in a year, this raptor will not count against that number for the subsequent falconers to whom it is legally transferred.

#### NEW SECTION

**WAC 232-30-222 Take of nestling at nest site.** (1) It is unlawful to remove an immature raptor from a nest unless one or more live immature raptors remain in the nest after such removal.

(2) A person other than a permitted falconer may climb to a raptor nest and remove a nestling for the falconer, but only with the falconer present at the nest site.

(3) The falconer permittee taking a raptor must be present at the capture site. The permittee is considered the

person who removes the bird from the wild even if a proxy climber, or other person, captures the bird for you. The permittee is responsible for reporting take of the bird from the wild.

(4) If a falconer is not at the immediate location where a raptor is taken from the wild for him/her, the person who removes the bird from the wild must be a general or master falconer, and must report take of the bird. If that person then transfers the bird to another falconer, the originating falconer must report the transaction no later than ten days after the take of the raptor. The raptor will count as one of the two wild raptors that a falconer is allowed to capture in any year. The bird will not count as a bird taken from the wild by the recipient. The falconer who takes the raptor from the wild must report the take even if he/she promptly transfers it to another falconer.

(5) If a falconer has a long-term or permanent physical impairment or disability that prevents him/her from attending the capture of a raptor, a general or master falconer may capture a bird for that falconer. The disabled falconer is responsible for reporting take of the bird from the wild, and the bird will count against the take of wild raptors he/she is allowed to take in any year. It will not count against the annual wild take for the falconer who captured the bird for the disabled falconer.

#### NEW SECTION

**WAC 232-30-224 Raptors injured due to falconer trapping efforts.** (1) There are two options for dealing with a raptor injured by your trapping efforts. In either case, the falconer involved with the capture is responsible for the costs of care and rehabilitation of the raptor.

(2) The raptor may be possessed by the falconer and reported within ten days after capture of the raptor. The bird will count against his/her possession limit.

(3) The raptor may be given directly to a veterinarian, a permitted wildlife rehabilitator, or an appropriate department representative or delegate. It will not count against the allowed take or the number of raptors of the falconer.

#### NEW SECTION

**WAC 232-30-230 Acquisition, transfer, release, loss, or rebanding of a raptor.** (1) If a raptor is acquired, transferred, rebanded, receives a microchip, released, or lost, it must be reported within ten days.

(2) If a raptor possessed by a falconer is stolen, it must be reported to the department and to the U.S. Fish and Wildlife Service Regional Law Enforcement office within ten days of the theft of the bird.

#### NEW SECTION

**WAC 232-30-232 Acquiring a bird for falconry from a permitted rehabilitator.** A raptor of any age and of a species that can be lawfully taken, may be acquired by a falconer directly from a rehabilitator or designee of WDFW. Transfer to the falconer is at the discretion of the department in consultation with the rehabilitator. It must be reported within ten days.

#### NEW SECTION

**WAC 232-30-240 Flying a hybrid raptor in falconry.** When flown free, a hybrid raptor must have at least two attached radio transmitters.

#### NEW SECTION

**WAC 232-30-242 Releasing a falconry bird to the wild permanently.** (1) A species not native to Washington, or a hybrid of any kind, may not be permanently released to the wild intentionally.

(2) If the species a falconer wants to release is native to Washington and is captive-bred, it may not be released to the wild intentionally without permission from the department. The raptor may be hacked to the wild at an appropriate time of year and an appropriate location. The falconry band, if banded, must be removed, and the falconer shall report the release.

(3) If the species a falconer wants to release is native to Washington and was taken from the wild, it may be released at an appropriate time of year and an appropriate location. The falconry band, if banded, must be removed and the falconer shall report the release.

#### NEW SECTION

**WAC 232-30-244 Transfer, selling, or trading raptors under a falconry permit.** (1) A falconer may purchase, sell, or barter, or offer to sell, purchase, or barter captive-bred or hybrid raptors marked with seamless bands to other falconry permittees who are authorized to possess them.

(2) Wild raptors may not be purchased, sold, traded, or bartered. Exchanging birds with other falconers is not considered to be barter.

(3) A raptor may be transferred to another permit type if the recipient of the bird, which could be the same transferring falconer, possesses the necessary permits for the other activity.

(4) A wild-caught falconry raptor may be transferred to a raptor propagation permit after the raptor has been used in falconry for at least two years, with the exception of one year is allowed for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel. Report this transfer within ten days.

(5) A wild-caught falconry raptor may be transferred to another permit type in less than two years with the exception of one year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel, if the bird has been injured, and a veterinarian or permitted wildlife rehabilitator has determined that the bird can no longer be flown for falconry. Report this transaction within ten days and provide a copy of the certification from the veterinarian or rehabilitator that the bird is not useable in falconry to the department and the U.S. Fish and Wildlife Service.

(6) A surviving spouse, executor, administrator, or other legal representative of a deceased falconry permittee may transfer any bird held by the permittee to another authorized permittee within ninety days of the death of the falconry permittee. After ninety days, disposition of a bird held under the permit is at the discretion of the department.



NEW SECTION

**WAC 232-30-250 Provisions for accidental take by falconers.** (1) When a raptor being used in falconry accidentally takes any species of wildlife (quarry) for which the hunting season is not currently open, the falconer must release the quarry if it is not seriously injured. If the quarry has been seriously injured or killed, the falconer may not retain or possess the quarry, but the raptor may feed upon the quarry before leaving the site of the kill.

(2) If the accidentally killed quarry is a species identified on the Washington candidate species list (for endangered, threatened, or sensitive status) or specifically identified by the director, or is a federally or state protected species, the falconer shall, before leaving the site of the kill, record upon a form provided by the department, or upon a facsimile, the falconer's name, falconry permit number, date, species and sex (if known) of the quarry, and exact location of the kill. The falconer shall submit the information to the department falconry permit coordinator by April 1st following the close of the current hunting season. A falconer must also report take of any federally listed species to the U.S. Fish and Wildlife Service.

(3) Accidental kill by any falconer in any license year shall not exceed a total of five individuals of any combination of species designated under subsection (2) of this section. Following an accidental kill by any falconer of any species designated under subsection (2) of this section, the falconer shall cease hunting for the day.

(4) Falconers must ensure that their activities do not cause the take of federally or state listed threatened or endangered wildlife, for example, by avoiding flying a raptor in the vicinity of the listed species. Notwithstanding any other section of this rule, take of species designated as endangered, threatened, or sensitive in Washington under WAC 232-12-011 or 232-12-014 is not permitted except by permit from the director.

(5) Violation of this section is an infraction, punishable under RCW 77.15.160.

NEW SECTION

**WAC 232-30-260 Closed areas for raptor trapping and practicing falconry.** (1) A falconry permit does not authorize you to capture or release raptors or practice falconry on public lands where it is prohibited, on private property without permission from the landowner or custodian, or on tribal lands without permission. Falconry birds may drift from the control of the falconer. It is the responsibility of the falconer to receive permission to enter to retrieve a falconry bird from public land where falconry is prohibited, private land, or tribal lands.

(2) Trapping raptors for falconry is not allowed in the following wildlife area units located in the western half of the Skagit Wildlife Area: Debay and Johnson Slough Unit, Fir Island Farms Reserve Unit, and Headquarters (Skagit) Unit.

NEW SECTION

**WAC 232-30-310 Banding or microchip tagging raptors used in falconry.** (1) If a falconer takes a goshawk, Har-

ris's hawk, peregrine falcon, or gyrfalcon from the wild or acquires one from a rehabilitator, it must be banded with a permanent, nonreusable, numbered U.S. Fish and Wildlife Service leg band that the department will supply. If desired by the falconer, he/she may purchase and implant an ISO (International Organization for Standardization) compliant (134.2 kHz) microchip in the bird in lieu of a band. Report the action and the band number and/or microchip information within ten days.

(2) A raptor bred in captivity must be banded with a seamless metal band or have an implanted ISO-compliant (134.2 kHz) microchip. If a seamless band is removed, or if it is lost, report it and request a replacement U.S. Fish and Wildlife Service nonreusable band from the U.S. Fish and Wildlife Service. Report the action and the band number and the microchip information within ten days.

(3) If banding a nestling and the raptor is not developed enough to be banded, the band does not need to be applied until the bird has developed sufficiently. During the interim, the band must accompany the bird at all times until the band is placed on the bird.

(4) If the band must be removed or is lost from a raptor in possession, report the loss of the band within five days, and request a replacement U.S. Fish and Wildlife Service nonreusable band from the department. Report the rebanding immediately.

(5) It is unlawful to alter, deface, or counterfeit a band. A falconer may smooth any imperfect surface on the rear tab of a band on a raptor taken from the wild if that action does not affect the integrity of the band or the numbering on it.

(6) If health or injury problems are documented for a raptor in possession that is caused by the band, the department will provide an exemption to the requirement for that raptor. In that case, you the falconer shall keep and possess a copy of the exemption paperwork with him/her when transporting or flying the raptor. If the raptor is a wild goshawk, Harris's hawk, peregrine falcon, or gyrfalcon, the band must be replaced with an ISO-compliant microchip purchased by the falconer.

(7) A raptor removed from the wild shall not be banded with a seamless numbered band.

NEW SECTION

**WAC 232-30-410 Inspections.** (1) Falconry, abatement, and propagation raptors, facilities, records, and equipment may be inspected in the presence of a falconry permittee during business hours, or reasonable time of the day, and on any day of the week by state, federal, or other authorized officials.

(2) All falconers must submit to the department a signed and dated statement showing that you agree that the falconry facilities and raptors may be inspected without advance notice. If your facilities are not on property owned by the falconer, the falconer must submit a signed and dated statement showing that the property owner agrees that the falconry facilities may also be inspected in the presence of the property owner. Inspecting authorities may not enter the facilities or disturb the raptors unless the falconer is present.

NEW SECTION

**WAC 232-30-420 Facilities are required for possession of falconry or abatement raptors.** (1) Resident and nonresident falconers in Washington are required to provide, and maintain approved facilities for housing raptors used in recreational falconry and abatement.

(2) Raptor facilities shall be approved by the department before a new falconry permittee obtains a raptor or a nonresident imports a raptor into Washington. A nonresident falconer shall submit to the department in advance of importing raptor into the state a description of temporary facilities.

(3) The U.S. Fish and Wildlife Service may establish standards and specifications for raptor propagation facilities.

(4) All raptors held under falconry or abatement permits shall be maintained in humane and healthful conditions.

NEW SECTION

**WAC 232-30-430 Falconry facilities on property not owned by falconry permittee.** Falconry facilities may be on property owned by another person where a falconer resides, or at a different location.

NEW SECTION

**WAC 232-30-440 Facilities and care requirements and guidelines.** (1) For housing wild raptors indoors or outdoors, the facility must protect raptors from predators, the environment, and domestic animals. The facility must have a suitable perch for each raptor, at least one opening for sunlight, and must provide a healthy environment for raptors. Untethered raptors may be housed together if they are compatible with each other. Each raptor must have an area large enough to allow it to fly if it is untethered or, if tethered, to fully extend its wings or attempt to fly while tethered without damaging its feathers or contacting other raptors. Each raptor must have a pan of clean water available.

(2) An indoor facility must be large enough to allow for the care and feeding of raptors kept there. Acceptable indoor facilities include perch enclosures where raptors are tethered side by side. If raptors in an indoor facility are not tethered, all walls that are not solid must be protected on the inside. Suitable materials may include vertical bars spaced narrower than the width of the body of the smallest raptor you house in the enclosure. However, heavy-duty netting or other such materials may be used to cover the walls or roof of the enclosure.

(3) Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and maintain healthy feathers. A falconry raptor or raptors may be kept inside a residence if a suitable perch or perches are provided. If inside a home, windows or other aspects of the structure do not need modification. Raptors kept in a home must be tethered when they are not being moved into or out of the location in which they are kept, exercised, worked with, or trained.

(4) An outdoor facility may be made of wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material. The facility must have at least a covered perch to protect a raptor held in it.

(5) New and different types of housing facilities and/or husbandry practices may be used if they satisfy the basic requirements above.

(6) Falconry raptors may be kept outside in the open if they are under watch, at any location or by a designated individual, for in a weathering yard.

(7) The department must be informed within five business days if the address of falconry facilities change.

NEW SECTION

**WAC 232-30-450 Required equipment.** A falconer must have appropriate jesses or the materials and equipment to make them, leash and swivel, bath container, and appropriate scales or balances for weighing raptor(s) in possession.

NEW SECTION

**WAC 232-30-460 Facilities for a raptor when in transport, using it for hunting, or are away from facilities, and temporary housing.** (1) A raptor must have a suitable perch and is protected from extreme temperatures, wind, and excessive disturbance. A "giant hood" or similar container is an example of an acceptable means for transporting and/or housing a raptor when away from a falconry facility.

(2) A raptor may be temporarily housed outside of your permanent facilities when you are not transporting it or using it for hunting for no more than one hundred twenty consecutive calendar days if the raptor has suitable facilities as described in WAC 232-30-440.

NEW SECTION

**WAC 232-30-470 Care of falconry raptors by another person.** (1) Another falconry permittee may care for a raptor or raptors for a falconry permittee at the permittee's facilities or at the caregiver's facilities for up to one hundred twenty consecutive calendar days. The caregiver falconer must have a signed and dated statement from the permittee that authorizes the temporary possession of the raptor, plus a copy of FWS Form 3-186A that shows that the permittee is the possessor of the raptor(s). The statement must include information about the time period for which the caregiver will keep the raptor(s), and about what the caregiver is allowed to do with the raptor(s). The raptor(s) will remain on the permittees falconry permit, and will not be counted against the possession limit of the caregiver falconer. If the person caring for the raptor(s) holds the appropriate level falconry permit, he/she may fly the raptor(s) including hunting.

(2) Another person who does not have a falconry permit may care for falconry bird(s) possessed at the permittees facilities for up to forty-five consecutive calendar days. The raptor(s) will remain on the permittees falconry permit. The raptor(s) must remain in the authorized facilities. The person(s) caring for their raptor(s) may not fly them for any reason.

(3) The care of your raptor(s) may be extended by written request to the department in extenuating circumstances, such as illness, military service, or for a family emergency.

NEW SECTION

**WAC 232-30-510 Captive propagation of raptors.** (1) A Washington falconry permit is required for anyone in the state to possess raptor propagation with permitted native North American raptors. The director will cease to issue a specific raptor propagation permit for captive breeding and rearing of raptors at such time as this regulation becomes effective. Thereafter, the U.S. Fish and Wildlife Service will have the sole responsibility for issuing raptor propagation permits in Washington.

(2) The department may promulgate state regulations for the management of captive raptor propagation in addition to federal regulations for raptor propagation.

(3) Raptors possessed under a falconry permit may be used for captive propagation purposes if the propagator acquired state and U.S. Fish and Wildlife Service falconry permits. It is not necessary to transfer a raptor from a state falconry permit to a U.S. Fish and Wildlife Service propagation permit if the raptor is used for fewer than eight months in a year for captive propagation. The raptor must be transferred by reporting that action, if the raptor is permanently transferred for use in propagation. The raptor bird must then be banded as required by state and federal regulations. With the exception of progeny from wild-caught raptors taken in Washington, the offspring of captive raptors are considered as captive-bred.

(4) Raptors you held under falconry and propagation permits shall be maintained in humane and healthful conditions.

(5) Wild-caught raptors taken in Washington may be used for propagation purposes, progeny shall not be offered for sale or trade.

NEW SECTION

**WAC 232-30-520 Hacking of falconry raptors.** (1) Hacking is an approved method for falconers and propagators to condition raptors for falconry, rehabilitation, or in preparation for sale of a captive-bred raptor. A general falconer or a master falconer may hack falconry raptors.

(2) Any raptor a falconer intends to hack with intent to continue to possess for recreational falconry counts against the permitted possession limit of a falconer.

(3) Any hybrid you hack must have two attached functioning radio transmitters during hacking.

(4) You may not hack a falconry bird near a nesting area of a state or federally threatened or endangered animal species or in any other location where the raptor is likely to harm a state or federally listed threatened or endangered animal species that might be disturbed or taken by a falconry raptor.

NEW SECTION

**WAC 232-30-530 Abatement activities with captive raptors.** (1) There is no specific Washington state abatement permit. The U.S. Fish and Wildlife Service has the sole responsibility for issuing special purpose abatement permits in Washington. An abatement operator, or subpermittees thereof, must possess a valid falconry permit from Washington, another state, tribe, or country. A falconry permit is not required for a person who is not engaged in flying a raptor,

such as caring for, handling, or otherwise assisting the operator.

(2) An abatement operator, or subpermittees thereof, and raptor handlers, using captive bred origin raptors, may receive payment for providing abatement services if they are listed in a U.S. Fish and Wildlife Service Abatement Permit. Abatement activities shall comply with any federal depredation order/permit and take permits. The abatement operator may be required to possess a Washington permit issued by the director for the take of wildlife (RCW 77.12.240 and 77.36.030). It is the responsibility of the abatement operator to possess all other relevant state and local permits.

(3) A master falconer, may independently conduct abatement activities. A general falconer, may conduct abatement activities only as a subpermittee of the holder of the federal abatement permit. A raptor handler who is not engaged in active flying of the raptor is not required to possess a falconry permit.

(4) Wildlife taken under abatement and depredation permits may be stored and/or used as food for raptors.

NEW SECTION

**WAC 232-30-540 Use of falconry raptors in education programs.** (1) A general or master falconer may use a raptor in education programs presented in public venues. A permitted falconer does not need a state scientific collection permit or a federal special purpose possession for education permit for public display to conduct education activities using a falconry raptor held under a state, tribal, or territorial falconry permit.

(2) An apprentice falconer may present education programs if under the supervision of a general or master falconer.

(3) A raptor used by a falconer for education must be one primarily used for falconry. A fee for presentation of an education program may be charged. The fee may not exceed the amount required to recoup your costs.

(4) In presenting conservation education programs, a falconer must provide information about the biology, ecological roles, and needs of raptors or other migratory birds, although not all of these topics must be addressed in every presentation.

NEW SECTION

**WAC 232-30-550 Other uses of falconry raptors.** (1) Falconry raptors may be used in photography, filming, or other such uses to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds, although a falconer may not be paid for doing so.

(2) A falconer may not use falconry raptors to make movies, commercials, or in other commercial ventures that are not related to falconry.

(3) Falconry raptors may not be used for commercial entertainment; for advertisements; as a representation of any business, company, corporation, or other organization; or for promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs, with the following exceptions:

(a) A falconry raptor may be used to promote or endorse a nonprofit falconry organization or association.

(b) A falconry raptor may be used to promote or endorse products or endeavors related to falconry including, but not limited to, items such as hoods, telemetry equipment, giant hoods, perches, materials for raptor facilities, falconry training and education materials, and scientific research and publication.

#### NEW SECTION

**WAC 232-30-560 Falconers assisting in rehabilitation of raptors to prepare them for release.** (1) A general or master falconer may assist a state and federally permitted migratory bird rehabilitator or the department to treat and condition raptors in preparation for their release to the wild. The rehabilitator must provide you with a letter, note, or form that identifies the bird and explains that you are assisting in its rehabilitation. A falconer may keep a bird undergoing rehabilitation at an approved raptor facility. The facility does not need to meet rehabilitation facility standards. A falconer may assist the department by trapping raptors for rehabilitation or wildlife control for release or rehabilitation.

(2) A raptor possessed for rehabilitation does not need to be added to a falconry permit. It will remain under the rehabilitator's permit.

(3) Any raptor bird that cannot be permanently released to the wild must be returned to the rehabilitator or the department within the one hundred eighty-day time frame in which the rehabilitator is authorized to possess the bird, unless the department authorizes the raptor's detention for longer than one hundred eighty days, or unless the rehabilitator or department transfers the raptor to the falconer to possess or hold under his/her falconry permit.

(4) Before releasing a threatened or endangered migratory bird, you must comply with any requirements for the release from the department and the U.S. Fish and Wildlife Service.

#### NEW SECTION

**WAC 232-30-570 Feathers molted by falconry raptors.** (1) A falconer may possess feathers for each species of raptor authorized to possess for as long as the falconer has a valid falconry permit. Falconers may receive feathers of any species authorized to possess from other permitted falconers, wildlife rehabilitators, propagators, or other authorized entities in the United States. Feathers may be exchanged with those entities. Raptor feathers and all feathers of other state and federally protected birds shall not be bought, sold, bartered, or otherwise used for commercial purposes.

(2) A falconer may donate feathers from a falconry bird, except golden eagle feathers, to any person or institution with a valid permit to possess them, or to anyone exempt from a permit requirement for feather possession.

(3) Except for primary or secondary flight feathers and retrices from a golden eagle, as a falconer you are not required to gather feathers that are molted or otherwise lost by a falconry bird. You may leave the feathers where they fall, store them, or destroy them.

(4) A falconer must collect molted flight feathers and retrices from a golden eagle. If the falconer chooses not to keep them for imping, golden eagle feathers must be sent to the National Eagle Repository.

(5) Send all other feathers (including body feathers) collected from any falconry golden eagle, and that are not needed for imping, to the National Eagle Repository.

(6) Any feathers in possession of a falconer whose permit is expired, suspended, or revoked must donate the feathers of any species of falconry raptors, except a golden eagle, to any person or any institution exempt from the permit requirement or authorized by permit to acquire and possess the feathers. If the feathers are not donated, they must be burned, buried, or otherwise destroyed.

#### NEW SECTION

**WAC 232-30-580 Disposition of carcasses of falconry birds that die.** (1) The entire body of a golden eagle, including all feathers, talons, and other parts, must be sent to the National Eagle Repository.

(2) The body or feathers of any other species of raptor may be donated to any person or institution exempt or authorized by permit to acquire and possess such parts or feathers.

(3) The body of any raptor, except that of a golden eagle, may be kept so that the feathers are available for imping, or that the body may be mounted by a taxidermist. The mount may be displayed in giving education programs. If the bird was banded, the band must be left on the leg. If the bird has an implanted microchip, the microchip must be left in place.

(4) If the raptor body or feathers are not donated or kept with the falconer, it must be burned, buried, or otherwise destroyed within ten days of the death of the bird or after final necropsy by a veterinarian. Carcasses of euthanized raptors could pose a risk of secondary poisoning scavaging wildlife. A falconer must take appropriate precautions to avoid such poisonings.

(5) If the raptor body and its parts are retained by the falconer, the body and its parts may be possessed for as long as the falconer has a valid falconry permit. Raptor bodies including all parts, and other state and federally protected birds, shall not be bought, sold, bartered, or otherwise used for commercial purposes.

**WSR 10-09-105  
PROPOSED RULES  
BOARD OF INDUSTRIAL  
INSURANCE APPEALS**

[Filed April 21, 2010, 10:05 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

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

Hearing Location(s): Board of Industrial Insurance Appeals, Main Conference Room, 2430 Chandler Court S.W., Olympia, WA 98502, on May 27, 2010, at 11:00 a.m.

Date of Intended Adoption: May 28, 2010.

Submit Written Comments to: J. Scott Timmons, P.O. Box 42401, Olympia, WA 98504-2401, e-mail [timmons@bii.wa.gov](mailto:timmons@bii.wa.gov), fax (360) 586-5611, by May 20, 2010.

Assistance for Persons with Disabilities: Contact Donald Ball by May 13, 2010, (360) 753-6823 x 183.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise the board's rules of practice and procedure by amending WAC 263-12-01501, 263-12-020, and 263-12-117; and by adding a new section WAC 263-12-116, regarding exhibits.

WAC 263-12-01501, the proposed revisions add language to clarify that motions for stay filed pursuant to RCW 51.52.050 cannot be filed at a board regional facility; and make minor housekeeping changes.

WAC 263-12-020, the proposed revisions add language regarding lay representation; amend language to a more clear and concise format; and make minor housekeeping changes.

WAC 263-12-117, the proposed revisions add language indicating that depositions must be submitted in a written format as well as an electronic portable document format (PDF); indicate the address for submitting electronic depositions; and make minor housekeeping changes.

WAC 263-12-116, adds a section regarding exhibits.

Reasons Supporting Proposal: Rules are being modified to meet current business needs.

Statutory Authority for Adoption: RCW 51.52.020.

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

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

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

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

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

April 21, 2010

J. Scott Timmons  
Executive Secretary

#### NEW SECTION

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

(2) The board will not accept any hazardous exhibit. A hazardous exhibit is an exhibit that threatens the health and safety of persons handling the exhibit, including exhibits having potentially toxic, explosive, or disease-carrying characteristics. Non-exclusive examples of hazardous exhibits include:

- biohazards (bodily fluid samples, bloody clothing)
- used medical implements or devices (surgical screws, cables, plates, pins, prosthetic devices)
- corrosive or toxic substances
- controlled substances (prescription drugs)
- potential airborne contaminants (asbestos, silica)
- flammable, explosive, or reactive materials
- live ammunition, firearms, knives, and other weapons

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

(4) If a party is uncertain whether a proposed exhibit conforms to this rule, that party must request a conference for the judge to make a determination of conformity at least fourteen days before submitting the exhibit.

AMENDATORY SECTION (Amending WSR 06-12-003, filed 5/25/06, effective 6/25/06)

**WAC 263-12-01501 Communications and filing with the board.** (1) **Communications with the board.**

(a) **Where to file.** All written communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

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

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

(ii) **Filing by mail.** The filing of a written communication with the board is perfected by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

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

(A) The filing of a written communication with the board by telephone facsimile is perfected when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment. All facsimile communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations,

agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

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

(C) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission.

(D) No written communication should exceed fifteen pages in length, exclusive of the cover page required by this rule.

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 04-16-009, filed 7/22/04, effective 8/22/04)

**WAC 263-12-020 Appearances of parties before the board. (1) Who may appear.**

(a) Any party to any appeal may appear before the board at any conference or hearing held in such appeal, either on the party's own behalf or by an attorney at law or other authorized lay representative of the party's choosing as prescribed (~~(by)~~ ~~in~~ (~~section 3~~) ~~subsection (3)~~ below.

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

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

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

(c) Where the party appears representing himself or herself, he or she may be accompanied, both at conference and at hearing, by a lay person of his or her choosing who shall be permitted to accompany the party into the conference or hearing room and with whom he or she can confer during such procedures.

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

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

(a) Appearances shall be made either by:

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

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

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

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

appeal or written notice of appearance has been filed on behalf of the party, the individual who last appeared at any proceeding concerning the appeal.

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

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

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

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

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

(e) APR 9 legal interns may represent parties appearing before the board as they would represent parties in courts of limited jurisdiction under APR 9 (c)(5).

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

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

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

- (i) Admonish or reprimand such person((:)); ((⊕))
- (ii) Exclude such person from further participation in the proceedings and adjourn the same((:)); ((⊕))

- (ii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100((:)); or
- (iv) Report the matter to the board.

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

- (i) A letter of reprimand((:));
- (ii) Refusal to permit such person to appear in a representative capacity in any proceeding before the board or its industrial ((A))appeals judges, or
- (iii) Certification of the record to the superior court for contempt proceedings as provided in RCW 51.52.100. If the circumstances require, the board may take action as described above prior to notice and hearing if the conduct or fitness of the person appearing before the Board requires immediate action in order to preserve the orderly disposition of the appeal or appeals.

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

- (i) Admonish or reprimand such person((:)); ((⊕))
- (ii) Exclude such person from further participation in the proceedings and adjourn the same((:)); ((⊕))
- (iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100((:)); or
- (iv) Report the matter to the board for action consistent with (b) ~~((above))~~ of this subsection.

AMENDATORY SECTION (Amending WSR 04-16-009, filed 7/22/04, effective 8/22/04)

**WAC 263-12-117 Perpetuation depositions.** (1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition, subject to the applicable provisions of WAC 263-12-115. Such ruling may only be given after the industrial appeals judge gives due consideration to: (a) ~~((⊕))~~ the complexity of the issues raised by the appeal; (b) the desirability of having the witness's testimony presented at a hearing; (c) the costs incurred by the parties in complying with the ruling; and (d) ~~((⊕))~~ the fairness to the parties in complying with the ruling. ~~((The industrial appeals judge may require that depositions be taken and published within prescribed time limits, which time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when appropriate and requested by a party, the industrial appeals judge may allocate costs to parties or their representatives. If the deposition is not transcribed in a reproducible format it may be excluded from the record.))~~

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

(3) The party filing a deposition must submit the deposition in a written format as well as an electronic Portable Document Format (PDF). The address for submitting electronic depositions is: [depositions@biia.wa.gov](mailto:depositions@biia.wa.gov). Exhibits to the deposition do not have to be filed electronically but a legible hard copy must accompany the paper transcription of the deposition. If the deposition is not transcribed in a reproducible format it may be excluded from the record.

~~((2))~~ **(4) Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions: (a) ~~((F))~~ that all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if not raised at such time shall be deemed waived; (b) that all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition; (c) that the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge; (d) that all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order; and (e) that the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being retyped into the record.