

WSR 06-05-006
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 1, 2006, 4:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-122.

Title of Rule and Other Identifying Information: WAC 181-01-002 WEST-B exemptions.

Hearing Location(s): Professional Educator Standards Board Meeting, Red Lion Inn, Pasco, Washington, on May 17 and 18, 2006.

Date of Intended Adoption: May 23, 2006.

Submit Written Comments to: Esther Baker, Old Capitol Building, 600 Washington Street South, Room 249, P.O. Box 47236, Olympia, WA 98504-7236, e-mail ebaker@ospi.wednet.edu, fax (360) 725-6277, by May 10, 2006.

Assistance for Persons with Disabilities: Contact Esther Baker by May 10, 2006, TTY (360) 664-3631 or (360) 725-6277.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to clarify language in WAC 181-01-002 that is consistent with language in WAC 180-79A-257. Specifically, the proposal seeks to change "Individuals from out-of-state" to "Out-of-state candidates."

Reasons Supporting Proposal: The clarification in language is consistent with the intent of WAC 180-79A-257 which is cited within WAC 181-02-002.

Statutory Authority for Adoption: RCW 28A.410.220.

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: Candidates who are prepared and/or certified out-of-state applying for a Washington state residency teaching certificate under WAC 180-79A-257 (1)(b), or out-of-state candidates applying to masters degree level teacher preparation program residing outside of the state of Washington at time of application, in lieu of passing the WEST-B, may provide official documentation of scores on the Praxis I of 177 for the reading subtest, 176 for the mathematics subtest, and 174 for the writing subtest, or scores on the Praxis I CBT computer-administered test of 325 for the reading subtest, 321 for the mathematics subtest, and 321 for the writing subtest, or passing scores from California or Oregon on the CBEST.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting: Nasue Nishida, 600 South Washington Street, Room 249, Olympia, WA 98504, (360) 725-6238; Implementation and Enforcement: Esther Baker, 600 South Washington Street, Room 249, Olympia, WA 98504, (360) 725-6277.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The change merely clarifies language without changing its effect and therefore is exempt under RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. The change merely clarifies language without changing its effect and therefore is exempt under RCW 34.05.310 (4)(d).

January 16, 2006

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 04-24-049, filed 11/29/04, effective 12/30/04)

WAC 181-01-002 WEST-B exemptions. (~~Individuals from~~) Candidates who are prepared and/or certified out-of-state applying for a Washington state residency teaching certificate under WAC 180-79A-257 (1)(b), or (~~individuals~~) out-of-state candidates applying to masters-degree level teacher preparation programs residing outside of the state of Washington at time of application, in lieu of passing the WEST-B, may provide official documentation of scores on the Praxis I of 177 for the reading subtest, 176 for the mathematics subtest and 174 for the writing subtest, or scores on the Praxis I CBT computer-administered test of 325 for the reading subtest, 321 for the mathematics subtest, and 321 for the writing subtest, or passing scores from California or Oregon on the CBEST.

WSR 06-05-007

PROPOSED RULES

PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 1, 2006, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-122.

Title of Rule and Other Identifying Information: WAC 181-02-002 WEST-B exemptions.

Hearing Location(s): Professional Educator Standards Board Meeting, Red Lion Inn, Pasco, Washington, on May 17 and 18, 2006.

Date of Intended Adoption: May 23, 2006.

Submit Written Comments to: Esther Baker, Old Capitol Building, 600 Washington Street South, Room 249, P.O. Box 47236, Olympia, WA 98504-7236, e-mail ebaker@ospi.wednet.edu, fax (360) 725-6277, by May 10, 2006.

Assistance for Persons with Disabilities: Contact Esther Baker by May 10, 2006, TTY (360) 664-3631 or (360) 725-6277.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to exempt individuals from the requirement for the WEST-E/Praxis II series assessment who are national board certified in the subject for which they seek an endorsement.

Reasons Supporting Proposal: The WEST-E/Praxis II series content and knowledge assessments are designed for entry-level teachers, while the national board certification is designed for experienced/accomplished teachers. The

national board certification has a content/knowledge assessment required to fulfill the program.

Statutory Authority for Adoption: RCW 28A.410.220.

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: Individuals who hold a certificate through the National Board for Professional Teaching Standards are exempt from the requirement for the WEST-E/Praxis II series assessment if they are national board certified in the subject matter for which an endorsement, as published by the superintendent of public instruction, is sought.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting: Nasue Nishida, 600 South Washington Street, Olympia, WA 98504, (360) 725-6238; Implementation and Enforcement: Esther Baker, 600 South Washington Street, Room 249, Olympia, WA 98504, (360) 725-6277.

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 required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting WEST-E Assessment Program, P.O. Box 47236, Olympia, WA 98504-7236, phone (360) 725-6275, fax (360) 586-4548, e-mail pesbassessment@.

January 16, 2006

Nasue Nishida

Policy and Research Analyst

Chapter 181-02 WAC

WEST-E ASSESSMENT PROGRAM

NEW SECTION

WAC 181-02-002 WEST-E exemptions. Individuals who hold a certificate through the National Board for Professional Teaching Standards are exempt from the requirement for the WEST-E/Praxis II series assessment if there is a direct equivalency between the endorsement sought and the national board certificate, as approved by the professional educator standards board and published by the superintendent of public instruction.

WSR 06-05-017

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed February 6, 2006, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-049.

Title of Rule and Other Identifying Information: Standards of conduct for students.

Hearing Location(s): Conference Room 403, Lighty Student Services Building, Washington State University, Pullman, Washington 99164, on March 30, 2003 [2006], at 3:00 p.m.

Date of Intended Adoption: May 5, 2006.

Submit Written Comments to: Ralph T. Jenks, P.O. Box 641225, Pullman, WA 99164-1225, e-mail forms@mail.wsu.edu, fax (509) 335-3969, by March 24, 2006.

Assistance for Persons with Disabilities: Contact Deborah Bartlett by March 24, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are being changed in order to update WSU's current code using a Model Code for the Twenty-First Century endorsed by the National Association of College and University Attorneys and the Association of Student Judicial Affairs. The revisions will allow the university to include amendments to FERPA published after the current code was implemented.

Reasons Supporting Proposal: To update WSU's current code using a Model Code for the Twenty-First Century endorsed by the National Association of College and University Attorneys and the Association of Student Judicial Affairs. The revisions will allow the university to include amendments to FERPA published after the current code was implemented.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Office of student affairs, Washington State University.

Name of Agency Personnel Responsible for Drafting: Dr. Elaine Voss, Lighty Student Services Building, Room 190, (509) 335-4532; Implementation and Enforcement: Dr. Alton Jamison, Lighty Student Services Building, Room 360, (509) 335-4531.

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.

February 3, 2006

Ralph T. Jenks, Director

Office of Procedures, Records, and Forms, and University Rules Coordinator

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 504-25-001	Terms of enrollment.
WAC 504-25-002	Washington State University.
WAC 504-25-003	Definition of a student.
WAC 504-25-011	Good standing.
WAC 504-25-013	Responsibility for guests.
WAC 504-25-014	Students studying abroad.

WAC 504-25-015	Academic dishonesty.	WAC 504-25-137	Misuse of keys or access cards.
WAC 504-25-018	Copyright and intellectual property.	WAC 504-25-138	Misuse of identification.
WAC 504-25-020	Discrimination.	WAC 504-25-139	Identity theft.
WAC 504-25-025	Sexual offenses.	WAC 504-25-140	Other conduct.
WAC 504-25-030	Physical abuse or threatened physical abuse.	WAC 504-25-200	Disciplinary action.
WAC 504-25-035	Hazing is prohibited.	WAC 504-25-201	Student rights.
WAC 504-25-040	Harassment.	WAC 504-25-202	Emergency interventions and interim action.
WAC 504-25-041	Malicious harassment.	WAC 504-25-203	Parental notification.
WAC 504-25-042	Stalking.	WAC 504-25-205	Types of hearings.
WAC 504-25-043	Abuse of self or others.	WAC 504-25-215	University officer, conduct board, and appeal board.
WAC 504-25-045	Reckless endangerment.		
WAC 504-25-050	Alcohol.	WAC 504-25-221	Complaint.
WAC 504-25-051	Effect of alcohol or drugs.	WAC 504-25-222	Preliminary conference.
WAC 504-25-055	Drugs and drug paraphernalia.	WAC 504-25-223	Notice.
WAC 504-25-060	Firearms and dangerous weapons.	WAC 504-25-224	Service of notice.
WAC 504-25-065	Illegal entry and trespassing.	WAC 504-25-226	Administrative hearing.
WAC 504-25-070	Theft or damage of property or services.	WAC 504-25-227	Administrative hearing appeal.
WAC 504-25-075	Safety equipment.	WAC 504-25-228	Conduct board hearing.
WAC 504-25-080	Misrepresentation, fraud and falsification of university records.	WAC 504-25-229	Conduct board appeal.
WAC 504-25-085	Computer abuses.	WAC 504-25-230	Sanctions.
WAC 504-25-090	Disruption.	WAC 504-25-245	Records.
WAC 504-25-095	Disturbing the peace.	WAC 504-25-300	Introduction.
WAC 504-25-100	Public indecency.	WAC 504-25-305	Overview of academic integrity procedures.
WAC 504-25-105	Interference with university or student programs or activities.	WAC 504-25-310	Definitions.
WAC 504-25-110	Violation of university policies.	WAC 504-25-315	Academic integrity processes.
WAC 504-25-115	Violation of local ordinances, state or federal law.	WAC 504-25-320	Reports of academic dishonesty.
WAC 504-25-120	Failure to comply with a proper order.	WAC 504-25-325	Conduct officer and hearing boards.
WAC 504-25-125	Assisting illegal or prohibited conduct.	WAC 504-25-330	Acts of academic dishonesty that violate the conduct regulations and the academic integrity standards.
WAC 504-25-130	Violation of a disciplinary sanction.	WAC 504-25-335	Academic integrity procedures.
WAC 504-25-135	Failure to cooperate with a university investigation.	WAC 504-25-340	Rights of students charged with violations of the academic integrity standards.
		WAC 504-25-350	Hearing guidelines.

WAC 504-25-355	Sanctions.
WAC 504-25-360	Appeals.
WAC 504-25-365	Finding of no responsibility.
WAC 504-25-370	Other interventions.
WAC 504-25-375	Records.

Chapter 504-26 WAC

STANDARDS OF CONDUCT FOR STUDENTS

NEW SECTION

WAC 504-26-001 Preamble. Washington State University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct. Students are expected to uphold these standards both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the community.

NEW SECTION

WAC 504-26-010 Definitions. (1) The term "accused student" means any student accused of violating the standards of conduct for students (chapter 504-26 WAC).

(2) The term "appellate board" means any person or persons authorized by the vice-president for student affairs to consider an appeal from a student conduct board's determination as to whether a student has violated the standards of conduct for students (chapter 504-26 WAC) or from the sanctions imposed by the student conduct officer.

(3) The term "cheating" includes, but is not limited to:

(a) Use of any unauthorized assistance in taking quizzes, tests, or examinations.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition, without permission, of tests or other academic material belonging to a member of the university faculty or staff.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness.

(e) Engaging in any behavior specifically prohibited by a faculty member in the course syllabus or class discussion.

(4) The term "complainant" means any person who submits a charge alleging that a student violated the standards of conduct for students (chapter 504-26 WAC). When a student believes that s/he has been a victim of another student's misconduct, the student who believes s/he has been a victim has the same rights under these standards as are provided to the

complainant, even if another member of the university community submitted the charge itself.

(5) The term "faculty member" for purposes of these standards (chapter 504-26 WAC), means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "may" is used in the permissive sense.

(7) The term "member of the university community" includes any person who is a student, faculty member, university official, or any other person employed by the university. A person's status in a particular situation is determined by the vice-president for student affairs.

(8) The term "organization" means any number of persons who have complied with the formal requirements for university recognition.

(9) The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(10) The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

(11) The term "shall" is used in the imperative sense.

(12) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students (chapter 504-26 WAC), who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, although not enrolled in this institution.

(13) The term "student conduct officer" means a university official authorized by the vice-president for student affairs to impose sanctions upon any student(s) found to have violated the standards of conduct for students (chapter 504-26 WAC).

(14) The term "university" means all locations of Washington State University.

(15) The term "university conduct board" means any person or persons authorized by the vice-president for student affairs to determine whether a student has violated the standards of conduct for students (chapter 504-26 WAC) and to impose sanctions when a rules violation has been committed.

(16) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(17) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks).

(18) The vice-president for student affairs is that person designated by the university president to be responsible for

the administration of the standards of conduct for students (chapter 504-26 WAC).

ARTICLE I AUTHORITY FOR STANDARDS OF CONDUCT FOR STUDENTS

NEW SECTION

WAC 504-26-100 Composition of boards. The vice-president for student affairs or designee shall determine the composition of university conduct boards and appellate boards.

NEW SECTION

WAC 504-26-101 Convening boards. The student conduct officer convenes boards for each conduct matter and for appeals of decisions.

NEW SECTION

WAC 504-26-102 Policies. The vice-president for student affairs or designee shall develop policies for the administration of the student conduct system and procedural rules for the conduct of student conduct board hearings that are consistent with provisions of the standards of conduct for students (chapter 504-26 WAC).

NEW SECTION

WAC 504-26-103 Decisions. Decisions made by a student conduct board and/or student conduct officer are final, pending the normal appeal process.

ARTICLE II PROSCRIBED CONDUCT

NEW SECTION

WAC 504-26-200 Jurisdiction of the university standards of conduct for students. The university standards of conduct for students (chapter 504-26 WAC) shall apply to conduct that occurs on university premises, at university sponsored activities, and to off-campus conduct that adversely affects the university community and/or the pursuit of its objectives. Each student is responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from school while a disciplinary matter is pending. The university has sole discretion to determine what conduct occurring off campus adversely impacts the university and/or the pursuit of its objectives.

NEW SECTION

WAC 504-26-201 Misconduct—Rules and regulations. Any individual or organization found to have commit-

ted or to have attempted to commit the following misconduct (WAC 504-26-202 through 504-26-230) is subject to the disciplinary sanctions outlined in Article IV of chapter 504-26 WAC (WAC 504-26-401 through 504-26-404).

NEW SECTION

WAC 504-26-202 Acts of dishonesty. Acts of dishonesty, including but not limited to the following:

(1) Cheating, plagiarism, or other forms of academic dishonesty such as:

(a) Unauthorized collaborations on assignments;

(b) Facilitation of dishonesty, including not challenging academic dishonesty;

(c) Obtaining unauthorized knowledge of exam materials;

(d) Unauthorized multiple submission of the same work; sabotage of others' work.

(2) Knowingly furnishing false information to any university official, faculty member, or office.

(3) Forgery, alteration, or misuse of any university document, record, or instrument of identification.

NEW SECTION

WAC 504-26-203 Disruption or obstruction. Students have the right to freedom of speech, including the right to dissent or protest, but this expression may not interfere with the rights of others or disrupt the university's activities. Prohibited behavior includes: Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other university activities, including its public service functions on or off campus, or of other authorized nonuniversity activities when the conduct occurs on university premises.

NEW SECTION

WAC 504-26-204 Abuse of self or others. Physical abuse, threats, intimidation, and/or other conduct which threatens or endangers the health or safety of any person, including one's self.

NEW SECTION

WAC 504-26-205 Theft or damage to property. Theft of and/or damage to property of the university or property of a member of the university community or other personal or public property, on or off campus.

NEW SECTION

WAC 504-26-206 Hazing. (1) No student or student organization at Washington State University may conspire to engage in hazing or participate in hazing of another.

(a) Hazing includes any activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical harm, regardless of the person's willingness to participate.

(b) Hazing activities may include but are not limited to the following: Abuse of alcohol during new member activi-

ties; striking another person whether by use of any object or one's body; creation of excessive fatigue; physical and/or psychological shock; morally degrading or humiliating games or activities that create a risk of bodily, emotional, or mental harm.

(c) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and NCAA athletics, or other similar contests or competitions, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited.

(2) Washington state law also prohibits hazing which may subject violators to criminal prosecution. As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary education institution in this state.

(3) Washington state law (RCW 28B.10.901) also provides sanctions for hazing:

(a) Any person who violates this rule, in addition to other sanctions that may be imposed, shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the university.

(b) Any organization, association, or student living group that knowingly permits hazing by its members or others subject to its direction or control shall be deprived of any official recognition or approval granted by the university.

NEW SECTION

WAC 504-26-207 Failure to comply with university officials or law enforcement officers. Failure to comply with directions of university officials and/or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

NEW SECTION

WAC 504-26-208 Unauthorized keys or unauthorized entry. Unauthorized possession, duplication, or use of keys to any university premises or unauthorized entry to or use of university premises.

NEW SECTION

WAC 504-26-209 Violation of university policy, rule, or regulation. Violation of any university policy, rule, or regulation published in hard copy or available electronically on the university web site.

NEW SECTION

WAC 504-26-210 Violation of law. Violation of any federal, state, or local law.

NEW SECTION

WAC 504-26-211 Drugs and drug paraphernalia. Use, possession, manufacture, or distribution of marijuana, narcotics, or other controlled substances, and drug paraphernalia except as expressly permitted by federal, state, and local law.

NEW SECTION

WAC 504-26-212 Alcohol. Use, possession, manufacture, or distribution of alcoholic beverages (except as expressly permitted by university regulations), or public intoxication are prohibited. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under twenty-one years of age.

NEW SECTION

WAC 504-26-213 Firearms and dangerous weapons. No student may carry, possess, or use any firearm, explosive (including fireworks), dangerous chemical, or any dangerous weapon on university property or in university-approved housing. Airsoft guns and other items that shoot projectiles are not permitted in university-approved housing. Students wishing to maintain a firearm for hunting or sporting activities must store the firearm with the Washington State University department of public safety.

NEW SECTION

WAC 504-26-214 Disruptive activity. Participating in an on-campus or off-campus riot or unlawful assembly that disrupts the normal operations of the university and/or infringes on the rights of other members of the university community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area. For peaceful demonstrations, students should consult with university police for safety guidelines.

NEW SECTION

WAC 504-26-215 Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or supervised functions.

NEW SECTION

WAC 504-26-216 Disorderly conduct. Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace on university premises or at functions sponsored by, or participated in by, the university or members of the academic community.

NEW SECTION

WAC 504-26-217 Unauthorized use of electronic or other devices. Unauthorized use of electronic or other devices:

Making an audio or video record of any person while on university premises without his/her prior knowledge, or with-

out his/her effective consent when such a recording is likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.

NEW SECTION

WAC 504-26-218 Computer abuses or theft. Theft or other abuse of computer facilities and resources, including but not limited to:

- (1) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.
- (2) Unauthorized transfer of a file.
- (3) Use of another individual's identification and/or password.
- (4) Use of computing facilities and resources to interfere with the work of another student, faculty member, or university official.
- (5) Use of computing facilities and resources to send obscene, harassing, or threatening messages.
- (6) Use of computing facilities and resources to interfere with normal operation of the university computing system.
- (7) Use of computing facilities and resources in violation of copyright laws.
- (8) Any violation of the university computer use policy found at http://www.wsu.edu/~forms/HTML/EP4_Electronic_Publishing_Policy.htm

NEW SECTION

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system, including but not limited to:

- (1) Failure to obey the notice from a university conduct board or university official to appear for a meeting or hearing as part of the student conduct system.
- (2) Willful falsification, distortion, or misrepresentation of information before a student conduct board.
- (3) Disruption or interference with the orderly conduct of a student conduct board proceeding.
- (4) Filing fraudulent charges or initiating a student conduct code proceeding in bad faith.
- (5) Attempting to discourage an individual's proper participating in, or use of, the student conduct system.
- (6) Attempting to influence the impartiality of a member of a university conduct board prior to, and/or during the course of, the student conduct board proceeding.
- (7) Harassment (verbal or physical) and/or intimidation of a member of a university conduct board prior to, during, after and/or a student conduct code proceeding.
- (8) Failure to comply with the sanction(s) imposed under the standards of conduct for students (chapter 504-26 WAC).
- (9) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.

NEW SECTION

WAC 504-26-220 Discrimination. Discrimination on the basis of race, national or ethnic origin, creed, age, sex, marital status, veterans status, sexual orientation, or disability is prohibited in conformity with federal and state laws. Dis-

crimination includes sexual or racial harassment which is defined as conduct that is:

- (1) Sexually or racially motivated and has the purpose or effect of unreasonably interfering with a person's work or educational performance;
- (2) Creating an intimidating, hostile, or offensive environment.

NEW SECTION

WAC 504-26-221 Sexual misconduct. Sexual misconduct of any kind, including, but not limited to rape, indecent liberties, assault of a sexual nature, voyeurism, and/or unwanted sexual contact are prohibited.

(1) Rape is defined under state law as sexual intercourse with a person who did not consent by his or her words or conduct. Consent to sexual activity means actual words or conduct indicating the person has freely and voluntarily agreed to have sexual intercourse.

(a) Silence or mere passivity from a state of intoxication or unconsciousness does not imply consent to sexual intercourse.

(b) Lack of consent is implied if force or blackmail is threatened or used.

(2) Indecent liberties mean knowingly causing sexual contact with a person by forcible compulsion or when the person is incapable of consent by reason of mental defect, mental incapacitation, or physical helplessness. Sexual contact is defined as any nonconsensual touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party.

(3) Voyeurism. A person commits the violation of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy.

NEW SECTION

WAC 504-26-222 Harassment. Conduct by any means that is sufficiently severe, pervasive, or persistent so as to threaten an individual or limit the individual's ability to work, study, or participate in the activities of the university.

NEW SECTION

WAC 504-26-223 Stalking. Intentionally and repeatedly harassing or following a person and placing the person being followed or harassed in fear of physical harm to one's self or property or physical harm to another person or another's property.

NEW SECTION

WAC 504-26-224 Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to another person or property.

NEW SECTION

WAC 504-26-225 Trespassing. Any person who has been given written notice, served by a university official, of the university's decision to exclude him or her from university property is not licensed, invited, or otherwise privileged to enter or remain on university property, unless given explicit written permission by university administration.

NEW SECTION

WAC 504-26-226 Violation of a disciplinary sanction. Violation of any term or condition of any disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

ARTICLE III RULES AND REGULATIONS

NEW SECTION

WAC 504-26-301 Malicious intent. If student conduct finds an accused person is responsible for any violation of this code and such violation is found to have been motivated by a perception of another's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, sensory handicap, or veterans status, such finding is considered an aggravating factor in determining a sanction for such conduct.

NEW SECTION

WAC 504-26-302 Responsibility for guests. A student or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

NEW SECTION

WAC 504-26-303 Students studying abroad. Students who participate in any university-sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

- (1) The laws of the host country;
- (2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying; and
- (3) Any other agreements related to the student's study program in a foreign country.

NEW SECTION

WAC 504-26-304 Group conduct. Sororities, fraternities, and recognized groups are expected to comply with the standards of conduct for students (chapter 504-26 WAC) and with university policies. When a member or members of a student organization violates the standards of conduct for students (chapter 504-26 WAC), the student organization or individual members may be subject to appropriate sanctions authorized by these standards.

NEW SECTION

WAC 504-26-305 Violation of law and university discipline. (1) University disciplinary proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and the standards of conduct for students (chapter 504-26 WAC) (that is, if both possible violations result from the same factual situation) without regard to pending civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under these standards (chapter 504-26 WAC) may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the vice-president for student affairs or designee. Determinations made or sanctions imposed under these standards are not subject to change because criminal charges arising out of the same facts giving rise to violation of university rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant. Students may choose to remain silent recognizing that they give up their opportunity to explain their side of the story and that a decision will be made based on the information presented at the hearing.

(2) When a student is charged by federal, state, or local authorities with a violation of law, the university does not request or agree to special consideration for that individual because of his or her status as a student. If the alleged offense is also being processed under the standards of conduct for students (chapter 504-26 WAC), the university may advise off-campus authorities of the existence of the standards and of how such matters are typically handled within the university community. The university attempts to cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators (provided that the conditions do not conflict with campus rules or sanctions). Individual students and other members of the university community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.

ARTICLE IV STUDENT CONDUCT CODE PROCEDURES

NEW SECTION

WAC 504-26-401 Complaints and student conduct board hearings. (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students (chapter 504-26 WAC). A complaint is prepared in writing and directed to the student conduct officer. Any complaint is to be submitted as soon as possible after the event takes place, preferably within one year.

(2) A student conduct officer, or designee, may conduct an investigation to determine if the complaint has merit and/or if an agreed upon resolution may be reached. Such disposition is final and there are no subsequent proceedings, such as an appeal.

(a) When the allegation involves a student/community complainant, and the accused disputes the facts and/or denies

responsibility, the matter is referred to the university conduct board.

(b) The conduct officer has the sole discretion to send the matter to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the final decision on the matter is made by the university officer and is not subject to appeal.

(3) The student conduct officer, or designee, has the authority to review any complaint to determine whether the matter may be resolved through alternative dispute resolution. The parties are informed of all university options for alternative dispute resolution. Either party may request an alternative dispute resolution.

(4) All complaints are presented to the accused student in written form, either by regular mail and/or electronic mail to the student or organization's last known local address. If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address. (The student or student organization is responsible for keeping an updated address on file.)

The written notice shall include:

(a) The specific complaint, including the university policy or regulation allegedly violated;

(b) The approximate time and place of the alleged act;

(c) The time and place of the meeting. A time is set not less than seven nor more than fifteen calendar days after the student has been notified. Maximum time limits for scheduling of student conduct hearings may be extended only at the written request of the accused, and then only at the discretion of the student conduct officer.

(5) University conduct board hearings are conducted by a university conduct board according to the following guidelines, except as provided by subsection (7) of this section:

(a) Procedures:

(i) University conduct board hearings are conducted in private.

(ii) The complainant, accused student, and his/her advisors, if any, are allowed to attend the entire portion of the university conduct board hearing at which information is received (excluding deliberations). Admission of any other person to the university conduct board hearing is at the discretion of the university conduct board chair and/or the student conduct officer.

(iii) In university conduct board hearings involving more than one accused student, the student conduct officer, in his or her discretion, may permit joint or separate hearings.

(iv) In university conduct board hearings involving graduate students, board memberships are comprised to include graduate students and teaching faculty to the extent possible.

(v) The complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. The complainant and/or the accused student is responsible for presenting his or her own information, and therefore, advisors are not permitted to speak or to participate directly in any university conduct hearing. An advisor may communicate with the accused and recesses may be allowed for privacy. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the university conduct board hearing because delays

are not normally allowed due to the scheduling conflicts of an advisor.

(vi) The complainant, the accused student, and the student conduct officer may arrange for witnesses to present pertinent information to the university conduct board. The conduct officer tries to arrange the attendance of possible witnesses who are identified by the complainant. Complainant witnesses must provide written statements at least two weekdays prior to the hearing. Witnesses identified by the accused student must provide written statements to the conduct officer at least two weekdays prior to the conduct hearing. The accused student is responsible for informing his/her witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the university conduct board. Questions may be suggested by the accused student and/or complainant to be answered by each other or by other witnesses. Written questions are directed to the chairperson, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an adversarial environment. Questions concerning whether potential information may be received are resolved at the discretion of the chairperson of the university conduct board.

(vii) Pertinent records, exhibits, and written statements (including student impact statements) may be accepted as information for consideration by a university conduct board at the discretion of the chairperson.

(viii) Questions related to the order of the proceedings are subject to the final decision of the chairperson of the university conduct board.

(ix) After the portion of the university conduct board hearing concludes in which all pertinent information is received, the student conduct board shall determine (by majority vote) whether the accused student has violated each section of the standards of conduct for students (chapter 504-26 WAC) as charged.

(x) The university conduct board's determination is made on the basis of whether it is more likely than not that the accused student violated the standards of conduct for students (chapter 504-26 WAC).

(xi) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings.

(b) The student or student organization is notified of the conduct board's decision within ten calendar days from the date the matter is heard (if the university is not in session, this period may be reasonably extended). The student or organization shall receive written notice of the decision, the reasons for the decision, the sanction and the right to appeal. Verbal and/or electronic notice may be utilized prior to receipt of the written notice at the discretion of the conduct officer.

(i) The conduct board's written decision is sent by regular and/or electronic mail to the student's or the president of the student organization's last known address.

(ii) The written decision is the university's initial order.

(iii) If the student or organization does not appeal the conduct board's decision within twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(6) There is a single verbatim record, such as a tape recording, of all university conduct board hearings (not including deliberations). Deliberations are not recorded. The record is the property of the university.

(7) If an accused student, with notice, does not appear before a university conduct board hearing, the information in support of the complaint is presented and considered in his/her absence.

(8) The university conduct board may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused student, and/or other witnesses during the hearing by providing separate facilities, and/or by permitting participation by telephone, audio tape, written statement, or other means, where and as determined in the sole judgment of the vice-president for student affairs or designee to be appropriate.

NEW SECTION

WAC 504-26-402 Procedure for academic integrity violations. (1) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor assembles the evidence and assigns a grade, or takes other appropriate action, considering the academic nature of the violation.

(2) The instructor shall notify the office of student conduct of the violation.

(3) If the violation is a first offense for the student, the office of student conduct sends a warning letter to the student informing him or her that a conduct file has been created. The office of student conduct takes no additional action unless the violation is serious enough to warrant further action or the student denies the allegation(s) and requests a hearing.

(4) If the student has a prior academic integrity violation, the case is handled according to the normal conduct procedures. Hearing officers for academic integrity matters are teaching faculty trained as university conduct board members. Serious or multiple violations which may result in suspension or expulsion are referred to a university conduct board.

(5) A student wishing to appeal a grade assigned by the instructor must follow Academic Regulation 104 in the university catalog. To view the catalog, go to the registrar's office web site at: <http://www.registrar.wsu.edu>.

NEW SECTION

WAC 504-26-403 Sanctions. (1) The following sanctions may be imposed upon any student found to have violated the standards of conduct for students (chapter 504-26 WAC):

(a) Warning. A notice in writing to the student that the student is violating or has violated institutional regulations.

(b) Probation. A written reprimand for violation of specified regulations. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to violate any institutional regulation(s) during the probationary period.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the student to complete an educational project designed to create an awareness of the student's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of an organization).

(g) Residence hall suspension. Separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

(h) Residence hall expulsion. Permanent separation of the student from the residence halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified. (More than two violations of the university's alcohol policy may result in a minimum one semester suspension.)

(j) University expulsion. Permanent separation of the student from the university.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of university standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in this student conduct code (chapter 504-26 WAC), including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from university property based on his or her misconduct.

(n) Assessment. The student may be required to have an assessment (such as alcohol/drug or anger management) by a certified professional.

(o) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen. Loss of recognition is defined as withholding university services or administrative approval from a student organization. Services and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and office of Greek life advising.

(p) Hold on transcript and/or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold is released.

(q) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3) Other than university expulsion or revocation or withholding of a degree, disciplinary sanctions are not made

part of the student's permanent academic record, but shall become part of the student's disciplinary record.

(4) In cases heard by university conduct boards, sanctions are determined by that board. The student conduct officer has the authority to assign sanctions in cases in which the accused student takes responsibility for violations of the standards of conduct for students (chapter 504-26 WAC).

NEW SECTION

WAC 504-26-404 Interim suspension. In certain circumstances, the vice-president for student affairs, or a designee, may impose a university suspension prior to the university conduct board hearing.

(1) Interim suspension may be imposed only:

(a) In situations involving an immediate danger to the health, safety, or welfare of the university community or public at large;

(b) To ensure the student's own physical safety and well-being; or

(c) If the student poses an on-going threat of disruption of, or interference with, the operations of the university.

(2) During the interim suspension, a student may be denied access to the residence halls, and/or to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the vice-president for student affairs or designee may determine to be appropriate.

(3) The interim suspension does not replace the regular process, and shall proceed as quickly as feasible in light of the interim suspension.

NEW SECTION

WAC 504-26-405 Review of decision. (1) A decision reached by the university conduct board or a sanction imposed by the student conduct officer may be appealed by the accused student(s) to an appellate board within twenty-one days of the date of the decision letter.

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and supporting documents for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students (chapter 504-26 WAC) were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students (chapter 504-26 WAC) occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for

students (chapter 504-26 WAC) which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original student conduct board hearing.

(3) The university appeal board shall review the record and make one of the following determinations:

(a) Affirm the conduct board's decision;

(b) Reverse the conduct board's decision;

(c) Affirm, reverse, or modify the sanctions imposed by the conduct board.

(4) The student or student organization is notified of the appeal board's decision within twenty calendar days from the date of the appeal letter. (If the university is not in session, this period may be reasonably extended.) The university appeal board's decision letter is the final order and shall advise the student or student organization that judicial review may be available.

ARTICLE V RECORDS

NEW SECTION

WAC 504-26-501 Records. (1) Disciplinary records are maintained in accordance with the university's records retention schedule.

(2) The disciplinary record is confidential.

(3) A student may request a copy of his or her own disciplinary record at his or her own reasonable expense by making a written request to the office of student conduct.

(4) Personally identifiable student information is redacted to protect another student's privacy.

(5) A student may authorize release of his/her own disciplinary record to a third party in compliance with the Family Educational Rights and Privacy Act (FERPA) by making a written request to the office of student conduct.

(6) The university may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence as defined by FERPA.

(7) The university may not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include but are not limited to:

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent for tax purposes as defined by FERPA.

(b) To another educational institution, upon request, where the student seeks or intends to enroll.

ARTICLE VI INTERPRETATION AND REVISION

NEW SECTION

WAC 504-26-601 Interpretations. Any question of interpretation or application of the standards of conduct for

students (chapter 504-26 WAC) is referred to the vice-president for student affairs or designee for final determination.

NEW SECTION

WAC 504-26-602 Periodic review. The standards of conduct for students (chapter 504-26 WAC) are reviewed every three years under the direction of the student conduct officer.

WSR 06-05-020
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed February 6, 2006, 4:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-21-094.

Title of Rule and Other Identifying Information: WAC 388-450-0085 How we count your self-employment income?

Hearing Location(s): Blake Office Park East, Rose Room, 450 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on March 21, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 22, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., March 21, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 17, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amended rule clarifies current policy on the deductions the department allows to determine countable income of someone who is self-employed. It also adopts federal requirements for the food stamp program regarding losses for self-employed fishers or farmers.

Reasons Supporting Proposal: The proposed amendment updates current rules to reflect how the department treats self-employment income for cash assistance, Basic Food, and medical programs. RCW 74.04.510 requires the department to adopt rules consistent with federal requirements for administration of the food stamp program.

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

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.9, 7 C.F.R. 273.11.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by establishing eligibility rules related income deductions for people who are self-employed. The rules impact whether or not income is used to determine a person's eligibility for department programs including cash assistance, Basic Food, and medical 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." These rules update references and clarify department policy for how the department treats income for department programs consistent with Title 74 RCW and Title 7 C.F.R. Part 273.

February 3, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-13-045, filed 6/11/03, effective 8/1/03)

WAC 388-450-0085 (~~How we count your self-employment income~~) Does the department count all of my self-employment income to determine if I am eligible for benefits? This section applies to (~~TANF/SFA, GA, RCA~~) cash assistance, Basic Food, and medical programs for children, pregnant women and families.

(1) We decide how much of your self-employment income to count by:

(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment;

(b) Subtracting your business expenses as described in subsection (2) below; and

(c) Dividing the remaining amount of self-employment income by the number of months over which the income will be averaged.

(2) We (~~automatically~~) subtract one hundred dollars as a business expense even if your costs are less than this. If you want (~~to claim~~) us to subtract your actual costs of more than one hundred dollars, you must (~~itemize and provide~~) list and give us proof of your expenses (~~in order~~) for us to count them. We never allow the following expenses:

(a) Federal, state, and local income taxes;

(b) Money set aside for retirement purposes;

(c) Personal work-related expenses (such as travel to and from work);

(d) Net losses from previous periods;

(e) Depreciation; or

(f) Any amount that (~~exceeds~~) is more than the payment you get from a boarder for lodging and meals.

(3) If you have worked at your business for less than a year, we figure your gross self-employment income by averaging:

(a) The income over the period of time the business has been in operation; and

(b) The monthly amount (~~estimated~~) we estimate you will get for the coming year.

(4) For cash and medical assistance, if your self-employment expenses are more than your self-employment income, we do not use this "loss" to reduce income from other self-employment businesses or other sources of income to your assistance unit.

(5) For Basic Food, we use a "loss" from self-employment farming or fishing income to reduce other sources of income **only** if you meet the following three conditions:

(a) Someone in your assistance unit is a self-employed farmer or fisher;

(b) Your gross yearly income from farming or fishing is or is expected to be at least one thousand dollars; and

(c) Your allowable costs for farming or fishing are more than your income from farming or fishing.

WSR 06-05-035

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF REVENUE

[Filed February 8, 2006, 2:31 p.m.]

The department of revenue has withdrawn its proposal to amend WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries, filed on August 3, 2005, and published in the Washington State Register as WSR 05-16-0129 [05-16-128].

Alan R. Lynn
Rules Coordinator

WSR 06-05-036

PROPOSED RULES DEPARTMENT OF REVENUE

[Filed February 8, 2006, 2:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-20-057.

Title of Rule and Other Identifying Information: Amend WAC 458-14-005 Definitions, 458-14-015 Jurisdiction of county boards of equalization, 458-14-025 Assessment roll (~~corrections~~) adjustments not requiring board action, 458-14-026 Assessment roll corrections agreed to by taxpayer, 458-14-046 Regularly convened session—Board duties—Presumption—Equalization to revaluation year, 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause, 458-14-066 Requests for valuation information—Duty to exchange documentary information—Time limits, 458-14-076 Hearings on petitions—Withdrawal, 458-14-095 Record of hearings, 458-14-116 Orders of the board—Notice of value adjustment—Effective date, 458-14-127 Reconvened boards—Authority, 458-14-136 Hearing examiners,

458-14-160 Continuances—Ex parte contact, and 458-14-170 Appeals to the state board of tax appeals.

Hearing Location(s): Capital Plaza Building, 4th Floor L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA on March 21, 2006, at 9:30 a.m.

Date of Intended Adoption: March 28, 2006.

Submit Written Comments to: James A. Winterstein, P.O. Box 47471, Olympia, WA 98504-7471, e-mail JimWi@dor.wa.gov, fax (360) 586-7602, by March 21, 2006.

Assistance for Persons with Disabilities: Contact Sandy Davis at (360) 725-7499 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are proposed to be updated to incorporate changes in legislation that have occurred. Also, the proposed amendments are necessary to provide clearer guidance for assessors, board members, and taxpayers, based on experience with the existing rules over the past few years.

Reasons Supporting Proposal: The proposed amendments to the rules bring them into conformity with current law and provide guidance to assessors, board members, and taxpayers with respect to the operation of the boards.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.48.200.

Statute Being Implemented: RCW 84.48.200.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: James A. Winterstein, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5880; Implementation and Enforcement: Peri Maxey, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required for the reason that the rule does not impose any new performance requirement or administrative burden on any small business.

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

February 8, 2006

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

WAC 458-14-005 Definitions. The following definitions (~~shall~~) apply to chapter 458-14 WAC:

(1) "Alternate member" means a board member appointed by the county legislative authority to serve in the temporary absence of a regular board member.

(2) "Arm's length transaction" means a transaction between parties under no duress, not motivated by special purposes, and unaffected by personal or economic relation-

ships between themselves, both seeking to maximize their positions from the transaction.

(3) "Assessed value" means the value of real or personal property determined by an assessor.

(4) "Assessment roll" means the record which contains the assessed values of property in the county.

(5) "Assessment year" means the calendar year when the property is listed and valued by the assessor and precedes the calendar year when the tax is due and payable.

(6) "Assessor" means a county assessor or any person authorized to act on behalf of the assessor.

(7) "Board" means a county board of equalization.

(8) "County financial authority" means the county treasurer or any other person in a county responsible for billing and collecting property taxes.

(9) "County legislative authority" means the board of county commissioners or the county legislative body as established under a home rule charter.

(10) "Department" means the department of revenue.

(11) "Documentary evidence" means comparable sales data, cost data, income data, or any other item of evidence, including maps or photographs, which ~~((supports value))~~ makes the existence of relevant facts more or less probable.

(12) "Equalize" means ensuring that comparable properties are comparably valued and refers to the process by which the county board of equalization reviews the valuation of real and personal property on the assessment roll as returned by the assessor, so that each tract or lot of real property and each article or class of personal property is entered on the assessment roll at one hundred percent of its true and fair value.

(13) "Interim member" means a board member appointed by the county legislative authority to fill a vacancy caused by the resignation or permanent incapacity of a regular board member. ~~((Such))~~ The interim member shall serve for the balance of the regular board member's term.

(14) "Manifest error" means an error in listing or assessment, which does not involve a revaluation of property, including the following:

- (a) An error in the legal description;
- (b) A clerical or posting error;
- (c) Double assessments;
- (d) Misapplication of statistical data;
- (e) Incorrect characteristic data;
- (f) Incorrect placement of improvements;
- (g) Erroneous measurements;
- (h) The assessment of property exempted by law from taxation;

(i) The failure to deduct the exemption allowed by law to the head of a family; or

(j) Any other error which can be corrected by reference to the records and valuation methods applied to similarly situated properties, without exercising appraisal judgment.

(15) "Market value" means the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. True and fair value is the same as market value or fair market value.

(16) "May" as used in this chapter is expressly intended to be permissive.

(17) "Member" means a regular member of a board.

(18) "Reconvene" refers to the board's limited power to meet to equalize assessments in the current assessment year after the board's regularly convened session is adjourned, or to meet to hear matters concerning prior years.

(19) "Regularly convened session" means the statutorily mandated twenty-eight day period commencing annually on July 15, or the first business day following July 15 if it should fall on a Saturday, Sunday, or holiday.

(20) "Revaluation" means a change in value of property based upon an exercise of appraisal judgment.

(21) "Shall" as used in this chapter, unless the context indicates otherwise, is expressly intended to be mandatory.

(22) "Taxpayer" means the person or entity whose name and address appears on the assessment rolls, or their duly authorized agent, personal representative, or guardian. "Taxpayer" also includes the person or entity whose name and address should appear on the assessment rolls as the owner of the property, but because of mistake, delay, or inadvertence does not so appear; for example, in an instance when the rolls have not yet been updated after a transfer of property. A property owner may contract with a lessee for the purpose of making the lessee responsible for the payment of the property tax and ~~((such))~~ the lessee may be deemed to be a taxpayer solely for the purpose of pursuing property tax appeals in his or her own name. If ~~((such))~~ the contract is made, the lessee shall be responsible for providing the county assessor with a proper and current mailing address.

(23) "Tax year" means the calendar year when property taxes are due and payable.

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

WAC 458-14-015 Jurisdiction of county boards of equalization. (1) Boards have jurisdiction to hear all appeals as may be authorized by statute, including the following types of appeals:

(a) ~~((Appeals of exemption denials arising under RCW 35.21.755 (public corporations).))~~

~~((b))~~ Appeals for a change in appraised value when the department establishes taxable rent under ~~((RCW 82.29A-020-2))~~ chapter 82.29A RCW (leasehold excise tax) based on an appraisal done by the county assessor at the request of the department.

(b) Appeals of assessor determinations related to cancellation of exemption pursuant to RCW 84.14.110 (multiple unit dwellings in urban centers).

(c) Appeals of decisions or disputes pursuant to RCW 84.26.130 (historic property).

(d) Forest land ~~((determinations pursuant to RCW 84.33.116, 84.33.118, 84.33.120.))~~ application denial under RCW 84.33.130, and forest land removal under RCW 84.33.140 ~~((including an appeal of an assessor's refusal to classify land as forest land under RCW 84.33.120)).~~

(e) Current use determinations pursuant to RCW 84.34.035, denial of application for farm and agricultural land, and RCW 84.34.108 ~~((and 84.34.035)), removal from current use classification and appeal of new assessed valuation upon removal of current use classification.~~

(f) Appeals pursuant to RCW 84.36.385 (senior citizen exemption denials).

(g) Appeals pursuant to RCW 84.36.812 (assessed value upon which additional tax is based, upon cessation of exempt use).

(h) Determinations pursuant to RCW 84.38.040 (property tax deferrals).

(i) Determinations pursuant to RCW 84.40.039 (valuation reduction after government restriction).

(j) Determinations pursuant to RCW 84.40.085 (omitted property or value).

~~((j))~~ (k) Valuation appeals of taxpayers pursuant to RCW 84.48.010.

~~((k))~~ (l) Appeal from a decision of the assessor relative to a claim for either real or personal property tax exemption, pursuant to RCW 84.48.010.

~~((l))~~ (m) Determinations pursuant to RCW 84.48.065 (cancellation or correction of manifest error) when the cancellation or correction results in a change on the assessment or tax roll.

(n) Destroyed property appeals pursuant to RCW 84.70.010.

(2) Boards have jurisdiction to equalize property values on their own initiative pursuant to RCW 84.48.010, in accordance with WAC 458-14-046.

AMENDATORY SECTION (Amending WSR 93-08-050, filed 4/2/93, effective 5/3/93)

WAC 458-14-025 Assessment roll (~~(corrections)~~) adjustments not requiring board action. (1) Introduction. The board need not be involved in all determinations made by an assessor relative to property tax matters, but may become involved in instances when a taxpayer appeals from an assessor's determination.

(2) Statutorily required (~~(corrections)~~) adjustments to the assessment rolls (~~(shall)~~) must be made by the assessor as necessary and (~~(shall)~~) do not require any board action. Such (~~(corrections)~~) adjustments include:

(a) Change of tax status due to a sale to or by a public (~~(corporation)~~) entity;

(b) The removal, addition, or change of status of a senior citizens/disabled exemption;

(c) The removal, addition, or change of status of a current use (~~(assessment)~~) classification;

(d) The removal, addition, or change of status of forest land (~~(classification or)~~) designation;

(e) The reduction of property value with respect to destroyed property;

(f) The removal, addition, or change of status of a special valuation assessment (chapters 84.14 and 84.26 RCW);

(g) The exemption with respect to physical improvements to a single family dwelling (RCW 84.36.400);

(h) The change of status of property determined to be exempt by the department;

~~(i) (The change of status of property owned by a public corporation, commission or authority, based on use (RCW 35.21.755); and~~

~~(j))~~ The exemption of a sprinkler system installed in a nightclub (RCW 84.36.660);

(j) Valuation reduction after adoption of government restriction (RCW 84.40.039); and

(k) The cancellation or correction of assessment rolls which assessments are manifestly erroneous (RCW 84.48.-065).

(3) Notice of any of the above changes, except for subsection (2)(h) of this section, (~~(shall)~~) must be (~~(personally served upon the taxpayer, or)~~) mailed to the taxpayer by the assessor, and (~~(shall)~~) must notify the taxpayer of the right to appeal the change to the board and (~~(shall)~~) must notify the taxpayer of the time period in which to file his or her petition.

AMENDATORY SECTION (Amending WSR 93-08-050, filed 4/2/93, effective 5/3/93)

WAC 458-14-026 Assessment roll corrections agreed to by taxpayer. (1) The assessor (~~(shall)~~) must make a correction to the assessment roll for the current assessment year when the correction involves an error in the determination of the valuation of property and the following conditions are met:

(a) The assessment roll has previously been certified in accordance with RCW 84.40.320;

(b) The taxpayer has timely filed a completed petition with the board for the current assessment year;

(c) The board has not yet held a hearing on the merits of the taxpayer's petition; and

(d) The assessor and taxpayer have signed an agreement as to the true and fair value of the taxpayer's property in which agreement the parties set forth the valuation information which was used to establish (~~(such)~~) the true and fair value. The true and fair value (~~(shall)~~) must be the value as of January 1 of the year in which the property was last revalued by the assessor according to a revaluation cycle approved by the department. For example, if the county is on a (~~(multi-year)~~) four-year revaluation cycle, and the taxpayer's property was last revalued in (~~(1990)~~) 2005, any agreement between the taxpayer and the assessor based on an appeal by the taxpayer in (~~(1992)~~) 2007, must use the true and fair value of the taxpayer's property in (~~(1990)~~) 2005 as the basis of the agreement. The value thus agreed to will, in this example, only apply to the (~~(1992)~~) 2007 assessment year (the assessment year for which the taxpayer timely filed his or her appeal) and thereafter until the taxpayer's property is again revalued in accordance with an approved revaluation cycle.

(2) The assessor (~~(shall)~~) must immediately notify the board of any corrections to the assessment roll made in accordance with subsection (1) of this section, with a copy of the notification provided to the taxpayer, and the taxpayer's petition shall be deemed withdrawn as of the date of notification to the board.

AMENDATORY SECTION (Amending WSR 90-23-097, filed 11/21/90, effective 12/22/90)

WAC 458-14-046 Regularly convened session—Board duties—Presumption—Equalization to revaluation year. (1) RCW 84.48.010 requires the board to meet annually beginning July 15th for the purpose of equalizing property values in the county and to hear taxpayer appeals. The board (~~(shall)~~) must remain in session not less than three

days, nor more than twenty-eight days, provided that the board, with the approval of the county legislative authority may convene at any time when taxpayer petitions filed exceed twenty-five or ten percent of the number of petitions filed in the preceding year, whichever is greater. It is only during this twenty-eight day session that the board has the authority to equalize property values on its own initiative.

(2) At its regularly convened session, the board ~~((shall))~~ must adjust the current assessment year's value of property, both real and personal, to its true and fair value, but only if the board finds that the assessed value is not correct based upon:

(a) Information available to the board and/or the board's own examination and comparison of the assessment roll; or

(b) A request by the assessor, together with necessary valuation information, for correction of an error which correction requires ~~((some))~~ appraisal judgment.

(3) The board ~~((shall))~~ must also hold hearings in accordance with WAC 458-14-076 on properly and timely filed taxpayer petitions.

(4) The assessor's valuation ~~((shall be))~~ as certified to the board of equalization under RCW 84.40.320 is presumed correct, except with respect to subsection (2)(b) of this section (unless the board has clear, cogent, and convincing evidence that the valuation is grossly inequitable and palpably excessive or that the valuation was made on a fundamentally wrong basis)). The taxpayer may overcome the presumption of correctness in favor of the assessor's valuation as follows:

(a) If a taxpayer shows by clear, cogent, and convincing evidence that the assessor's overall approach to valuation, or the assessor's valuation method, is flawed or invalid, then the presumption does not apply. For example, the taxpayer may be able to prove that the assessor failed to deduct any amount for depreciation when using the cost approach to value on an existing improvement. In such a case, the taxpayer only needs to prove the correct value of the property by a preponderance of the evidence.

(b) If a taxpayer shows by clear, cogent, and convincing evidence that a specific value within an overall assessed value is incorrect, then the standard of proof shifts to preponderance of the evidence for all contested issues related to that specific value. For example, the overall assessment of complex industrial properties is often made up of particular values for portions of the property being appraised. An assessor's error on one value decision does not necessarily invalidate the entire property's assessment, and the presumption of correctness in favor of the assessor remains with respect to the remainder of the property.

(5) In counties which are not on an annual revaluation cycle, the board ~~((shall))~~ must, in relation to a taxpayer appeal or otherwise, equalize real property values to true and fair value as of January 1 of the year in which the property was last revalued by the county assessor according to an approved revaluation cycle.

(6) The board ~~((shall))~~ must also consider any taxpayer appeals from an assessor's decision with respect to tax exemption of real or personal property, and determine:

- (a) If the taxpayer is entitled to an exemption; and
- (b) If so, the amount thereof.

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause. (1) The sole method for appealing an assessor's determination to the board, as to valuation of property, or as to any other types of assessor determinations ~~((shall be))~~ is by means of a properly completed and timely filed taxpayer petition.

(2) A taxpayer's petition for review of the assessed valuation placed upon property by the assessor or for review of any of the types of appeals listed in WAC 458-14-015 ~~((shall))~~ must be filed in duplicate with the board on or before July 1st of the assessment year or within thirty days, or up to sixty days if a longer time period is adopted by the county legislative authority, after the date an assessment or value change notice or other determination notice is mailed to the taxpayer, whichever date is later (RCW 84.40.038).

(3) No late filing of a petition shall be allowed except as specifically provided in this subsection. The board may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause, as defined in this subsection, for the late filing. A petition that is filed after the deadline without a showing of good cause ~~((shall))~~ must be dismissed unless, after the taxpayer is notified by the board that the petition will be dismissed because of the late filing, the taxpayer promptly shows good cause for the late filing. The board ~~((shall))~~ must decide a taxpayer's claim of good cause without holding a public hearing on the claim and ~~((shall))~~ must promptly notify the taxpayer of the decision, in writing. The board's decision regarding a waiver of the filing deadline is final and not appealable to the state board of tax appeals. Good cause may be shown by documentation of one or more of the following events or circumstances:

(a) The taxpayer was unable to file the petition by the filing deadline because of a death or serious illness of the taxpayer or of a member of the taxpayer's immediate family occurring at or shortly before the time for filing. For purposes of this subsection, the term "immediate family" includes, but is not limited to, a grandparent, parent, brother, sister, spouse, child, or grandchild.

(b) The taxpayer was unable to file the petition by the filing deadline because of the occurrence of all of the following:

(i) The taxpayer was absent from his or her home or from the address where the assessment notice or value change notice is normally received by the taxpayer. If the notice is normally mailed by the assessor to a mortgagee or other agent of the taxpayer, the taxpayer must show that the mortgagee or other agent was required, pursuant to written instructions from the taxpayer, to promptly transmit the notice and failed to do so; and

(ii) The taxpayer was absent (as described in (b)(i) of this subsection) for more than fifteen of the thirty days prior to the filing deadline; and

(iii) The filing deadline is after July 1 of the assessment year ~~((, that is, the notice from which the taxpayer appeals was mailed within the assessment year and after June 1st)).~~

(c) The taxpayer was unable to file the petition by the filing deadline because the taxpayer reasonably relied upon incorrect, ambiguous, or misleading written advice as to the

proper filing requirements by either a board member or board staff, the assessor or assessor's staff, or the property tax advisor designated under RCW 84.48.140, or his or her staff.

(d) The taxpayer was unable to file the petition by the filing deadline because of a natural disaster such as a flood or earthquake occurring at or shortly before the time for filing.

(e) The taxpayer was unable to file the petition by the filing deadline because of a delay or loss related to the delivery of the petition by the postal service. The taxpayer must be able to provide documentation from the postal service of such a delay or loss.

(f) The taxpayer is a business and was unable to file the petition by the filing deadline because the person employed by the business, responsible for dealing with property taxes, was unavailable due to illness or unavoidable absence.

(4) If a petition is filed by mail it ~~((shall))~~ must be postmarked no later than the filing deadline. If the filing deadline falls upon a Saturday, Sunday or holiday, the petition ~~((shall))~~ must be filed on or postmarked no later than the next business day.

(5) A petition is properly completed when all relevant questions on the form provided or approved by the department have been answered and the answers contain sufficient information or statements to apprise the board and the assessor of the reasons for the appeal. A petition which merely states that the assessor's valuation is too high or that property taxes are excessive, or similar such statements, is not properly completed and ~~((shall))~~ must not be considered by the board. If, at the time of filing the petition, the taxpayer does not have all the documentary evidence available which he or she intends to present at the hearing, the petition will be deemed to be properly completed for purposes of preserving the taxpayer's right of appeal, if it is otherwise fully and properly filled out. However, any comparable sales ~~((or other))~~, valuation evidence, or other documentary evidence not submitted at the time the petition is filed must be provided by the taxpayer to the assessor and the board at least seven business days, excluding legal holidays, prior to the board hearing. A copy of ~~((such))~~ the completed petition ~~((shall))~~ must be provided to the assessor by the clerk of the board. Any petition not fully and properly completed ~~((shall))~~ must not be considered by the board (RCW 84.40.038) and a notice of the board's rejection of the petition must be promptly mailed to the taxpayer. See: WAC 458-14-066 Requests for valuation information—Duty to exchange information—Time limits, for an explanation of the availability, use and exchange of valuation and other documentary information prior to the hearing before the board.

(6) Whenever the taxpayer has an appeal pending with the board, the state board of tax appeals or with a court of law, and the assessor notifies the taxpayer of a change in property valuation, the taxpayer is required to file a timely petition with the board in order to preserve the right to appeal the change in valuation. For example, if a taxpayer has appealed a decision of the board to the board of tax appeals regarding an assessed value for the year ~~((1989))~~ 2005, and that appeal is pending when the assessor issues a value change notice for the ~~((1990))~~ 2006 assessment year, the taxpayer must still file a timely petition appealing the valuation for the ~~((1990))~~ 2006 assessment year in order to preserve his

or her right to appeal from that ~~((1990))~~ 2006 assessed value. If the taxpayer has an appeal pending before any board, the board of tax appeals, or any court, and the assessor does not issue a value change notice regarding the property under appeal while the appeal is pending, the taxpayer does not need to take any further action to preserve the effect of the decision reached on appeal, for an assessment year subsequent to the year being appealed. For example, if a taxpayer appeals a board decision to the board of tax appeals regarding assessment year 2005, and that appeal is pending until assessment year 2007, but the assessor has not changed the 2005 assessed value of the taxpayer's property for assessment year 2006, and does not send the taxpayer a value change notice for 2006, the decision of the board of tax appeals in 2007 applies to the assessed value in 2006 without any further action by the taxpayer. The assessor would make the 2006 assessed value comply with the decision, if a change for 2005 is ordered.

(7) Petition forms shall be available from the clerk of the board and from the assessor's office.

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

WAC 458-14-066 Requests for valuation information—Duty to exchange documentary information—Time limits. (1) Introduction. Timely access to valuation and other documentary information should be provided to both parties prior to the hearing on a petition so that time-consuming and costly discovery procedures are unnecessary. The postmark is used to determine whether the information is timely provided.

(2) Requests by a taxpayer for valuation information from the assessor may be made on the petition form filed with the board, or may be made at any reasonable time prior to the hearing. Upon request by the taxpayer, the assessor ~~((shall))~~ must make available to the taxpayer the comparable sales used in establishing the taxpayer's property valuation. If valuation criteria other than comparable sales were used, the assessor ~~((shall))~~ must provide the taxpayer with ~~((such))~~ the information. All such valuation information, including comparable sales, ~~((shall))~~ must be provided to the taxpayer and the board within sixty days of the request but at least fourteen business days, excluding legal holidays, prior to the taxpayer's appearance before the board of equalization.

(3) The valuation information provided by the assessor to the taxpayer ~~((shall))~~ must not be subsequently changed by the assessor unless the assessor has found new evidence supporting the assessor's valuation, in which situation the assessor ~~((shall))~~ must provide the additional evidence to the taxpayer and the board at least fourteen business days prior to the hearing at the board.

(4) A taxpayer who lists comparable sales on the petition, or who provides the board and the assessor with comparable sales or valuation evidence after filing the petition ~~((shall))~~ must not thereafter change or add other comparable sales ~~((or))~~, valuation evidence, or other documentary evidence without ~~((providing))~~ mailing or submitting the evidence to the assessor and the board ~~((with the additional~~

information)) at least seven business days, excluding legal holidays, prior to the board hearing.

(5) If either the assessor or taxpayer does not comply with the requirements of this section, the board in its discretion may take any of the following actions:

(a) If there is no objection by either party, consider the new evidence provided by either party and proceed with the hearing;

(b) If there is an objection by either party to the failure of the other party to comply with the requirements of this section, the board may:

(i) Refuse to consider evidence that was not timely submitted;

(ii) Accept the evidence that was not timely submitted, regardless of a party's objection, when the evidence is not unduly detrimental to the objecting party, and give the evidence the appropriate weight.

(iii) Postpone the hearing for a definite time period designated by the board, to provide the parties an opportunity to review all evidence; or

(iv) Proceed with the hearing but allow the parties to submit new evidence to the board and the other party, after the hearing is concluded, within definite time periods designated by the board, and provide each party with an adequate opportunity to rebut or comment on the new evidence prior to the board's decision.

AMENDATORY SECTION (Amending WSR 90-23-097, filed 11/21/90, effective 12/22/90)

WAC 458-14-076 Hearings on petitions—Withdrawal. (1) The board or one of its hearing examiners ((shall)) must hold individual hearings on each properly filed petition which has not been withdrawn or otherwise disposed of. A taxpayer may withdraw a petition as a matter of right by written notice received by the board no later than two business days prior to the scheduled hearing. The board, in its discretion, may allow the taxpayer to withdraw up to the time of the hearing. The board must promptly notify the assessor of the taxpayer's withdrawal.

(2) The assessor and taxpayer ((shall)) must be provided notice of the hearing date by the clerk of the board at least fifteen business days before the hearing, unless the clerk and the parties agree upon a shorter time period.

(3) If property is sold or transferred after a petition has been timely filed, the seller or transferor may continue to pursue the appeal unless otherwise agreed in writing between the parties. If the seller or transferor does not pursue the appeal, the new purchaser or transferee may pursue the appeal in place of the seller or transferor.

(4) All persons testifying before the board ((shall)) must swear or affirm on the record that they will testify truthfully under penalty of perjury.

AMENDATORY SECTION (Amending WSR 90-23-097, filed 11/21/90, effective 12/22/90)

WAC 458-14-095 Record of hearings. (1) All hearings of a board or its hearing examiners ((shall)) must be recorded with an audio recording device.

(2) Testimony concerning information which is exempt from public disclosure pursuant to RCW 84.40.340 or 42.17.310 ((shall)) must be recorded on a separate ((blank audio tape)) audio recording device, and ((shall)) must, along with any other confidential evidence, be placed in an envelope bearing the notation "confidential evidence" and the case number, and sealed from public inspection. The clerk ((shall)) must keep a separate file for all ((such)) the confidential evidence. Provided that, notwithstanding the above described procedures, any procedure which substantially complies with the confidentiality requirements of the above mentioned statutes shall be sufficient.

(3) The public record ((shall)) must include:

(a) The date or dates the board was in session;

(b) The names of board members or hearing examiners in attendance; and

(c) All evidence presented to the board.

(4) The requirements of this section shall not apply to post hearing deliberations of a board.

(5) Boards are not required to provide transcripts of proceedings to any person or entity other than as may be required by chapter 42.17 RCW, however board clerks ((shall)) must complete a form provided by the department for each hearing.

(6) The records of the board ((shall)) must be kept and maintained as required by RCW 40.14.060.

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

WAC 458-14-116 Orders of the board—Notice of value adjustment—Effective date. (1) All orders issued by a board ((shall)) must be on the form provided or approved by the department and ((shall)) must state the facts and evidence upon which the decision is based and the reason(s) for the decision.

(2) All orders of the board ((shall)) must be signed by the chairman of the board, provided, however, that the chairman may, by written designation, authorize other members or the board clerk to sign orders on behalf of the chairman.

(3) After a hearing, if a board adjusts or sustains the valuation of a parcel of real property or an item of personal property, the board ((shall)) must serve or mail notice of the decision to the appellant and the assessor.

(a) If the valuation is reduced, the new valuation shall take effect immediately, subject to the parties' right to appeal the decision.

(b) If the valuation is increased, the increased valuation shall become effective thirty days after the date of service or mailing of the notice of the adjustment unless the taxpayer or assessor files a petition to the board of tax appeals in accordance with WAC 458-14-170, before the effective date. If such a petition is filed, the increase does not take effect until the board of tax appeals disposes of the matter.

(4) If the valuation is increased without a petition having been filed, the increased valuation shall become effective thirty days after the date of service or mailing of the notice of the adjustment to the assessor and the taxpayer unless the assessor or taxpayer files a petition with the board on or before the effective date.

(5) In counties with a multiyear revaluation cycle, orders issued by the board shall have effect up to the end of the revaluation cycle used by the assessor and approved by the department. The board order may contain a specific statement notifying the parties of this effect. If there has been an intervening change in assessed value of the taxpayer's property between the time the petition was filed and the date the board's order is issued, the board's order shall have effect only up to the effective date of the change in assessed value. The same effect will also apply when a valuation adjustment is ordered upon appeal of a board order.

(6) In counties with a multiyear revaluation cycle, once the board has issued a decision with respect to a taxpayer's real property, and when there has been no intervening change in assessed value, any subsequent appeal to the board:

(a) By the same taxpayer relating to the same property shall be treated as a motion for reconsideration. The board ~~((shall))~~ must hold a hearing on the appeal/motion only if the taxpayer can show that there is newly discovered evidence that materially affects the basis for the board's decision and the taxpayer can show that the evidence could not with reasonable diligence have been discovered and produced at the original hearing;

(b) By a taxpayer who acquired the property from the taxpayer to whom the board decision was issued, and for a subsequent assessment year, shall be treated as an original appeal.

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

WAC 458-14-127 Reconvened boards—Authority.

(1) Boards of equalization may reconvene on their own authority to hear requests concerning the current assessment year when the request is filed with the board by April 30 of the tax year immediately following the board's regularly convened session and at least one of the following conditions is met:

(a) A taxpayer requests the board reconvene and submits to the board ~~((a sworn))~~ an affidavit stating that notice of change of value for the assessment year was not received by the taxpayer at least fifteen calendar days prior to the deadline for filing the petition, and can show proof that the value was actually changed.

(b) An assessor submits an affidavit to the board stating that the assessor was unaware of facts which were discoverable at the time of appraisal and that such lack of facts caused the valuation of property to be materially affected. Submitting such an affidavit to the board is for the purpose of correcting latent defects in the assessment process that become apparent only after the normal appeal process has expired, and is wholly within the assessor's discretion. In the affidavit, the assessor ~~((shall))~~ must state the facts which affected the value and also state both the incorrect value and the true and fair market value of the property and ~~((shall))~~ must mail a copy of the affidavit to the taxpayer. If the board decides to reconvene to consider the valuation, it ~~((shall))~~ must notify both the taxpayer and assessor of its decision in writing.

(c) In an arm's length transaction, a bona fide purchaser or contract buyer of record has acquired an interest in real property subsequent to the first day of July and on or before

December 31 of the assessment year and the sale price was less than ninety percent of the assessed value.

(2) Upon request of either the taxpayer or the assessor, boards may reconvene on their own authority to hear appeals with respect to property or value that was omitted from the assessment rolls. No request shall be accepted ~~((for any period more than three years preceding the year in which the omission is discovered))~~ if it is made concerning an assessment year that is more than three years prior to the year the omitted property or value was discovered. The request itself must be received by the board no later than thirty calendar days, or up to sixty days if a longer time period is adopted by the county legislative authority under RCW 84.40.038, after the mailing of the notification of the discovery of the omitted property or value. For example, if omitted property is discovered in September 2005, and the property was omitted since 2000, the board may only reconvene to hear an appeal for assessment year 2002, and subsequent years. If the taxpayer is notified by mail of the discovery of the omitted property or value on October 14, 2005, for example, any request with respect to the omitted property or value must be made no later than thirty calendar days after October 14, 2005, or up to sixty days if a longer time period is adopted by the county legislative authority under RCW 84.40.038.

(3) Requests for reconvening boards concerning prior year's assessments or for an extension of the annual regularly convened session to enable the board to complete its annual equalization duties ~~((shall))~~ must be submitted to the clerk of the board who ~~((shall))~~ must submit ~~((such))~~ the request to the department for determination.

(4) The department may require any board to reconvene at any time for the purpose of performing or completing any duty or taking any action the board might lawfully have performed or taken at any of its previous meetings, or for any other purpose allowed by law. This statutory authority is reserved for those instances when an error or injustice has occurred and where the regular remedial procedures do not apply. These instances include significant valuation errors that become apparent only after the normal appeal process has expired.

(5) The department ~~((shall))~~ must reconvene a board upon request of a taxpayer when the taxpayer makes a prima facie showing of actual ~~((or constructive))~~ fraud on the part of taxing officials, or makes a prima facie showing that the taxpayer's property is overvalued by at least double the true and fair value. The department ~~((shall))~~ must reconvene a board upon request of an assessor when the assessor makes a prima facie showing of actual or constructive fraud on the part of a taxpayer.

(6) All reconvening requests ~~((shall))~~ must:

(a) Specify the assessment year(s) that is the subject of the request; and

(b) State the specific grounds upon which the request is based; and

(c) If the taxpayer is the party requesting the reconvening, state that he or she is the owner or duly authorized agent, personal representative or guardian, of the property or is a lessee responsible for the payment of the property taxes.

(7) No board shall reconvene later than three years after the adjournment of its regularly convened session, except in

the case of omitted property or value, as noted in subsection (2) of this section. The three years is determined by the date of adjournment of the board's regularly convened session, which is four weeks after July 15th, or four weeks after the first business day after July 15th, if July 15th falls on a Saturday, Sunday, or holiday. For example, for a timely request to reconvene regarding the 2006 assessment roll, the allowable time period in which to receive the request would be from August 14, 2006 through August 13, 2009.

AMENDATORY SECTION (Amending WSR 90-23-097, filed 11/21/90, effective 12/22/90)

WAC 458-14-136 Hearing examiners. (1) Any board may employ one or more hearing examiners to assist the board in conducting hearings.

(2) All hearing examiners ~~((shall))~~ must take the same oath required of regular board members and ~~((shall))~~ must meet the same qualifications for membership as regular board members.

(3) A board member may act as a hearing examiner.

(4) A hearing examiner may hold hearings separate from the board and take testimony from both parties and their witnesses.

(5) Hearing examiners ~~((shall))~~ must present to the full board or a quorum thereof, all evidence submitted by the parties at the hearing before the hearing examiner. The board ~~((shall))~~ must make the final determination on all petitions filed. The board may make its final determination based upon the record submitted by the examiner or may request further testimony or documentation from either the taxpayer or the assessor, including their witnesses, before making its final determination.

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

WAC 458-14-160 Continuances—Ex parte contact.

(1) Extensions of time, other than the time for filing petitions, continuances, and adjournments may be ordered by the board on its own motion or may be granted by it, in its discretion, on motion of any party showing good and sufficient cause therefor. For a waiver of the time limit in which to file the petition, see WAC 458-14-056(3).

(2) No one shall make or attempt to make any ex parte contact with board members except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law ~~((, nor shall a))~~. No board member shall make or attempt to make any ex parte contact with any person regarding any issue in the proceeding ~~((who has a direct or indirect interest in the outcome of the proceeding))~~, without notice and opportunity for all parties to participate, unless necessary to procedural aspects of maintaining an orderly process.

AMENDATORY SECTION (Amending WSR 95-17-099, filed 8/23/95, effective 9/23/95)

WAC 458-14-170 Appeals to the state board of tax appeals. (1) Pursuant to RCW 84.08.130, any taxpayer, taxing unit, or assessor feeling aggrieved by the action of a board

may appeal to the board of tax appeals by filing with the board of tax appeals a notice of appeal within thirty days after the board has served or mailed its decision. The appeal is deemed timely filed with the board of tax appeals if post-marked on or before the thirtieth day after the board of equalization has served or mailed its decision.

(2) The notice of appeal ~~((shall))~~ must specify the actions of the board that the appellant is appealing, and ~~((shall))~~ must be in ~~((such))~~ the form ~~((as-is))~~ required by the board of tax appeals (see WAC 456-10-310 and 456-09-310). ~~((The petitioner shall serve a copy of the notice of appeal on all named parties within the same thirty-day time period.))~~

(3) The board appealed from ~~((shall))~~ must file with the board of tax appeals a true and correct copy of its decision in ~~((such))~~ the action and all evidence taken in connection therewith.

WSR 06-05-049

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed February 13, 2006, 7:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-06-043.

Title of Rule and Other Identifying Information: WAC 246-01-080 Organization and chapter 246-08 WAC, Practice and procedure. WAC 246-01-080 was updated in 2003 and most of chapter 246-08 WAC was last updated in 1997. Since then the agency has updated the agency organizational structure, relocated the department's main office to Tumwater, updated administrative procedures on public records disclosure and the index on significant decisions.

Hearing Location(s): Washington State Department of Health, Point Plaza East, Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on March 23, 2006, at 10:00 a.m.

Date of Intended Adoption: March 27, 2006.

Submit Written Comments to: Jovi S. Swanson, P.O. Box 47890, Olympia, WA 98504, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 586-7424, by March 20, 2006.

Assistance for Persons with Disabilities: Contact Jovi S. Swanson by March 16, 2006, TTY (711) 1-800-833-6388 or (360) 236-4028.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update language to current practice and procedures. In addition, the proposal adds two new sections: (1) WAC 246-08-395 which reinstates 2003 repealed language requiring licensees or persons applying for benefits to provide a current mailing address to the department and (2) WAC 246-08-480 which states the requirements for recording adjudicative proceedings in an index of significant decisions.

Reasons Supporting Proposal: The proposal assures that the department represents accurate and current information to the public and to the clients the department serves.

Statutory Authority for Adoption: RCW 43.70.040, 43.70.050, 34.05.220, 42.17.250, 70.02.005.

Statute Being Implemented: RCW 34.05.220.

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

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

Name of Agency Personnel Responsible for Drafting: Jovi Swanson, 101 Israel Road, Tumwater, WA 98504, (360) 236-4028; Implementation and Enforcement: Shellie Carpenter, 310 Israel Road S.E., Tumwater, WA 98504, (360) 236-4674 and Kathy Stout, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4221.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not prepared since the proposed rule does not impose more than minor costs on businesses in an industry under RCW 19.85.030. The proposed rule updates organizational practices and procedures.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 (5)(b)(iv)(v). The proposed rule clarifies language and makes address changes without changing its effect and rules content is dictated by statute.

February 10, 2006

M. C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 03-11-032, filed 5/15/03, effective 6/15/03)

WAC 246-01-080 Organization. (1) DOH exists to protect and improve the health of the people of Washington. The department shares this mission with three primary partners:

(a) Professional boards, commissions, and committees, which have varying degrees of statutory authority, ranging from advisory powers to rule adoptions and disciplinary powers;

(b) The state board of health which has statutory authority to adopt rules to protect the public health, and may delegate this authority to the secretary and rescind the delegated authority; and

(c) Local health jurisdictions throughout the state.

(2) DOH is organized into ~~((five administrative))~~ four health services divisions as noted in this subsection plus the secretary's office ~~((and))~~, information resource management office ~~((s))~~, financial services office, and other administrative offices necessary to carry out the goals expressed in RCW 43.70.020(2):

(a) Community and family health;

(b) Environmental health;

(c) Epidemiology, health statistics and public health laboratories; and

(d) Health systems quality assurance ~~((and~~

~~((e) Management services))~~.

(3) DOH maintains offices in Kent, ~~((Olympia,))~~ Tumwater, Richland, Shoreline and Spokane. These offices are not complete service locations and are not required to keep complete policy manuals and other records available for public inspection.

AMENDATORY SECTION (Amending Order 369, filed 6/3/93, effective 7/4/93)

WAC 246-08-101 Declaratory orders—((Forms)) Format, content, and filing. Any person may petition the department for a declaratory order under RCW 34.05.240 with respect to the applicability of a particular circumstance of a rule, order, statute enforced by the agency. A petition for a declaratory order shall generally adhere to the following ~~((form))~~ format:

(1) At the top of the page shall appear the wording "Before the Washington State Department of Health." On the left side of the page below the ~~((foregoing))~~ above statement, the following caption shall be set out: "In the matter of the petition of (name of petitioning party to be inserted) for a declaratory order." Opposite the ~~((foregoing))~~ caption shall appear the word "petition."

(2) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the statement of facts ~~((relied upon in form))~~ similar in form to ~~((that))~~ applicable ~~((to))~~ complaints in civil actions before the superior courts of this state. The concluding paragraphs shall contain the ~~((prayer))~~ request of the petitioner. The petition shall be subscribed and verified in the manner prescribed for verification of complaints in the superior courts of this state.

(3) The original and two legible copies shall be filed with the ~~((appropriate board having jurisdiction in relation to a profession as provided in RCW 18.130.040 (2)(b). The original and two legible copies shall be filed with the))~~ Department of Health, ~~((Office of Professional Standards, PO Box 47872))~~ Adjudicative Service Unit, P.O. Box 47879, Olympia, WA ((98504-7872 if the secretary of the department of health has jurisdiction in relation to a profession or program as provided under RCW 18.130.040 (2)(a) and 43.70.020 through 43.70.040 respectively)) 98504-7879. Petitions shall be on white paper, 8 1/2" x 11" in size.

AMENDATORY SECTION (Amending Order 369, filed 6/3/93, effective 7/4/93)

WAC 246-08-102 Declaratory orders—Procedural rights of persons in relation to petition. Within fifteen days after receiving a petition for a declaratory order, the department shall notify all persons who are parties to the petition as required by chapter 34.05 RCW and any other person it considers necessary. If a petition for a declaratory order is set for specified proceedings under RCW 34.05.240 (5)(b), the department shall give ~~((not less than))~~ at least seven days advance written notice of the proceedings to the petitioner and all persons ~~((described under RCW 34.05.240(3)))~~ who are parties to the petition as required by law and any other person it considers necessary. The notice ~~((shall))~~ must contain the time, date, place, and nature of the proceedings and shall describe how interested persons may participate in the proceeding.

NEW SECTION

WAC 246-08-395 Mailing lists and current address required. The department will update its mailing lists periodically. Any person may request to be added or removed from the department's mailing lists. It is the responsibility of the licensee, applicant for licensure, and person who receives or applies for benefits administered by the department, to keep the department informed of a current mailing address.

(1) Licensees, applicants for licensure, and persons who receive or apply for benefits administered by the department must provide the department with a current mailing address when submitting new applications or renewal applications with the department.

(2) Licensees, applicants for licensure, and persons who receive or apply for benefits are responsible for notifying the appropriate department programs, in writing, of any address changes. The department will accept written notice through e-mail, fax, or by regular mail.

(3) The department will use the most recent mailing address provided by the licensee, applicant, or persons who receive or apply for benefits for all official correspondence.

(4) For the purpose of this section, "licensee" means a person holding a license, permit, certification, approval, registration, charter, or similar form of authorization required by law and granted by the department.

AMENDATORY SECTION (Amending Order 346, filed 3/24/93, effective 4/24/93)

WAC 246-08-420 Public records—Access and exemptions. (1) The department shall, upon request, make public records (shall be) available for inspection and copying, during the department's normal business hours.

(2) The location of specific public records may be obtained by contacting the program where the records are maintained or the ~~((rules coordinator in the management services division))~~ appointed public records disclosure designee.

(3) Requests ~~((for))~~ to inspect or receive copies of public records (shall be in writing and) must include:

(a) ~~((The name and address of the person requesting the record;~~

~~((b))~~ A ((detailed)) description of the requested ((material; and

~~((c) If a list of names of individuals is being requested, an explanation of the purpose for which the request is made))~~ record or records;

(b) An indication whether the requestor wishes to inspect or receive a copy of the requested records;

(c) An address or other means through which the department may communicate with the requestor to clarify the request, provide information on copying charges and collect payment, and arrange for inspection or mailing of copies of the requested record or records; and

(d) If a list of names of individuals is being requested, an explanation to determine whether the list will be used for commercial purposes consistent with RCW 42.17.260(9).

(4) ~~((No))~~ The department shall not charge a fee ((shall be charged)) for the inspection of public records, however the department may charge for reimbursement of the costs incurred ((by)) for providing copies.

(5) The department ~~((reserves the right to))~~ will determine ((that)) the extent to which a public record is exempt from public disclosure under ((the provisions of)) chapter 42.17 RCW or other statutes.

(6) ~~((The department reserves the right to delete identifying details when disclosing public records if there is reason to believe that disclosure of such details would be an invasion of personal privacy.~~

~~((7))~~ The department, when denying a request for a public record in whole or in part, shall provide a statement of the specific statutory exemption ((which)) that authorizes the withholding of the record or information and a brief explanation of how the exemption applies to the record or information withheld.

~~((8) Upon receipt of such denial, the requesting party)~~ (7) If the department denies a record, in whole or in part, the requestor may seek review of the decision by ((letter addressed)) sending a written request for review to the ((deputy secretary, 1112 S.E. Quincee Street,)) Agency Public Records Disclosure Officer, P.O. Box 47890, Olympia, WA 98504-7890.

AMENDATORY SECTION (Amending WSR 94-04-079, filed 1/31/94, effective 3/3/94)

WAC 246-08-450 Final orders, declaratory orders, interpretive statements and policy statements—Indexes.

(1) In accordance with RCW 42.17.260, the department shall index:

(a) Final orders that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and contain an analysis or decision of substantial importance to the department in carrying out its duties;

(b) Declaratory orders that contain an analysis or decision of substantial importance to the department in carrying out its duties;

(c) Interpretive statements as defined in RCW 34.05.-010(8); and

(d) Policy statements as defined in RCW 34.05.010(14).

(2) The department shall maintain indexes of:

(a) Final orders meeting the criteria in subsection (1)(a) of this section, issued by the department and the disciplining authorities identified in RCW 18.130.040;

(b) Declaratory orders meeting the criteria in subsection (1)(b) of this section issued by the department and the state board of health; and

(c) Interpretive and policy statements issued by the department and state board of health.

(3) The indexes shall, at a minimum, contain the case or document number; type of document; name of parties, if applicable, unless such names are exempt from public disclosure; brief description of subject, program; pertinent legal citation; and location of the document.

(4) ~~((Any person may nominate a final adjudicative order or declaratory order to be evaluated for indexing by completing an Order Index Nomination Request Form which can be obtained from and returned to the Office of Professional Standards, PO Box 47872, Olympia, WA 98504-7872, along with a copy of the nominated order. The department shall~~

~~make a final decision as to whether to index the nominated order, and that decision is not appealable.~~

~~(5))~~ The department shall periodically update the indexes ~~((on an ongoing basis and conduct an annual review))~~ to verify that the indexed documents continue to meet the criteria in subsection (1) of this section. The department may, at any time, delete a document from an index. ~~((Pursuant to))~~ Under RCW 42.17.260(6), a public record may not be cited in a proceeding if it has not been indexed.

~~((6))~~ (5) The indexes are public records and are available for public inspection and copying in accordance with WAC 246-08-420 and 246-08-440. Indexes are located as follows:

(a) The index of final adjudicative orders and declaratory orders is located in the ~~((Office of Professional Standards, 2413 Pacific Avenue, Olympia))~~ Adjudicative Service Unit, 310 Israel Road S.E., Tumwater, WA 98501; and

(b) The index of ~~((declaratory orders,))~~ interpretive and policy statements issued by the department and the state board of health is located in the Office of the Secretary, ~~((4112 Quince St. SE, Olympia, WA 98504))~~ 101 Israel Road S.E., Tumwater, WA 98501.

NEW SECTION

WAC 246-08-480 Index of significant decisions. (1)

The department's index of significant decisions, prepared under RCW 42.17.260, contains orders that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and include an analysis or decision of substantial importance to the department in carrying out its duties. Together with the indices maintained under WAC 246-08-450, "significant decisions" shall serve as the index required by RCW 42.17.-260 (4)(b) and (c).

(2) The secretary and disciplinary authorities identified in RCW 18.130.040 select the orders to be included in "significant decisions" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. The significant decision index shall include orders meeting the criteria in subsection (1) of this section, issued by the department and the disciplining authorities identified in RCW 18.130.040.

(3) The index shall, at a minimum, contain the case or document number; type of document; name of parties, if applicable, unless such names are exempt from public disclosure; brief description of subject, program; pertinent legal citation; and location of the document.

(4) Any person may nominate a final adjudicative order, other adjudicative order or declaratory order to be evaluated for indexing by completing an Order Index Nomination Request Form. The form can be obtained from and returned to the Adjudicative Service Unit, P.O. Box 47879, Olympia, WA 98504-7879, along with a copy of the nominated order. The department shall make a final decision as to whether to index the nominated order, and that decision is not appealable.

(5) The department shall periodically update and review the index to verify that the indexed documents continue to

meet the criteria in subsection (1) of this section. The department may, at any time, delete a document from an index. Under RCW 42.17.260(6), a public record may not be cited in a proceeding if it has not been indexed.

(6) The index is a public record and is available for public inspection and copying in accordance with WAC 246-08-420 and 246-08-440. The index of significant adjudicative orders is located in the Adjudicative Service Unit, 310 Israel Road, Tumwater, WA 98501.

AMENDATORY SECTION (Amending Order 346, filed 3/24/93, effective 4/24/93)

WAC 246-08-520 Equal opportunity/affirmative action. The department is firmly committed to equal opportunity and nondiscrimination both in the work force and in the delivery of services and makes every good faith effort to achieve the objectives of the affirmative action plan.

(1) **Employment** - The department recruits, hires, develops, and promotes persons in all ~~((job classifications))~~ positions without regard to race, creed, color, sex, age, national origin, marital status, or presence of a mental, physical, or sensory handicap. The department seeks to maintain a working environment free of harassment or intimidation, and to reasonably accommodate persons of disability.

(2) **Affirmative action** - The department strives to correct deficiencies regarding the utilization of protected groups, consistent with ~~((WAC 356-05-327, according to the timetables set forth))~~ applicable state and federal laws and guidelines as outlined in the department's affirmative action plan.

(3) **Services** - The department provides services, programs, and lets contracts in a fair and impartial manner. No person shall, on the grounds of sex, race, creed, color, age, national origin, marital status, or handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity administered or supervised by the department as required by the federal government as a prerequisite for fiscal grants-in-aid (Sec. 601, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d) and chapter 49.60 RCW.

WSR 06-05-056

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed February 13, 2006, 9:24 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 6.03 (Notice of Construction) and 6.04 (Notice of Construction Fees).

Hearing Location(s): Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on March 23, 2006, at 9:15 a.m.

Date of Intended Adoption: March 23, 2006.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA

98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by March 22, 2006.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by March 16, 2006, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revisions to Section 6.03 will:

- Enable the exemption of small coffee roasters (10 lbs./batch or less);
- Clarify certain existing exemptions to ensure they are being interpreted in the same way by all parties; and
- Add an exemption to the list for certain closed-loop solvent recovery systems that are commonly exempted on a case-by-case basis through agency review.

The proposed revision to Section 6.04 will update the fees for review of the notification required by small coffee roasters.

Reasons Supporting Proposal: These revisions will streamline and clarify current processes for the agency, and for our sources.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: RCW 70.94.141.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The state implementation plan will be updated to reflect the amendments to Section 6.03.

Name of Proponent: Puget Sound clean air agency, governmental.

Name of Agency Personnel Responsible for Drafting: Agata McIntyre, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4061; Implementation and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

February 10, 2006
Agata McIntyre
Engineer II

AMENDATORY SECTION

REGULATION I SECTION 6.03 NOTICE OF CONSTRUCTION

(a) It shall be unlawful for any person to cause or allow the establishment of a new source, or the replacement or substantial alteration of control equipment installed on an existing source, unless a "Notice of Construction application" has been filed and an "Order of Approval" has been issued by the

Agency. The exemptions in Sections 6.03(b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), and Subpart S (Primary Aluminum Reduction Plants); and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) and Subpart OOO (Nonmetallic Mineral Processing Plants) for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for Subpart B (Radon from Underground Uranium Mines), Subpart H (Emissions of Radionuclides other than Radon from Department of Energy Facilities), Subpart I (Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H), Subpart K (Radionuclides from Elemental Phosphorus Plants), Subpart Q (Radon from Department of Energy Facilities), Subpart R (Radon from Phosphogypsum Stacks), Subpart T (Radon from Disposal of Uranium Mill Tailings), Subpart W (Radon from Operating Mill Tailings), and for demolition and renovation projects subject to Subpart M (Asbestos);

(3) Any project that qualifies as a new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except for the provisions of Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, Subpart LL (Primary Aluminum Reduction Plants), and the provisions of Subpart S (Pulp and Paper Industry) and Subpart MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills) pertaining to kraft and sulfite pulp mills;

(4) Any new major stationary source or major modification as defined under WAC 173-400-030; and

(5) Any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation.

(b) **Notifications.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that a complete notification is filed with the Agency prior to initial startup:

Liquid Storage and Transfer

(1) Storage tanks used exclusively for:

(A) Gasoline and having a rated capacity of 1,001-19,999 gallons, PROVIDED THAT they are installed in accordance with the current California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-39,999 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity \geq 40,000 gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

Relocation of Portable Batch Plants

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, rock (or concrete) crushers, and concrete batch plants for which an Order of Approval has been previously issued by the Agency. *All the conditions in the previously issued Order of Approval remain in effect.*

Dry Cleaning

(4) Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers to recover the cleaning solvent.

Printing

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with $\leq 6\%$ VOC by volume or $\leq 8.5\%$ if refrigerated to $< 60^\circ\text{F}$, and cleaning solvents with a vapor pressure $\leq 25\text{mm Hg}$ or a VOC content $\leq 30\%$ by volume.

Water Treatment

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food waste). *A letter from the local sewer district documenting compliance is required in order to use this exemption.*

Sanding Equipment

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $< 3.5:1$ (for reverse-air or manual cleaning) or $< 12:1$ (for pulse-jet cleaning).

Ventilation and Control Equipment

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $< 3.5:1$ (for mechanical or manual cleaning) or $< 12:1$ (for pulse-jet cleaning).

(9) Replacement of existing paint spray booths. *All the conditions in the previously issued Order of Approval remain in effect.*

Miscellaneous

(10) Any source not otherwise exempt under Section 6.03(c) of this regulation that has been determined through review of a Notice of Construction application by the Control Officer not to warrant an Order of Approval because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

Coffee Roasters

(11) Batch coffee roasters with a maximum rated capacity of 10 lbs per batch or less.

(c) **Exemptions.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that sufficient records are kept to document the exemption:

Combustion

(1) Fuel-burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A) < 10 million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane (or any combination thereof);

(B) < 0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) < 1 million Btu per hour heat input burning any other fuel.

(2) All stationary gas turbines with a rated heat input < 10 million Btu per hour.

(3) Stationary internal combustion engines having a rated capacity:

(A) < 50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated < 500 hours per year, PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange for the power supplier's ability to curtail energy consumption with prior notice.

(4) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(5) All nonroad compression ignition engines subject to 40 CFR Part 89.

Metallurgy

(6) Crucible furnaces, pot furnaces, or induction furnaces with a capacity $\leq 1,000$ pounds, PROVIDED THAT no sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing $> 50\%$ aluminum, magnesium, tin, zinc, or copper is melted.

(7) Crucible furnaces or pot furnaces with a capacity ≤ 450 cubic inches of any molten metal.

(8) Ladles used in pouring molten metals.

(9) Foundry sand-mold forming equipment.

(10) Shell core and shell-mold manufacturing machines.

(11) Molds used for the casting of metals.

(12) Die casting machines with a rated capacity $\leq 1,000$ pounds that are not used for copper alloys.

(13) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(14) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(15) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(16) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, siliconizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(17) Atmosphere generators used in connection with metal heat-treating processes.

(18) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(19) Welding equipment and oxygen/gaseous fuel cutting equipment.

(20) Soldering or brazing, or equipment, including brazing ovens.

(21) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that meets all of the following tank content criteria:

(A) ~~((uses materials containing))~~ ≤ 50 grams of VOC per liter(~~(?);~~);

(B) No acids other than boric. ~~((or containing exclusively))~~ formic ~~((acid))~~, acetic ~~((acid))~~, phosphoric ~~((acid))~~, sulfuric ~~((acid))~~, or $\leq 12\%$ hydrochloric ~~((acid));~~ and

(C) May contain alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and~~((or))~~ water in any concentration.

~~((and a))~~ Associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment are also exempt. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of $\leq 20\%$ by weight and using $\leq 10,000$ amp-hours per day, or phosphoric acid anodizing with a bath concentration of $\leq 15\%$ by weight of phosphoric acid and using $\leq 20,000$ amp-hours per day.)

(22) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or electrolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. Also, equipment used to electrolytically recover metals from spent or pretreated plating solutions that qualify for this exemption.

Ceramics and Glass

(23) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(24) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enameling drying ovens, if any combustion equipment is also exempt.

(25) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity $\leq 1,000$ pounds of glass.

(26) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(27) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

Plastics and Rubber and Composites

(28) Equipment used exclusively for conveying and storing plastic pellets.

(29) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(30) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is $\leq 1\%$ by weight.

(31) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(32) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT the blowing agent contains no VOC or chlorinated compounds.

(33) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter ≤ 26 inches, PROVIDED THAT it is operated at $\leq 400^\circ\text{F}$.

(34) Ovens used exclusively for the curing or forming of plastics or composite products, where no foam-forming or expanding process is involved, if any combustion equipment is also exempt.

(35) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(36) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(37) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(38) Mixers, roll mills, and calenders for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

Material Working and Handling

(39) Equipment used for mechanical buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, graphite, or composites. This exemption also applies to laser cutting, drilling, and machining of metals.

(40) Hand-held sanding equipment.

(41) Sanding equipment controlled by a fabric filter with an airflow of $< 2,000$ cfm.

(42) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hoppers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(43) Paper shredding and associated conveying systems and baling equipment.

(44) Hammermills used exclusively to process aluminum and/or tin cans.

(45) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

Abrasive Blasting

(46) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with $\geq 66\%$ by volume water.

(47) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(48) Hydroblasting equipment using exclusively water as the abrasive.

(49) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is ≤ 100 cubic feet.

(50) Shot peening operations, PROVIDED THAT no surface material is removed.

Cleaning

(51) Solvent Cleaning

(A) Non-refillable, hand-held aerosol spray cans of solvent; or

(B) Closed-loop solvent recovery systems with refrigerated or water-cooled condensers used for recovery of waste solvent generated on-site.

(52) Steam-cleaning equipment.

(53) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity ≤ 10 gallons and containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(B) Using a solvent with a true vapor pressure ≤ 0.6 psi containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(C) With a remote reservoir and using a solvent containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(D) With a solvent capacity ≤ 2 gallons.

(54) Hand-wipe cleaning.

Coating, Resin, and Adhesive Application

(55) Powder-coating equipment.

(56) Portable coating equipment and pavement strippers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(57) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity ≤ 8 fluid ounces, PROVIDED THAT it is not used to coat > 9 square feet per day and is not used to coat motor vehicles or aerospace components.

(58) Airbrushes having a cup capacity ≤ 2 fluid ounces and an airflow of 0.5-2.0 cfm.

(59) Hand-held aerosol spray cans having a capacity of ≤ 1 quart of coating.

(60) Spray-coating equipment used exclusively for application of automotive undercoating materials with a flash point $> 100^\circ\text{F}$.

(61) Ovens associated with an exempt coating operation, if any combustion equipment is also exempt.

(62) Ovens associated with a coating operation that are used exclusively to accelerate evaporation, if any combustion equipment is also exempt. (Note: The coating operation is not necessarily exempt.)

(63) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(64) Hand lay, brush, and roll-up resins equipment and operations.

(65) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(66) Hot-melt adhesive equipment.

(67) Any adhesive application equipment that exclusively uses materials containing $< 1\%$ VOC by weight and $< 0.1\%$ HAP.

(68) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

Printing

(69) Retail, sheet-fed, non-heatset offset presses (lithographic or letter-press).

(70) Presses using exclusively UV-curable inks.

(71) Presses using exclusively plastisols.

(72) Presses using exclusively water-based inks (< 1.5 lbs VOC per gallon, excluding water, or $< 10\%$ VOC by volume) and cleaning solvents without VOC.

(73) Presses used exclusively for making proofs.

(74) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(75) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

Photography

(76) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

Liquid Storage and Transfer

(77) Storage tanks permanently attached to a motor vehicle.

(78) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, or petroleum refinery;

(C) Any liquids (other than asphalt) that also have a rated capacity $\leq 1,000$ gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity $< 20,000$ gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure < 2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity $< 40,000$ gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure < 0.5 psia that also have a rated capacity $\geq 40,000$ gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength $\leq 99\%$ by weight;

(H) Nitric acid with an acid strength $\leq 70\%$ by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength $\leq 30\%$ by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains $\leq 1\%$ VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content $\leq 5\%$ by volume or a VOC composite partial pressure of ≤ 0.1 psi at 68°F ; or

(N) Wine, beer, or other alcoholic beverages.

(79) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(80) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity < 60 gallons, except equipment transferring $> 1,000$ gallons per day of liquid with a true vapor pressure > 0.5 psia.

(81) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

Mixing

(82) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains <1% VOC by weight.

(83) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(84) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(85) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(86) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(87) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains <1% VOC by weight.

(88) Batch mixers with a rated working capacity ≤55 gallons.

(89) Batch mixers used exclusively for paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts ≥90% of the rim.

Water Treatment

(90) Oil/water separators, except those at petroleum refineries.

(91) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

(92) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(93) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(94) Soil and groundwater remediation projects involving <15 pounds per year of benzene or vinyl chloride, <500 pounds per year of perchloroethylene, and <1,000 pounds per year of toxic air contaminants.

Landfills and Composting

(95) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(96) Closed landfills that do not have an operating, active landfill gas collection system.

(97) Non-commercial composting.

Agriculture, Food, and Drugs

(98) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(99) Insecticide, pesticide, or fertilizer spray equipment.

(100) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbecue units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(101) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(102) Bakery ovens with a total production of yeast leavened bread products <10,000 pounds per operating day, if any combustion equipment is also exempt.

(103) Equipment used to dry, mill, grind, blend, or package <1,000 tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(104) Equipment used to convey, transfer, clean, or separate <1,000 tons per year of dry food products or waste from food production operations.

(105) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle <1,000 tons per year.

(106) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(107) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(108) Brewing operations at facilities producing <3 million gallons per year of beer.

(109) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(110) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(111) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, PROVIDED THAT no organic solvents are used.

Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants

(112) Portable sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤150 tons per hour.

(113) Fixed sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤25 tons per hour.

(114) Common clay plants and pumice plants with a cumulative rated capacity of all initial crushers of ≤10 tons per hour.

(115) Mixers and other ancillary equipment at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(116) Concrete mixers with a rated working capacity of ≤1 cubic yard.

(117) Drilling or blasting (explosives detonation).

(118) Asphaltic concrete crushing/recycling equipment with a throughput <5,000 tons per year.

Construction

(119) Asphalt paving application.

(120) Asphalt (hot-tar) roofing application.

(121) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

Ventilation and Control Equipment

(122) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to control air contaminants generated by, or released from, sources subject to Notice of Construction.

(123) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(124) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(125) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(126) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(127) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(128) Portable control equipment used exclusively for storage tank degassing.

(129) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2,000 cfm.

(130) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c) of this regulation.

(131) Routine maintenance, repair, or similar parts replacement of control equipment.

Testing and Research

(132) Laboratory testing and quality assurance/control testing equipment used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. ~~((including a))~~ Non-production bench scale research equipment is also included.

Miscellaneous

(133) Single-family and duplex dwellings.

(134) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(135) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(136) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of ≤2 cubic feet used by healthcare facilities.

(137) Ozone generators that produce <1 pound per day of ozone.

(138) Fire extinguishing equipment.

(d) Each Notice of Construction application and Section 6.03(b) notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Notice of Construction applications shall also include any additional information required to demonstrate that the requirements of this Article are met. Notice of Construction applications shall also include an environmental checklist or other documents demonstrating compliance with the State Environmental Policy Act.

AMENDATORY SECTION

REGULATION I SECTION 6.04 NOTICE OF CONSTRUCTION FEES

(a) A Notice of Construction application is incomplete until the Agency has received fees as shown below:

Filing Fee (for each application, to be paid prior to any review)	\$750
Spray-Coating Booth (commercially manufactured)	\$250
Coffee Roaster (less than 40 pounds/batch, with thermal oxidizer)	\$500
Hot Mix Asphalt Batch Plant	\$7,000
Soil Thermal Desorption Unit	\$5,000
Electric Generation Project: (combined heat input capacity)	
10 - 100 million Btu/hr (2.9 - 29 MW)	\$5,000
101 - 250 million Btu/hr (29 - 73 MW)	\$10,000
>250 million Btu/hr (>73 MW)	\$25,000
Composting Facility	\$10,000
Commercial Solid Waste Handling Facility	\$10,000
Landfill Gas System	\$2,500
Refuse Burning Equipment: (rated charging capacity)	
≤12 tons per day	\$5,000
>12 tons and ≤250 tons per day	\$20,000
>250 tons per day	\$50,000
Other (not listed above) for each Piece of Equipment and Control Equipment	\$500
Additional Charges (for each application):	
SEPA Threshold Determination (DNS, under Regulation I, Section 2.04)	\$500
SEPA Threshold Determination (MDNS, under Regulation I, Section 2.07).	\$1,500
Public Notice (under WAC 173-400-171)	\$500 (+ publication costs)
NSPS or NESHAP (per subpart of 40 CFR Parts 60, 61, and 63)	\$1,000
Refined Dispersion Modeling Analysis (under Regulation III, Section 2.07(c)(2))	\$500
Major Source, Major Modification, or Emission Increases Greater than Prevention of Significant Deterioration (PSD) Thresholds	\$5,000 (+ Ecology fees)

(under WAC 173-400-112 or WAC 173-400-113)

An Agency request for an Inapplicability Determination for PSD Program Requiring Written Applicability Determination from Ecology	\$5,000
Construction or Reconstruction of a Major Source of Hazardous Air Pollutants (see 40 CFR 63.2)	\$2,500
Tier II Air Toxics Review (under WAC 173-460-090).	\$5,000 (+ Ecology fees)
Opacity/Grain Loading Correlation	\$5,000

(b) A notification under Section 6.03 (b)(1) through Section 6.03 (b)(9) and 6.03 (b)(11) of this regulation is incomplete until the Agency has received a fee of \$100. An application processed as a Notice of Construction exemption under Section 6.03 (b)(10) requires payment of the Notice of Construction filing fee only. An application for coverage under a general order of approval issued by this Agency is not subject to the fees in Section 6.04(a) and instead requires payment of a \$500 fee, which is due prior to any review of the application.

(c) The Control Officer is authorized to enter into a written cost-reimbursement agreement with an applicant as provided in RCW 70.94.085.

(d) Additional Fee for Service - Second Incomplete Application

Upon receipt of a second incomplete Notice of Construction application from the same applicant for the same project, the Control Officer may cease review of the application and provide written notification of that determination. The Control Officer may resume review of the application if, within 30 days of the date of the notification describing the Agency's receipt of the second incomplete Notice of Construction application, the applicant has deposited \$1,000 with the Agency, and executed a fee-for-service agreement with the Agency that allows the Agency to recover the reasonable direct and indirect costs that arise from processing the Notice of Construction application, including the requirements of other relevant laws such as the Washington State Environmental Policy Act (SEPA).

The agreement shall require that the applicant assume full responsibility for paying the Agency for the costs incurred under the fee-for-service agreement. The Agency shall credit the \$1,000 deposit made by the applicant towards the costs required by a fee-for-service agreement. The fee-for-service agreement may require the applicant to make progress payments during the application review period. The \$1,000 deposit referred to in this section and the costs provided for in a fee-for-service agreement are in addition to the fees required in Section 6.04(a).

If the applicant has not made a \$1,000 deposit and executed such a fee-for-service agreement within 30 days of the date of the notification from the Agency describing its receipt of a second incomplete application, the Agency may issue an Intent to Disapprove an Application.

The \$1,000 deposit required under this section is not refundable. In addition, any payments made to the Agency under a fee-for-service agreement are not refundable.

(e) Additional Fee - Revised Application

The Control Officer may assess an additional fee for processing a Notice of Construction application when a subsequent significantly revised application is submitted after the original application was determined to be complete and prior to the Agency issuing an Order of Approval or Intent to Disapprove an Application regarding the original application. The revision fee shall be the amount of the fee that was charged for the original Notice of Construction application, including the filing fee. The resulting total fee is the fee for the original Notice of Construction application plus the revision fee.

WSR 06-05-057
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
[Filed February 13, 2006, 9:25 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 3.07 (Compliance Tests) and 6.01 (Components of New Source Review Program).

Hearing Location(s): Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on March 23, 2006, at 9:15 a.m.

Date of Intended Adoption: March 23, 2006.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by March 22, 2006.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by March 16, 2006, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revision to Section 3.07 requires that compliance source test notifications be submitted on forms provided by the agency. Currently, source test notifications are received in a variety of formats, which sometimes causes confusion and leads to delays or mistakes in the review and handling of these test notices. This revision will help to eliminate confusion.

The proposed revision to Section 6.01 updates a WAC reference that was changed by the department of ecology.

Reasons Supporting Proposal: These are administrative revisions that will (1) help document receipt and review of source test notifications as part of the record, and (2) amend an outdated WAC reference.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The state implementation plan will be updated to reflect these amendments.

Name of Proponent: Puget Sound clean air agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

February 10, 2006
James Nolan
for Steve Van Slyke
Supervisory Engineer

AMENDATORY SECTION

REGULATION I SECTION 3.07 COMPLIANCE TESTS

(a) Testing of sources for compliance with emission standards shall be performed in accordance with current U.S. Environmental Protection Agency approved methods unless specific methods have been adopted by the Board. Where there is no federally approved or Board approved method, testing shall be performed in accordance with a method approved in writing by the Control Officer.

(b) The owner or operator of a source shall notify the Agency in writing at least ~~((2 weeks))~~ **21 days** prior to any compliance test ~~((and provide the Agency an opportunity to review the test plan and to observe the test))~~. Notification of a compliance test shall be submitted on forms provided by the Agency. Test notifications using the Agency forms do not constitute test plans, and compliance with this notification provision does not satisfy any requirement to submit a test plan. Notification under Section 3.07(b) of this regulation does not waive or modify test notification requirements found in other applicable regulations.

(c) The owner or operator of any source required to perform a compliance test shall submit a report to the Agency no later than 60 days after the test. The report shall include:

- (1) A description of the source and the sampling location;
- (2) The time and date of the test;
- (3) A summary of results, reported in units and for averaging periods consistent with the applicable emission standard;
- (4) A description of the test methods and quality assurance procedures employed;
- (5) The amount of fuel burned or raw material processed by the source during the test;
- (6) The operating parameters of the source and control equipment during the test;

(7) Field data and example calculations; and

(8) A statement signed by the senior management official of the testing firm certifying the validity of the source test report.

AMENDATORY SECTION

REGULATION I SECTION 6.01 COMPONENTS OF NEW SOURCE REVIEW PROGRAM

(a) In addition to the provisions of this regulation, the Agency adopts by reference and enforces the following provisions of the new source review program established by the Washington State Department of Ecology:

WAC 173-400-030 Definitions. (effective 2/10/05)

WAC 173-400-081 Startup and shutdown. (effective 9/20/93)

WAC 173-400-110 (3) and (6)-(10) New source review (NSR). (effective 2/10/05)

WAC 173-400-112 Requirements for new sources in nonattainment areas. (effective 2/10/05)

WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas. (effective 2/10/05)

WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source. (effective 9/15/01)

WAC 173-400-117 Special protection requirements for federal Class I areas. (effective 2/10/05)

WAC 173-400-171 Public involvement. - excluding references to chapter 173-460 WAC (effective 2/10/05)

WAC 173-400-200 Creditable stack height and dispersion techniques. (effective 2/10/05)

WAC 173-400-560 General order of approval. (effective 2/10/05)

WAC 173-400-700 Review of major stationary sources of air pollution. (effective 2/10/05)

WAC 173-400-710 Definitions. (effective 2/10/05)

WAC 173-400-720 Prevention of significant deterioration (PSD). (effective 2/10/05)

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (effective 2/10/05)

WAC 173-400-740 PSD permitting public involvement requirements. (effective 2/10/05)

WAC 173-400-750 Revisions to PSD permits. (effective 2/10/05)

WAC 173-460-020 Definitions. (effective 2/14/94)

WAC 173-460-040 (3)-(10) New source review. (effective 2/14/94)

WAC 173-460-050 Requirement to quantify emissions. (effective 2/14/94)

WAC 173-460-060 Control technology requirements. (effective 8/21/98)

WAC 173-460-070 Ambient impact requirement. (effective 9/18/91)

WAC 173-460-080 Demonstrating ambient impact compliance. (effective 2/14/94)

WAC 173-460-090 Second tier analysis. (effective 2/14/94)

(b) The Washington State Department of Ecology is the permitting agency for the Prevention of Significant Deterioration (PSD) program under WAC 173-400-700 through

WAC 173-400-750 (as delegated by agreement with the US Environmental Protection Agency, Region 10), and for primary aluminum smelters, kraft pulp mills, and sulfite pulp mills.

(c) The Washington State Department of Health is the permitting agency for radionuclides under chapter 246-247 WAC.

(d) The Energy Facility Site Evaluation Council (EFSEC) is the permitting agency for large natural gas and oil pipelines, electric power plants above 350 megawatts, new oil refineries or large expansions of existing facilities, and underground natural gas storage fields under chapter 463-((39))78 WAC.

WSR 06-05-074

PROPOSED RULES

HORSE RACING COMMISSION

[Filed February 14, 2006, 7:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-01-018.

Title of Rule and Other Identifying Information: WAC 260-75-030 Satellite locations.

Hearing Location(s): Red Lion Inn, Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, WA 99336, on April 7, 2006, at 9:30 a.m.

Date of Intended Adoption: April 7, 2006.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by April 3, 2006.

Assistance for Persons with Disabilities: Contact Patty Sorby by April 3, 2006, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends WAC 260-75-030 by eliminating "periodic" inspections in favor of requiring each location to be open for inspection without advanced warning.

Reasons Supporting Proposal: Provides the commission greater flexibility to meet its obligation to regulate horse racing in Washington.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

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

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

February 13, 2006

R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 05-05-042, filed 2/14/05, effective 3/17/05)

WAC 260-75-030 Satellite location. (1) Each satellite location shall have a location manager designated by the host racing association.

(2) All location managers and mutuel clerks shall be licensed by the commission. The host association shall not activate any terminal for any person that is not currently licensed or approved by the commission.

(3) The location managers shall be responsible to ensure the satellite location is in compliance with WAC 260-12-250.

(4) All satellite locations shall be ~~((periodically inspected))~~ open to inspection without advance notice by the commission or its designee.

WSR 06-05-075

PROPOSED RULES

HORSE RACING COMMISSION

[Filed February 14, 2006, 7:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-14-069.

Title of Rule and Other Identifying Information: Amend chapter 260-20 WAC, Association grounds and facilities.

Hearing Location(s): Red Lion Inn, Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, WA 99336, on April 7, 2006, at 9:30 a.m.

Date of Intended Adoption: April 7, 2006.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by April 3, 2006.

Assistance for Persons with Disabilities: Contact Patty Sorby by April 3, 2006, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: By amending chapter 260-20 WAC the agency intends to modernize our rules as part of or [our] regulatory reform effort and to also write and organize our rules in a more clear and concise manner so they are more easily understood by those to whom they apply.

Reasons Supporting Proposal: The current effort will modernize our rules and repeal a number of rules that were established in 1961.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

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

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

February 13, 2006

R. M. Leichner
Executive Secretary

NEW SECTION

WAC 260-20-005 General duty of a racing association. A racing association, its officers, directors, officials and employees shall abide by and enforce the rules of racing and the orders of the commission and stewards. A racing association may request an exemption from a requirement in this chapter to utilize new technology or innovative construction in the design of the racetrack facilities. The commission may grant an exemption if the commission determines that the racing association's proposal substantially satisfies the purpose of the requirement, and the exemption is in the best interests of horse racing.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-010 Duty to maintain race track. Racing associations shall at all times maintain their race tracks in good condition and with a special consideration for the ~~((comfort and))~~ safety and well-being of the public ~~((-of))~~ and the horses ~~((stabled, exercising or entered to race thereat, and of all whose business requires their attendance thereat, and to this end))~~. The racing association shall have available adequate and proper implements to maintain a uniform track, weather conditions permitting.

NEW SECTION

WAC 260-20-012 Audio and visual equipment. (1) A racing association shall provide and maintain in good working order a communication system between the stewards' stand, race office, tote room, jockeys' quarters, paddock, test barn, starting gate, weigh-in scale, video camera locations, clockers' stand, track announcer, location of the ambulances (equine and human), and other locations and persons designated by the commission, or designee.

(2) A racing association shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

(3) A racing association may be required to provide two electronic photo finish devices with mirror image to photograph the finish of each race. The commission, or designee shall approve the location and operation of the photo finish devices before its first use in a race. The association shall promptly post a photograph or digital image of each photo finish for win, place or show in an area accessible to the pub-

lic. The association shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission, or designee. On request by the commission, or designee, the association, or photo finish provider, shall provide, without cost, a print of a photo finish to the commission, or designee. The association or photo finish provider shall maintain photo finish records of each race for not less than six months after the end of the race meeting, or such other period as directed by the stewards or the commission, or designee.

(4) A racing association shall provide an electronic timing system that records the time of each race in at least hundredths of a second. It shall be the duty of the association to maintain this system and all split time markers sensors in good working order.

(5) A racing association shall provide a videotaping system approved by the commission, or designee. Cameras must be located to provide clear panoramic and head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review, shall be provided in the stewards' stand. The commission, or designee shall approve the location and construction of video towers.

(a) One camera, designated by the commission, or designee shall videotape the prerace loading of all horses into the starting gate and shall continue to videotape them until the starter dispatches the field.

(b) One camera, designated by the commission, or designee, shall videotape the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted and the equipment has been removed from the horse.

(c) The board of stewards may, at their discretion, direct the video camera operators to videotape the activities of any horses or persons handling horses prior to, during or following a race.

(6) Races run at a Class A or B track must be recorded by at least three video cameras. Races run at a Class C track must be recorded by at least two video cameras.

(7) A racing association shall, upon request, provide to the commission, without cost, a copy of a videotape of a race.

(8) Videotapes recorded prior to, during and following each race shall be maintained by the association for not less than six months after the end of the race meeting, or such other period as is directed by the stewards or the commission, or designee.

(9) A racing association shall provide a viewing room in which an owner, trainer, jockey, or other interested individual may view a videotape recording of a race.

(10) Following any race in which there is an inquiry or objection, the association shall display to the public on designated monitors the videotaped replays of the incident in question, which were utilized by the stewards in making their decision.

NEW SECTION

WAC 260-20-013 Racetrack, rails and starting gate.

(1) The surface of a racetrack, including the cushion, subsur-

face and base, must be designed, constructed and maintained to provide for the safety of the jockeys and horses.

(2) Prior to the first race meeting at an association racetrack, a licensed surveyor may be required to provide to the commission a certified report of the grade and measurement of the distances to be run. If required, the surveyor's report must be submitted to the commission for approval prior to the first race day of the meeting.

(3) Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

(4) A racing association shall provide an adequate drainage system for the racetrack.

(5) A racing association shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The association shall provide back-up equipment for maintaining the track surface. An association that conducts races on a turf track shall:

(a) Maintain an adequate stockpile of growing medium; and

(b) Provide a system capable of adequately watering the entire turf course evenly.

(6) Racetracks, including turf tracks, shall have inside and outside rails, including gap rails, designed, constructed and maintained to provide for the safety of jockeys and horses. The commission or designee must approve the design and construction of rails prior to the first race meeting at the track.

(a) The top of the rail must be at least thirty-eight inches but not more than forty-two inches above the top of the cushion.

(b) For Class A and B associations, the inside rail shall have no less than a twenty-four-inch overhang with a continuous smooth cover.

(7) During racing hours, Class A and B associations shall provide at least two operable padded starting gates. Class C associations shall provide at least one operable padded starting gate. All starting gates shall be approved by the stewards.

(8) A racing association shall make at least one starting gate and qualified starting gate personnel available for schooling during designated training hours.

(9) A racing association shall ensure that an adequate amount of assistant starters are available for each horse in an official race.

(10) If a race is started at a place other than in a chute, the association shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

NEW SECTION

WAC 260-20-015 Lighting. (1) A racing association shall provide lighting for the racetrack and the patron facilities that is adequate to ensure the safety and security of the patrons, licensees and horses.

(2) A racing association shall provide additional lighting in the stable area as required by the commission, or designee.

(3) If a racing association conducts racing at night, the association shall maintain a back-up lighting system that is

sufficient to ensure the safety of race participants and patrons.

NEW SECTION

WAC 260-20-016 Barns. (1) All racing associations shall ensure that the barns are kept clean and in good repair. At Class A and B racing associations, each barn, including the receiving barn, must have a hot and cold water supply available, be well-ventilated, and have proper drainage.

(2) All racing associations shall ensure that each horse is stabled in an individual box stall with minimum dimensions of ten by ten feet.

NEW SECTION

WAC 260-20-017 Test barn. (1) All racing associations shall provide a test barn for taking specimens of urine, blood or other bodily substances or tissues for testing. The test barn must be equipped with:

(a) A walk ring that is large enough to accommodate four horses;

(b) An approved amount of enclosed stalls that permit observation of the collection process and provide for the protection of collection personnel;

(c) Facilities for the collection, identification and storage of samples;

(d) A wash-rack that is large enough to accommodate an adequate number of horses at the same time;

(e) Hot and cold running water at Class A and B racing associations.

(2) A racing association shall limit access to the test barn to persons authorized by the official veterinarian.

AMENDATORY SECTION (Amending Order 79-05, filed 12/17/79)

WAC 260-20-030 Fire prevention. ~~((Associations shall make reasonable provisions for fire prevention, protection against fire, and fire suppression within the enclosure. Smoking is prohibited in barns (except tackrooms), stables, shedrows, hay sheds, and any area prohibited by state or local law.))~~ (1) A racing association shall develop and implement a program for fire prevention on association grounds. An association shall instruct employees working on association grounds of the procedures for fire prevention. An association shall deliver to the commission a copy of the state or local fire marshal's certification regarding the association's compliance with fire safety regulations or the fire marshal's plan of corrections. The certification or plan must be based on an inspection of the association grounds conducted by the fire marshal annually.

(2) No person shall:

(a) Smoke in stalls, feed rooms, dormitory rooms, stable offices, or under shed rows;

(b) Tamper with a fire protection, prevention or suppression system or device;

(c) Burn open fires or oil and gas lamps in the stable area;

(d) Leave unattended any electrical appliance that is plugged in to an electrical outlet;

(e) Permit horses to come within reach of electrical outlets or cords;

(f) Store flammable materials such as cleaning fluids or solvents in the stable area; or

(g) Lock a stall that is occupied by a horse.

(3) A racing association shall post a notice in the stable area that lists the prohibitions outlined above.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-040 ~~((Credentials for))~~ Admission to grounds ~~((stables, and enclosures))~~ Restricted areas. No one shall be permitted to enter ~~((in or about the grounds, stables or stable enclosures))~~ the restricted areas of the grounds who does not have in his possession a license or credentials issued by the commission ~~((as owner, trainer, jockey, apprentice, agent, stable foreman, groom, exercise boy, plater, valet or veterinarian, or proper credentials)),~~ or a badge or pass issued by the association ~~((and a full record of these credentials shall [be] compiled and open to inspection at all times)).~~

(1) The restricted areas of a racing association shall include, but not be limited to the stable area, the jockey's quarters, and the paddock or saddling enclosure.

(2) Children may be granted access to the stable areas as long as they are in the company of a parent or guardian who has a properly issued license, credential, badge or pass.

(3) At a Class C racing association, the stable areas shall not be considered a restricted area, except that the racing association may limit access to this area.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-050 Badges and passes. ~~((No tax free badge or pass may be issued to any horseman, in any capacity, without the approval of the commission; all badges or passes so approved must be recorded in a book kept by the racing secretary and each badge or pass must be numbered and kept in numerical order in the records; the commission shall have the right at all times to inspect such records.))~~ The racing association may issue badges or passes and each badge or pass must be numbered and kept in numerical order in the records; the commission shall have the right at all times to inspect such records. Badges or passes must be displayed while in a restricted area.

AMENDATORY SECTION (Amending Order 81-01, filed 3/24/81)

WAC 260-20-075 Firearms prohibited on association grounds. ~~((Each racing association shall exclude from its grounds any person found to have firearms in his possession, except security personnel employed by the association or commission and law enforcement officers. Any licensee or permit holder who brings firearms onto the grounds of any racing association, except security personnel and law enforcement officers, may be subject to revocation or suspension of such license or permit, and any other authorized penalty the stewards may deem necessary.))~~ Firearms are not

permitted on the grounds of any racing association, except by security personnel employed by the association and law enforcement officers. Any person who brings or possesses firearms on the grounds may be suspended and/or ejected from the grounds.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-090 Association ~~((s to maintain police and watchman service—List))~~ security. ~~((Each association shall maintain and furnish complete police and watchman service night and day in and about all stable enclosures and furnish to the commission each day a complete tabulation list thereof, showing name, duty, place stationed and portions of enclosures supervised by such policeman and watchman.))~~ (1) A racing association conducting a race meeting shall maintain security controls over its grounds.

(2) An association shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

(3) Class A or B racing associations shall provide continuous security in the stable area during all times that horses are stabled on the grounds. An association shall require any person entering the stable area to display a valid license or credential issued by the commission or a badge or visitor pass issued by the association.

(4) Class A or B racing associations shall provide fencing around the stable area in a manner that is approved by the commission.

(5) Not later than twenty-four hours after an incident occurs requiring the attention of security personnel, the chief of security shall deliver to the WHRC security a written report describing the incident, which may be forwarded to the stewards for disciplinary action. The report must include the name of each individual involved in the incident, the circumstances of the incident and a description of any possible violations of these rules.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-160 Ambulances. Racing associations shall ~~((furnish and maintain both a man ambulance and a horse ambulance))~~ provide a properly equipped and licensed ambulance, staffed with two emergency medical technicians, with at least one being a certified paramedic (mobile intensive care unit paramedic) trained in advance life support for each day that ~~((their))~~ the track ~~((s may be))~~ is opened for racing or ~~((exercising horses, equipped and ready for immediate duty))~~ training. A racing association shall also provide a first-aid room equipped with at least two beds and other appropriate equipment.

NEW SECTION

WAC 260-20-165 Equine ambulance. (1) A racing association shall provide an equine ambulance staffed by trained personnel on association grounds on each day that the

racetrack is open for racing or training. The ambulance must be properly ventilated and kept at an entrance to the racing strip when not in use. The ambulance must be a vehicle that restricts view of the injured horse and large enough to accommodate a horse in distress. The ambulance must be able to navigate on the racetrack during all weather conditions and transport a horse off the racing surface. The ambulance must be equipped with:

- (a) Large, portable screens to shield a horse from the public view;
 - (b) Ramps to facilitate loading an injured horse;
 - (c) Adequate means of loading a horse that is down;
 - (d) A rear door and a door on each side;
 - (e) A padded interior;
 - (f) A movable partition to initially provide more room to load a horse and to later restrict a horse's movement;
 - (g) A shielded area for the person who is attending to the horse; and
 - (h) An adequate area for the storage of water and veterinary drugs and equipment.
- (2) A racing association may not conduct a race unless an equine ambulance or an official veterinarian approved substitute is available.
- (3) The official veterinarian shall approve the equine ambulance, its supplies and attendants and the operating procedures for the equine ambulance.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-180 ((Sanitary)) Facilities for jockeys. Each racing association shall ~~((make such sanitary arrangements as baths, toilets, etc., for the use of jockeys, as may be reasonably required by the commission, the same to be conveniently located on the grounds))~~ provide facilities for the use of jockeys separate from the public areas.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-190 Living quarters for stable employees. ~~((Each)) Class A and B racing association shall provide adequate and sanitary living quarters~~((, with proper sanitary arrangements pertaining thereto, for stable employees))~~ for groom.~~

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-20-210 Manure and refuse disposal. Each racing association shall provide ~~((proper and well located boxes or pits for separately receiving stable manure and other refuse, situated well distant from living quarters, and such boxes and pits shall be emptied and their contents entirely removed from the premises of the association daily, and the area sprayed or dusted for insects each day))~~ an adequate area for the placement of manure removed from the stalls. All manure must be removed from the stable area in a time frame to ensure the health of all participants.

AMENDATORY SECTION (Amending Rules of racing, filed 3/11/65)

WAC 260-20-220 Standard color designations for distance poles. ~~((The distance poles shall be))~~ A racing association shall provide starting point markers and distance poles in a size and position that is clearly seen from the stewards' stand. The starting point markers and distance poles must be marked as follows:

- 1/4 Poles Red and White Horizontal Stripes
- 1/8 Poles Green and White Horizontal Stripes
- 1/16 Poles Black and White Horizontal Stripes

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 260-20-020 Duty of commission employees relative to health, safety, and order.
- WAC 260-20-060 Unauthorized persons—Exclusion from stables.
- WAC 260-20-070 Unauthorized persons—Exclusion from paddock.
- WAC 260-20-100 Responsibility of police and watchmen—Letter of instructions.
- WAC 260-20-110 Stable enclosures—Fencing—Admission to.
- WAC 260-20-120 Report by bureau or security officer of arrests and bookings.
- WAC 260-20-130 Report by officer in charge of night force.
- WAC 260-20-140 Electric timing apparatus.
- WAC 260-20-150 Patron gates.
- WAC 260-20-170 First-aid equipment and personnel.
- WAC 260-20-200 Drinking water, toilets, for patrons and invitees.

**WSR 06-05-076
PROPOSED RULES
HORSE RACING COMMISSION**

[Filed February 14, 2006, 7:33 a.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 05-23-023.
Title of Rule and Other Identifying Information: To amend chapter 260-70 WAC, Controlled medication program.

Hearing Location(s): Red Lion Inn, Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, WA 99336, on April 7, 2006, at 9:30 a.m.

Date of Intended Adoption: April 7, 2006.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by April 3, 2006.

Assistance for Persons with Disabilities: Contact Patty Sorby by April 3, 2006, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend chapter 260-70 WAC for (1) to continue the agency's on-going regulatory reform effort, (2) to also write and organize our rules in a more clear and concise manner so they are more easily understood by those to whom they apply, and (3) to comply with the model rules on equine medication.

Reasons Supporting Proposal: Provides equine medication rules that conform to the national model rules and updates agency rules.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

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

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

February 13, 2006

R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

WAC 260-70-500 Definitions applicable to chapter 260-70 WAC. (1) "Interfering substance" or "interfere" means and refers to any medication which might mask or screen the presence of prohibited drugs or prevent testing procedures.

(2) "Post time" means the time set for the arrival (~~(at the starting point)~~) of the horses at the starting point in a race as specified in writing and posted by the board of stewards.

AMENDATORY SECTION (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

WAC 260-70-510 Equine health and safety. The purpose of this chapter is to protect the integrity of horse racing, to ensure the health and welfare of ~~((animals))~~ horses under the jurisdiction of the commission and to safeguard the interests of the public and the participants in racing. With this in mind, the commission shall convene an annual meeting, open to all interested parties, for the ~~((purpose of))~~ review of veter-

inarian practices, equine health and medication. Such meeting shall include:

(1) An annual report from an official veterinarian.

(2) Presentation of data regarding equine medication and treatment, including a review of the commission's ~~((list of))~~ quantitative medication levels and any recommendations for modifications ~~((to the list of quantitative medication levels))~~.

(3) Public comment regarding equine health and safety, medication and veterinarian practices.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-520 Trainer responsibility. The purpose of this subsection is to identify the minimum responsibilities of the trainer that pertain specifically to the health and well being of horses in his/her care.

(1) The trainer is ~~((solely))~~ responsible for the condition of horses in his/her care.

(2) The trainer is responsible for the presence of any prohibited drug, medication, or other prohibited substance, including permitted medication in excess of the maximum allowable concentration, in horses in his/her care. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a commission approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer shall be responsible.

(3) A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(4) A trainer whose horse has been claimed remains responsible for violation of any rules regarding that horse's participation in the race in which the horse is claimed.

(5) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and safety of horses in his/her care;

(d) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and an official veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his/her care and ensuring that such fact is designated on its certificate of registration;

(f) Promptly report to the racing secretary, when mares who have been entered to race, have been bred;

(g) ~~((Promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;~~

~~((h))~~ Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;

~~((i))~~ (h) Maintaining a knowledge of the medication record and medication status of horses in his/her care;

~~((j))~~ (i) Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

~~((k))~~ (j) Ensuring the fitness to perform creditably at the distance entered;

~~((l))~~ (k) Ensuring that every horse he/she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in this chapter;

~~((m))~~ (l) Ensuring proper bandages, equipment and shoes; and

~~((n))~~ (m) Presence in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

~~((o))~~ (n) Personally attending in the paddock and supervising the saddling thereof, unless excused by the stewards; and

~~((p))~~ (o) Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-530 Veterinarians under authority of official veterinarian. Veterinarians licensed by the commission and practicing at any location under the jurisdiction of the commission are under the authority of the official veterinarian and the stewards. An official veterinarian shall ~~((recommend))~~ make a recommendation to the stewards or the commission of the discipline ~~((, which may))~~ to be imposed upon a veterinarian who ~~((violates))~~ has violated the rules.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-540 Veterinarians' reports. (1) Every veterinarian who treats a racehorse at any location under the jurisdiction of the commission shall, in writing on a form approved by the commission, provide a treatment report to an official veterinarian. The report shall include the name of the horse treated, any medication, drug or substance or procedure administered or prescribed, the name of the trainer of the horse, the date and time of treatment and any other information requested by the official veterinarian.

(2) The report shall be signed by the practicing veterinarian ~~((:~~

~~((3))~~ (3) ~~The report shall be on file not~~, and filed with the official veterinarian no later than ~~((the time prescribed on the next race day by the official veterinarian. Any such report is confidential and its content shall not be disclosed except in the course of an investigation of a possible violation of these rules or in a proceeding before the stewards or the commission, or to the trainer or owner of record at the time of treatment.~~

~~((4))~~ (4) post time of the race for which the horse is entered.

(3) A timely and accurate ~~((filing of a veterinarian report that is consistent with the analytical results of a positive test))~~ treatment report may be used ~~((as a mitigating factor in deter-~~

~~mining the nature and extent of a violation of these rules))~~ to mitigate the penalty.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-545 Prohibited practices. The following are ~~((considered))~~ prohibited practices:

(1) The possession or use of a drug, substance or medication, specified ~~((below))~~ in subsection (3) of this section, on the premises of a facility under the jurisdiction of the commission ~~((for which a recognized analytical method has not been developed to detect and confirm the administration of such substance))~~; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing; or

(2) The possession or use of a drug or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in human or animal ~~((is forbidden)), or any forbidden substance.~~

(3) The possession and/or use of blood doping agents, including, but not limited to, those listed below, on the premises of a facility under the jurisdiction of the commission ~~((is forbidden))~~:

- (a) Erythropoietin
- (b) Darbepoietin
- (c) Oxyglobin
- (d) Hemopure

~~((The practice, administration or application of a treatment, procedure, therapy or method identified below, which is performed on the premises of any facility under jurisdiction of the commission and which may endanger the health and welfare of the horse, endanger the safety of the rider, or the use of which may adversely affect the integrity of horse racing:~~

~~((a))~~ (a) Intermittent Hypoxic Treatment by External Device.

~~((b))~~ (b) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted unless the following conditions are met:

~~((i))~~ (i) Any treated horse shall not be permitted to race for a minimum of ten days following treatment;

~~((ii))~~ (ii) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall be limited to veterinarians licensed to practice by the commission;

~~((iii))~~ (iii) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy shall not be permitted unless the following conditions are met:

(a) Any treated horse shall not be permitted to race for a minimum of ten days following treatment;

(b) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall be limited to veterinarians licensed by the commission;

(c) Prior to use, a report has been filed with an official veterinarian advising that any Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machine ~~((s))~~ is on the association grounds ~~((must be reported to an official veterinarian before use));~~

~~((iv))~~ (d) All Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy treatments ~~((must be))~~ are reported to an official veterinarian on the prescribed form not later than the time prescribed by an official veterinarian.

~~((e))~~ (5) The use of a naso gastric tube (a tube longer than six inches) for the administration of any substance within twenty-four hours prior to the post time of the race in which the horse is entered is prohibited without the prior permission of an official veterinarian.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-550 ((Medical)) Medication labeling.

(1) No person on association grounds ~~((where horses are lodged or kept))~~, excluding licensed veterinarians, shall have in or upon association grounds ~~((which that person occupies or has the right to occupy))~~, or in that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labeled in accordance with this subsection.

(2) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription must have been validly prescribed by a duly licensed veterinarian, and in compliance with applicable state statutes. All such allowable medications must have a prescription label, which is securely attached and clearly ascribed to show the following:

- (a) The name of the product;
- (b) The name, address and telephone number of the veterinarian prescribing or dispensing the product;
- (c) The name of each ~~((patient))~~ horse~~((s))~~ for whom the product is intended/prescribed;
- (d) The dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and
- (e) The name of the ~~((person))~~ trainer~~((s))~~ to whom the product was dispensed.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-560 Treatment restrictions.

(1) Except as otherwise provided by this subsection, no person other than a veterinarian licensed to practice veterinary medicine in this jurisdiction and licensed by the commission may administer a prescription or controlled medication, drug, chemical or other substance (including any medication, drug, chemical or other substance by injection) to a horse at any location under the jurisdiction of the commission.

(2) Nonveterinarians may administer the following substances, provided that, in post race testing the substances do not exceed approved quantitative levels, ~~((if any))~~ and the substances do not interfere with post race testing:

- (a) A recognized noninjectable nutritional supplement or other substance ~~((approved))~~, except that any such supplements or substances that have been disapproved by an official veterinarian may not be administered;
- (b) A noninjectable substance on the direction or by prescription of a licensed veterinarian; or

(c) A noninjectable nonprescription medication or substance.

(3) No person shall possess a hypodermic needle, syringe or injectable of any kind on association premises, unless otherwise approved by the ~~((commission))~~ stewards. At any location under the jurisdiction of the commission, veterinarians may use only onetime disposable needles, and shall dispose of them in a manner approved by the ~~((commission))~~ stewards. If a person has a medical condition which makes it necessary to have a needle and syringe at any location under the jurisdiction of the commission, that person may request permission of the stewards ~~((and/or the commission))~~ in writing, furnish a letter from a licensed physician explaining why it is necessary for the person to possess a needle and syringe, and must comply with any conditions and restrictions ~~((set))~~ on possession of a needle and syringe established by the stewards ~~((and/or the commission))~~.

(4) Veterinarians shall not treat or administer medication or drugs to any entered horse on a race day, and before the post time for the race the horse is entered to run, except for the administration of furosemide under the guidelines set forth in WAC 260-70-650, unless approved by the official veterinarian.

(5) Any horse entered for racing must be present on the grounds as follows, except with the prior approval of the official veterinarian:

(a) A first time starter must be present on the grounds two hours prior to the first post time or five hours prior to the post for the race the horse is entered for racing, whichever is earlier.

(b) A horse that has previously started must be present on the grounds five hours prior to the post time for the race the horse is entered for racing.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-570 Physical inspection of horses. All horses at locations under the jurisdiction of the commission shall be subject to inspections at the discretion of the stewards or an official veterinarian.

(1) Every horse entered to participate in an official race shall be subject to ~~((a veterinary inspection))~~ an inspection by an official veterinarian.

~~((2))~~ ~~((The inspection shall be conducted by an official veterinarian.~~

~~((3))~~ The trainer of each horse or a representative of the trainer shall present the horse for inspection as required by an official veterinarian.

~~((4))~~ (3) The ~~((veterinary inspection of a horse's racing condition, at a minimum shall include))~~ assessment of a horse's racing condition shall be based on the recommendations of the American Association of Equine Practitioners and shall include:

- (a) Proper identification of each horse inspected;
- (b) Observation of each horse in motion;
- (c) Manual palpation when indicated;
- (d) Close observation in the paddock and saddling area, during the parade to post and at the starting gate; and

(e) Any other inspection deemed necessary by an official veterinarian.

~~((5))~~ (4) Every horse shall be observed by an official veterinarian during and after the race.

~~((6))~~ (5) The official veterinarian shall maintain a continuing health and racing soundness record of each horse inspected.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-580 Veterinarian's list. (1) An official veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity or other medical condition.

(2) A horse may be removed from the veterinarian's list when, in the opinion of the official veterinarian, the horse is capable of competing in a race.

~~((3) An official veterinarian shall maintain a bleeder list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by an official veterinarian. Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:~~

~~(a) First incident—fourteen days;~~

~~(b) Second incident within a three hundred sixty five day period—thirty days;~~

~~(c) Third incident within a three hundred sixty five day period—one hundred eighty days;~~

~~(d) Fourth incident within a three hundred sixty five day period—barred from racing for life.~~

(4) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

(5) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined in this section.

(6) A horse may be removed from the bleeder list only upon the direction of an official veterinarian, who shall certify in writing to the stewards the recommendation for removal.

(7) A horse, which has been placed on a bleeder list in another jurisdiction pursuant to this section, shall be placed on the bleeder list maintained by an official veterinarian. (a) Horses placed on the veterinarian's list will remain on the list for a minimum of ten days. For purposes of counting days, the first day on the veterinarian's list is the day the horse is placed on the veterinarian's list.

(b) A horse may be removed from the veterinarian's list after the tenth day. Horses that must work to be removed from the veterinary list due to soreness, lameness, or certain injuries will be allowed to work no sooner than the eleventh day after being placed on the list.

(i) Works should be scheduled with the official veterinarian twenty-four hours in advance.

(ii) Horses must work a minimum distance to be determined by the official veterinarian in a time comparable for the track condition that day.

(iii) A blood test will be taken by an official veterinarian following the workout and medications levels may not exceed permitted post-race levels.

AMENDATORY SECTION (Amending WSR 96-10-001, filed 4/17/96, effective 5/18/96)

WAC 260-70-590 Reporting to the test barn. (1) The official winning horse and any other horse ordered by the stewards, official veterinarian or the commission shall be taken to the test barn to have a blood and/or urine sample taken at the direction of an official veterinarian.

(2) Random or extra testing may be required by the stewards, the official veterinarian, or the commission at any time on any horse on association grounds.

(3) Unless otherwise directed by the stewards or an official veterinarian, a horse that is selected for testing must be taken directly to the test barn.

(4) Access to the test barn ~~((and, if applicable, receiving barn))~~ shall be monitored and restricted. All persons who wish to enter the test barn ~~((receiving barn area))~~ must be currently licensed by the commission, display their commission identification badge and have a legitimate reason for being in the test barn area. No horse shall have more than three representatives in the test barn at any one time.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-610 Storage and shipment of split samples. (1) Split samples obtained in accordance with WAC 260-70-600 ~~((, subsection))~~ ~~(2)~~ ~~(b)~~ and ~~((2))~~ ~~(c)~~ shall be secured and made available for further testing in accordance with the following procedures:

(a) A split sample shall be secured in the test barn under the same manner as the portion of the specimen acquired for shipment to a primary laboratory until such time as specimens are packed and secured for shipment to the primary laboratory. Split samples shall then be transferred to a freezer at a secure location approved by the commission.

(b) A freezer for storage of split samples shall be equipped with a lock. The lock shall be closed and locked to prevent access to the freezer at all times except as specifically provided by these rules.

(c) A freezer for storage of split samples shall be opened only for depositing or removing split samples, for inventory, or for checking the condition of samples.

(d) A log shall be maintained by the official veterinarian that shall be used each time a split sample freezer is opened to specify each person in attendance, the purpose for opening the freezer, identification of split samples deposited or removed, the date and time the freezer was opened, and the time the freezer was closed and to verify that the lock was secured prior to and after opening of the freezer.

(e) Any evidence of a malfunction of a split sample freezer or samples that are not in a frozen condition during storage shall be documented in the log and immediately reported to an official veterinarian or a designated commission representative.

(2) A trainer or owner of a horse having been notified that a written report from a primary laboratory states that a

substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another laboratory approved by the commission. The request must be made in writing and delivered to the stewards not later than 48 hours after the trainer of the horse receives written notice of the findings of the primary laboratory. ~~((Any))~~ The split sample ((so requested must)) shall be shipped within ((an additional 72)) seventy-two hours of the delivery of the request for testing to the stewards.

(3) The owner or trainer requesting testing of a split sample shall be responsible for the cost of shipping and testing. Failure of the owner, trainer or designee to appear at the time and place designated by the official veterinarian to package the split sample for shipping shall constitute a waiver of all rights to split sample testing. Prior to shipment, the ~~((commission shall confirm the))~~ split sample laboratory's willingness to provide the testing requested ~~((, the laboratory's willingness))~~ and to send results to both the person requesting the testing and the commission, ~~((and))~~ shall be confirmed. Arrangements for payment satisfactory to the split sample laboratory shall also be confirmed. A laboratory for the testing of a split sample ((testing laboratory)) must be approved by the commission. The commission shall maintain a list of laboratories approved for testing of split samples.

(4) Prior to opening the split sample freezer, the commission shall provide a split sample chain of custody verification form ~~((that shall provide a place for recording the following information and such other information as the official veterinarian may require. The form shall be fully completed during the retrieval, packaging, and shipment of the split sample)).~~ The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner, trainer or designee. A commission representative shall keep the original and provide a copy for the owner, trainer or designee.

Split sample chain of custody verification form requirements:

- (a) The date and time the sample is removed from the split sample freezer;
- (b) The sample number;
- (c) The address where the split sample is to be sent;
- (d) The name of the carrier and the address where the sample is to be taken for shipment;
- (e) Verification of retrieval of the split sample from the freezer;
- (f) Verification of each specific step of the split sample packaging in accordance with the recommended procedure;
- (g) Verification of the address of the split sample laboratory on the split sample package;
- (h) Verification of the condition of the split sample package immediately prior to transfer of custody to the carrier; and
- (i) The date and time custody of the sample is transferred to the carrier.

(5) A split sample shall be removed from the split sample freezer, and packaged for shipment by ~~((a commission representative))~~ an official veterinarian or designee in the presence of the owner, trainer or designee.

~~((6))~~ A commission representative shall pack the split sample for shipment in the presence of the owner, trainer or

designee, in accordance with the packaging procedures recommended by the commission. A)) The split sample chain of custody verification form shall be signed by both the owner's representative and the ((commission representative)) official veterinarian or designee to confirm the packaging of the split sample. The exterior of the package shall be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package. The owner, trainer or designee may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

~~((7))~~ (6) The package containing the split sample shall be transported to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission approved laboratory selected by the owner or trainer.

~~((8))~~ The owner, trainer or designee may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(9) The split sample chain of custody verification form shall be completed and signed by the representatives of the commission and the owner, trainer or designee. A commission representative shall keep the original and provide a copy for the owner, trainer or designee.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-620 Medication restrictions. (1) ~~((No horse shall have in its body any prohibited or interfering substance, or permitted medication, except as provided in this chapter.~~

~~((2))~~ A finding by the commission approved laboratory of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include:

(a) Drugs or medications for which no acceptable threshold concentration has been established;

(b) Therapeutic medications in excess of established threshold concentrations;

(c) Substances present in the horse in excess of concentrations at which such substances could occur naturally; and

(d) Substances foreign to a horse at concentrations that cause interference with testing procedures.

~~((3))~~ (2) Except as otherwise provided by this chapter, a person may not administer or cause to be administered to a horse by any means, ~~((or attempt to administer by any means including naso gastric tube or dose syringe, to a horse))~~ a prohibited drug, medication, chemical or other substance, including any ~~((permitted))~~ restricted medication ~~((;))~~ pursuant to this chapter during the ~~((24-))~~ twenty-four hour period before post time for the race in which the horse is entered.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-630 Threshold levels. (1) The following quantitative medication levels are permissible in test samples up to the stated quantitative levels:

Procaine	25 ng/ml urine
Benzocaine	50 ng/ml urine
Mepivacaine	10 ng/ml urine
Lidocaine	50 ng/ml urine
Bupivacaine	5 ng/ml urine
Clenbuterol	25 pg/ml serum or plasma
Acepromazine	25 ng/ml urine
Promazine	25 ng/ml urine
Salicylates	750,000 ng/ml urine
Albuterol	1 ng/ml urine
Pyrilamine	50 ng/ml urine
Theobromine	2000 ng/ml urine

The official urine test sample may not contain more than one of the above drug substances, including their metabolites or analogs, in an amount ~~((up to))~~ exceeding the specified level. Official blood test samples must not contain any of the drug substances listed above, including their metabolites or analogs, except for ~~((their))~~ the threshold(s) amount established in this rule.

(2) ~~((The following))~~ Certain substances ((shall) can be considered environmental contaminants ((and are permissible in test samples up to the stated quantitative levels)) in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation, processing, treatment, storage or transportation phases.

(3) Certain drugs are recognized as substances of human use and addiction and which could be found in a horse. The following are permissible in test samples up to the stated quantitative levels:

Caffeine	100 ng/ml serum or plasma
Benzoylcegonine	50 ng/ml urine
Morphine Glucuronides	50 ng/ml urine

(4) If the preponderance of evidence presented in a stewards ruling conference shows that a positive test is the result of environmental contamination or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-640 Permitted medication. Trainers using permitted medication in the care of their horses are subject to all rules governing such medications. Failure to administer permitted medication to a horse on a program of permitted medication shall be a violation of these rules.

~~(1) ((Nonsteroidal anti-inflammatory drugs (NSAIDs)- (2)))~~ The use of one of three approved nonsteroidal anti-inflammatory drugs (NSAIDs) shall be permitted under the following conditions:

(a) ~~((Not to))~~ The drug shall not exceed the following permitted serum or plasma threshold concentrations, which are consistent with administration by a single intravenous injection at least twenty-four hours before the post time for the race in which the horse is entered:

- (i) Phenylbutazone - 5 micrograms per milliliter;
- (ii) Flunixin - 20 nanograms per milliliter;
- (iii) Ketoprofen - 10 nanograms per milliliter.

(b) ~~((These or any other))~~ No NSAID ((are prohibited to be)), including the approved NSAIDs listed in this rule, may be administered within the twenty-four hours before post time for the race in which the horse is entered.

(c) The presence of more than one of the three approved NSAIDs, with the exception of Phenylbutazone in a concentration below 1 microgram per milliliter of serum or plasma or any unapproved NSAID in the post-race serum or plasma sample is not permitted((, except the presence of two approved NSAIDs is allowed if one of them is phenylbutazone with a concentration of less than 1 mcg/ml)). The use of all but one of the approved NSAIDs shall be discontinued at least forty-eight hours before the post time for the race in which the horse is entered.

~~((2))~~ (2) Any horse to which a NSAID has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of an official veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-645 Anti-ulcer medications. The following anti-ulcer medications are permitted to be administered, at the stated dosage, up to twenty-four hours prior to the race in which the horse is entered.

- (1) Cimetidine (Tagamet®) - 8-20 mg/kg PO BID - TID
- (2) Omeprazole (Gastrogard®) - 2.2 grams PO SID
- (3) Ranitidine (Zantac®) - 8 mg/kg PO BID

~~((Noninterfering levels of sulfa drugs, antibiotics, anthelmintics and vitamins in a horse's post race urine or serum or plasma test may not be considered a violation of these rules.))~~

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-650 Furosemide. (1) Furosemide may be administered intravenously to a horse which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a urine sample, furosemide shall be permitted only after the official veterinarian has placed the horse on the furosemide or bleeder list.

(2) The use of furosemide shall be permitted under the following circumstances:

(a) Furosemide shall be administered on the grounds of the association, by a single intravenous injection, prior to post time for the race for which the horse is entered.

(b) The furosemide dosage administered shall not exceed 500 mg nor be less than 150 mg.

(c) The trainer of the treated horse shall cause to be delivered to an official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission:

(i) The name of the horse, the horse's tattoo number, racetrack name, the date and time the furosemide was administered to the entered horse;

(ii) The dosage amount of furosemide administered to the entered horse; and

(iii) The printed name and signature of the attending licensed veterinarian who administered the furosemide.

(iv) The signature of the trainer or his/her representative.

(d) Failure to administer furosemide in accordance with these rules may result in the horse being scratched from the race by the stewards.

(e) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.

(i) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity shall not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma shall be performed.

(ii) Quantitation of furosemide in serum or plasma shall be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-660 Furosemide and bleeder lists.

~~((1)(a))~~ The official veterinarians shall maintain a furosemide list and a bleeder list of all horses eligible to race with furosemide. The list is a statewide list that applies ~~((only at Class A or Class B))~~ to all licensed associations ~~((and not at any other track))~~.

~~((b))~~ (1) Furosemide list.

(a) A horse is eligible to race with furosemide if the licensed trainer and/or veterinarian determine that it would be in the horse's best interests to race with furosemide. Notification using prescribed commission forms must be given to the ~~((commission representative, providing sufficient time))~~ official veterinarian prior to the close of entries to ensure public notification.

~~((c))~~ (b) If the ~~((commission))~~ official veterinarian so orders, a horse(s) placed on the furosemide list shall be placed ~~((in a pre-race detention))~~ in detention in its regularly assigned stall, no later than four hours prior to the scheduled post time for any race in which it is entered to start, and with oral or written notification to the trainer may be watched by commission staff. ~~((The detention stall shall be the stall regu-~~

~~larly assigned that horse for its customary stabling.))~~ Once placed in ~~((the))~~ detention ~~((stall))~~, a horse must remain in its barn or on its assigned hotwalker until it is taken to the receiving barn or to the paddock to be saddled for the race, except that the stewards may permit a horse(s) to leave ~~((the))~~ detention ~~((stall))~~ to engage in exercise blowouts or warm-up heats.

~~((2))~~ (c) The confirmation of a horse eligible to race with furosemide must be certified in writing by an official veterinarian and entered on the furosemide list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. ~~((A notice of a horse's furosemide certification shall be affixed to the horse's certificate of registration.~~

~~((3))~~ (d) Every horse eligible to race with furosemide, regardless of age, shall be placed on the furosemide list.

~~((4))~~ (e) A horse placed on the official furosemide list must remain on that list unless the licensed trainer and/or veterinarian submit(s) a written request to remove the horse from the list. The request must be on forms provided by the official veterinarian and must be submitted to the ~~((commission designee))~~ official veterinarian no ~~((late))~~ later than time of entry. After a horse has been removed from the furosemide list, the horse may not be placed back on the list for a period of sixty calendar days unless determined to be detrimental to the welfare of the horse, in consultation with an official veterinarian. If a horse is removed from the official furosemide list a second time in a three hundred sixty-five day period, the horse may not be placed back on the list for a period of ninety calendar days.

~~((5))~~ (2) Bleeder list.

(a) The official veterinarian shall maintain a bleeder list of all horses, which have demonstrated external evidence of exercise induced pulmonary hemorrhage from one or both nostrils during or after a race or workout as observed by the official veterinarian.

(b) Every confirmed bleeder, regardless of age, shall be placed on the bleeder list and be ineligible to race for the following time periods:

(i) First incident - fourteen days;

(ii) Second incident within three hundred and sixty-five day period - thirty days;

(iii) Third incident within three hundred and sixty-five day period - one hundred and eighty days;

(iv) Fourth incident within three hundred and sixty-five day period - barred from racing for life.

(c) For the purposes of counting the number of days a horse is ineligible to run, the day the horse bled externally is the first day of the recovery period.

(d) The voluntary administration of furosemide without an external bleeding incident shall not subject the horse to the initial period of ineligibility as defined by this policy.

(e) Every horse that is confirmed a bleeder shall have a notation affixed to the horse's certificate of registration.

(f) A horse may be removed from the bleeder list only upon the direction of the official veterinarian.

(3) A horse which has been placed on a furosemide or bleeder list in another jurisdiction may be placed on the furosemide list in this jurisdiction.

~~((6) The specific gravity of post-race urine samples shall not be below 1.010. If the specific gravity of the post-race urine sample is determined to be below 1.010, quantitation of furosemide in serum or plasma shall be performed. Concentrations above 100 nanograms of furosemide per milliliter of serum or plasma shall constitute a violation of WAC 260-84-100.~~

~~(7) A horse that has been administered furosemide that does not show a detectable concentration of the drug in the post-race serum, plasma or urine sample shall be in violation of these rules.)~~

AMENDATORY SECTION (Amending WSR 05-17-123, filed 8/18/05, effective 9/18/05)

WAC 260-70-675 Bicarbonate testing. No bicarbonate-containing substance or alkalinizing substance that effectively alters the serum or plasma pH or concentration of bicarbonates or total carbon dioxide in a horse shall be administered to a horse within twenty-four hours of post time of the race in which the horse is entered.

The official veterinarian, the board of stewards or the executive secretary acting on behalf of the commission may at their discretion and at any time order the collection of test samples from any horses (~~present~~) either in the horse's stall or within the receiving or test barn to determine the serum or plasma pH or concentration of bicarbonate, total carbon dioxide, or electrolytes.

Test samples shall not exceed 37.0 millimoles of total carbon dioxide concentration per liter of serum or plasma. A serum or plasma total carbon dioxide level exceeding this value shall constitute a violation of this rule. Penalties shall be assessed as a Class 4 violation as provided in WAC 260-84-110.

Split samples will be taken from all horses entered to run in a race when bicarbonate testing is to be done. When split samples are taken, they shall be shipped as soon as practical to the commission-approved laboratories for total carbon dioxide split sample testing. The commission shall be responsible for the cost of shipping and testing of split samples taken under this section.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-680 Uniform classification guidelines. The following outline describes the types of substances placed in each category. This list shall be publicly posted in the offices of the official veterinarian and the racing secretary.

(1) Class 1

Opiates, opium derivatives, synthetic opioids, psychoactive drugs, amphetamines and U.S. Drug Enforcement Agency (DEA) scheduled I and II drugs. Also found in this class are drugs which are potent stimulants of the nervous system. Drugs in this class have no generally accepted medical use in the racehorse and their pharmacological potential for altering the performance of a race is very high.

(2) Class 2

Drugs in this category have a high potential for affecting the outcome of a race. Most are not generally accepted as

therapeutic agents in the racehorse. Many are products intended to alter consciousness or the psychic state of humans, and have no approved or indicated use in the horse. Some, such as injectable local anesthetics, have legitimate use in equine medicine, but should not be found in a racehorse. The following groups of drugs are in this class:

- (a) Opiate partial agonists, or agonist-antagonists;
- (b) Nonopiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;
- (c) Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);
- (d) Drugs with prominent CNS depressant action;
- (e) Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;
- (f) Muscle blocking drugs, which have a direct neuromuscular blocking action;
- (g) Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and
- (h) Snake venoms and other biologic substances, which may be used as nerve blocking agents.

(3) Class 3

Drugs in this class may or may not have an accepted therapeutic use in the horse. Many are drugs that affect the cardiovascular, pulmonary and autonomic nervous systems. They all have the potential of affecting the performance of a racehorse. The following groups of drugs are in this class:

- (a) Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);
- (b) A local anesthetic, which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);
- (c) Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;
- (d) Primary vasodilating/hypotensive agents; and
- (e) Potent diuretics affecting renal function and body fluid composition.

(4) Class 4

This category is comprised primarily of therapeutic medications routinely used in racehorses. These may influence performance, but generally have a more limited ability to do so. Groups of drugs assigned to this category include the following:

- (a) Nonopiate drugs which have a mild central analgesic effect;
- (b) Drugs affecting the autonomic nervous system, which do not have prominent CNS, cardiovascular or respiratory effects;
 - (i) Drugs used solely as topical vasoconstrictors or decongestants,
 - (ii) Drugs used as gastrointestinal antispasmodics,
 - (iii) Drugs used to void the urinary bladder,
 - (iv) Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.
- ~~((e))~~ (v) Antihistamines, which do not have a significant CNS depressant effect (this does not include H1 blocking agents, which are listed in Class 5);
- ~~((d))~~ (c) Mineralocorticoid drugs;

~~((e))~~ (d) Skeletal muscle relaxants;

~~((f))~~ (e) Anti-inflammatory drugs—those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

(i) Nonsteroidal anti-inflammatory drugs (NSAIDs)(—~~aspirin-like drugs~~);

(ii) Corticosteroids (glucocorticoids); and

(iii) Miscellaneous anti-inflammatory agents.

~~((g))~~ (f) Anabolic and/or androgenic steroids and other drugs;

~~((h))~~ (g) Less potent diuretics;

~~((i))~~ (h) Cardiac glycosides and antiarrhythmics including:

(i) Cardiac glycosides;

(ii) Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and

(iii) Miscellaneous cardiotoxic drugs.

~~((j))~~ (i) Topical anesthetics—agents not available in injectable formulations;

~~((k))~~ (j) Antidiarrheal agents; and

~~((l))~~ (k) Miscellaneous drugs including:

(i) Expectorants with little or no other pharmacologic action;

(ii) Stomachics; and

(iii) Mucolytic agents.

~~((m))~~ (Substances foreign to a horse at levels that cause interference with testing procedures.)

(5) Class 5

Drugs in this category are therapeutic medications for which concentration limits have been established as well as certain miscellaneous agents. Included specifically are agents, which have very localized action only, such as anti-ulcer drugs and certain antiallergic drugs. The anticoagulant drugs are also included.

(6) Nonclassified substances

Nonclassified substances are considered to have no effect on the physiology of a horse, except to improve nutrition or treat or prevent infections or parasite infestations. These substances normally include antimicrobials, antiparasitic drugs, and nutrients such as vitamins.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-720 Posterior digital neurectomy. (1)

No person shall bring onto the grounds of a racing association, or enter or cause to be entered in any race, or sell, offer for sale, or act as ~~((a bloodstock))~~ an agent in the sale of ~~((:))~~ any horse on the grounds under the jurisdiction of the commission that has had a posterior digital neurectomy performed, or has had any nerve removed from the leg of such horse, except as provided in this chapter.

(2) A horse upon which a posterior digital neurectomy has been performed is eligible to race ~~((, provided that))~~ if the following conditions are met:

(a) Prior approval of an official veterinarian has been obtained before the horse was brought onto the grounds of the racing association;

(b) An official veterinarian is satisfied that the loss of sensation to ~~((such))~~ the horse due to the posterior digital

neurectomy will not endanger the safety of ~~((any horse or rider, that the prior approval of an official veterinarian has been obtained if the horse is on the grounds of a racing association, that))~~ the public and the participants in racing and does not compromise the integrity of horse racing;

(c) The racing secretary is notified of the posterior digital neurectomy at the time ~~((such))~~ the horse is admitted to the grounds of ~~((a))~~ the racing association; and ~~((its))~~

(d) The horse's registration or eligibility certificate has been marked to indicate that a posterior digital neurectomy was performed.

AMENDATORY SECTION (Amending WSR 05-07-067, filed 3/11/05, effective 4/11/05)

WAC 260-70-730 Postmortem examination. (1) The commission may require a postmortem examination of any horse that is injured ~~((in this jurisdiction))~~ on the grounds of a racing association during its scheduled race meet and training periods, while the horse is in training or in competition and that subsequently expires or is destroyed, or any horse that expires while housed on the grounds. In proceeding with a postmortem examination the commission or its designee shall coordinate with the trainer and/or owner to determine and address any insurance requirements.

(2) ~~((The official veterinarian may require a postmortem examination of any horse that expires while housed on association grounds within this jurisdiction.))~~ Trainers and owners shall be required to ~~((comply))~~ cooperate with such action as a condition of licensure.

(3) The official veterinarian may take possession of the horse upon death for postmortem examination. The official veterinarian may submit blood, urine, other bodily fluid specimens or other tissue specimens collected during a postmortem examination for analysis. Upon completion of the postmortem examination, the remains may be returned to the owner or disposed of at the owner's option.

(4) The presence of a prohibited substance in a specimen collected during the postmortem examination ~~((of a horse))~~ may constitute a violation of these rules.

(5) The cost of commission-ordered postmortem examinations, testing and disposal shall be borne by the commission.

WSR 06-05-078

WITHDRAWAL OF PROPOSED RULES WASHINGTON STATE LOTTERY

[Filed February 14, 2006, 7:35 a.m.]

WAC 315-37-010, 315-37-020, 315-37-030, 315-37-040, 315-37-050, 315-37-060, 315-37-070, 315-37-080, 315-37-090, 315-37-100, 315-37-110 and 315-37-120, proposed by the Washington state lottery in WSR 05-16-069 appearing in issue 05-16 of the State Register, which was distributed on August 17, 2005, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted

within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 06-05-079
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 14, 2006, 7:36 a.m.]

WAC 296-104-050, proposed by the department of labor and industries in WSR 05-16-095 appearing in issue 05-16 of the State Register, which was distributed on August 17, 2005, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 06-05-086
PROPOSED RULES
COUNTY ROAD
ADMINISTRATION BOARD
[Filed February 14, 2006, 12:04 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 136-130-030 Project prioritization in Puget Sound region, 136-165-020 Requirements for consideration of RATA fund increases, 136-300-050 Distribution of CAPA funds, 136-300-060 Annual county arterial preservation programs, 136-300-070 Allowable activities within CAPP, and 136-300-090 Submittal of annual report.

Hearing Location(s): 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, on April 27, 2006, at 2:00 p.m.

Date of Intended Adoption: April 27, 2006.

Submit Written Comments to: Karen Pendleton, 2404 Chandler County [Court] S.W., Suite 240, Olympia, WA 98504-0913, e-mail karen@crab.wa.gov, fax (360) 753-5989, by April 21, 2006.

Assistance for Persons with Disabilities: Contact Karen Pendleton by April 21, 2006, TTY (800) 833-6382.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To make changes to the rural arterial program and the county arterial preservation program as outlined in the language below.

Statutory Authority for Adoption: Chapter 36.79 RCW.

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

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, (360) 753-5989.

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

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

February 9, 2006
Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 02-11-008, filed 5/2/02, effective 6/2/02)

WAC 136-130-030 Project prioritization in Puget Sound region (PSR). Each county in the PSR may submit projects requesting RATA funds not to exceed 80% of the forecasted regional apportionment. Each project shall be rated in accordance with the PSR RAP rating procedures. The PSR funding period shall allot a minimum of 25% of the forecasted regional apportionment to projects on roads classified as major collectors (07) or minor collectors (08).

PSR RAP maximum rating points for the (~~three~~) four project types shall be assigned based on the following:

Rating Criteria:	Project Type:			
	Road	<u>3R</u> <u>Safety</u>	Intersection	Bridge
Traffic Volume	20	<u>15</u>	20	20
Accident History	25	<u>15</u>	25	25
Structure	15	<u>10</u>	5	(20) <u>25</u>
Geometry	(25) <u>30</u>	<u>20</u>	(35) <u>40</u>	20
Special Road Usage	(15) <u>10</u>	<u>10</u>	(15) <u>10</u>	(15) <u>10</u>
<u>3R Safety</u>		<u>30</u>		
TOTAL POINTS	100	<u>100</u>	100	100

Bridge category projects that will not replace the structure must have federal funds committed to them prior to submittal for RATA funding.

Prioritization of PSR projects shall be on the basis of total PSR RAP rating points shown on the project worksheet and the prospectus form of the project application.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-165-020 Requirements for consideration of RATA fund increases. (1) When a county submits its final prospectus as described in WAC 136-161-050, the county road administration board presumes that the amount of RATA funds requested, plus any non-RATA funds that

may be designated for the project, are sufficient to fully, and in a timely manner, complete the project as described.

(2) In extraordinary circumstances, a county may request an increase in the amount of RATA funds allocated to a project. A county may request an increase in a project's RATA allocation only twice in the course of a project's development: At the completion of preliminary engineering, and prior to commencing construction. A project shall be considered in construction if:

(a) The construction contract for the work has been awarded.

(b) Done by day labor, the work has commenced.

All cost increases during the course of construction shall be the responsibility of the county. Requests for increases in excess of fifty percent of the original RATA allocation will not be considered or granted; the county must secure other funds, withdraw or request the termination of the project, or request a change in scope and/or project limits.

(3) A request by a county for an increase in RATA funds allocated to a project shall demonstrate that:

(a) The county at the time of preparing its final project prospectus considered the factors listed in subsection (4) of this section;

(b) The request for an increased allocation is based on extraordinary and unforeseeable circumstances of the type listed in subsection (5) of this section;

(c) It is not feasible to reduce the scope and/or project limits so the project can be substantially constructed within the initial RATA allocation; ~~((and))~~

(d) The request is not to pay for an expansion of the originally approved project;

(e) If the work is to be done by contract, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, advertisement of the project for construction bids; and

(f) If the work is to be done by day labor, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of commencement of the work.

(4) At the time of preparation and submittal of the final project prospectus, a county is expected to consider all information which may affect the cost of the project. In cases where the information is incomplete or poorly defined, the county is to exercise good professional judgment and/or seek outside professional assistance and advice in order to prepare a reasonable RATA fund request. The information which a county is expected to consider includes, but is not limited to, the following:

(a) The availability at the needed time of matching funds and other supplementary funds;

(b) All technical data reasonably available such as topographic maps, reconnaissance reports, surface and subsurface geotechnical data, hydraulic and hydrological data, sources of materials, applicable design standards, and any earlier preliminary engineering;

(c) Required permits, including pre-project scoping consultations with the permitting agencies and an estimate of the costs of complying with permit requirements;

(d) Required right of way or other easements, and the time and cost of acquisition;

(e) Availability of qualified contractors to perform the work;

(f) Ownership, type, amount, and time requirements of any required utility relocation;

(g) Historical and projected labor, equipment and material costs; and

(h) The project development timetable leading to completed construction and the interrelation of this project to all other work activities under the control of the county engineer.

(5) The county road administration board will increase RATA funds allocated to a project only if it finds that the request for an increased allocation is based on extraordinary and unforeseeable circumstances, including but not limited to the following:

(a) The county relied on existing technical data which were later found to be in error, and which will necessitate a significant design change prior to proceeding with construction;

(b) Project permit requirements were substantially changed, or new permits were required;

(c) Supplementary funds, such as impact fees, developer contributions, grants, etc., which were forecasted to be available for the project, were withdrawn or otherwise became unavailable;

(d) Design or other standards applicable to the project were changed; and/or

(e) The start of construction will be significantly delayed or additional construction requirements will be added as a direct result of legal action; provided however, that the failure of a county to exercise its statutory powers, such as condemnation, will not be grounds for increasing RATA funds.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-300-050 Distribution of CAPA funds. (1) Certification of county arterial mileage.

(a) Classification. The statute specifies that expenditure of CAPA funds is restricted to paved arterials in the unincorporated area of each county. Arterials are defined as being those county roads:

(i) In urban areas, classified within the federal functional classification system as arterials or collectors;

(ii) In rural areas, classified within the federal functional classification system as arterials, major collectors, or minor collectors.

(b) Paved roads are defined as those roads which, at the time of CAPA allocation determination, are hard-surfaced through the application of a bituminous surface treatment (BST), asphaltic concrete pavement (ACP), or portland cement concrete (PCC). Brick or block surfaces shall also be considered as paved.

(c) Source of information. The master county road log as maintained by the county road administration board in accordance with chapter 136-60 WAC shall be the source of official paved road mileage to be used for CAPA distribution.

(2) Establishment of allocation percentages. At its first regular meeting after July 1 of each year, the county road administration board shall establish the next calendar year's allocation percentages for the individual counties based on

information contained in the most recently certified master county road log. Each county's allocation percentage shall be computed by the county road administration board as its percentage of paved arterial lane miles of the total statewide paved county arterial lane miles.

(3) Notice to counties. Upon their establishment, the county road administration board shall notify the county legislative authority and the county engineer of each county of the respective county's CAPA allocation percentage and the latest estimate of the amount of CAPA funds to be allocated during the next calendar year.

(4) Distribution to counties. Distribution of allocated CAPA funds shall be done monthly by the state treasurer. The state treasurer shall use the allocation percentages provided by the county road administration board as computed under the provisions of subsection (2) of this section.

(5) Eligibility. All arterial preservation work and related activities, and maintenance management done by each county shall be eligible for CAPA funding provided that:

- (a) The county is determined to be in compliance with the pavement management system requirements as set forth in chapter 136-70 WAC; and
- (b) The county engineer submits the annual CAPA program as required in WAC 136-300-060; and
- (c) The work is in conformance with the allowable activities as specified in WAC 136-300-070.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-300-060 Annual county arterial preservation programs. Each county engineer shall, in conjunction with the county's annual road construction program as required by RCW 36.81.130 and chapter 136-16 WAC, prepare an annual county arterial preservation program. Appropriate forms will be provided by the county road administration board.

The county's annual arterial preservation program shall consist of a list of all proposed county arterial preservation projects and activities as well as total planned expenditure of CAPA and non-CAPA funds for maintenance management for the ensuing year. In order to evaluate the relative ability of CAPA funds to meet the county's total arterial pavement preservation needs, the annual county arterial preservation program shall identify those projects for which CAPA funding is available.

The county engineer shall submit the proposed county arterial preservation program to the county road administration board along with the county's annual road program and budget in accordance with chapter 136-16 WAC.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-300-070 Allowable activities within CAPP. For all CAPA-funded projects that involve structural resurfacing, the existing road must meet the following minimum width standards:

Shouldered roadway sections:

Current ADT	Lane width	Shoulder width
0 to 100	9 feet	2 feet
101 to 400	10 feet	2 feet
401 to 4000	10 feet	2 feet
Over 4000	11 feet	4 feet

Curbed roadway sections (minimum lane width):

Current ADT	Two-way	One-way
	undivided	& two-way divided
All	10 feet	9 feet

All roadways built to less than the above standards for which a county proposes to perform structural resurfacing must be widened with other than CAPA funds.

Use of county arterial preservation account funds shall be limited to the following three groups of activities:

- (1) Implementation of computerized systems to include:
 - (a) Acquisition of computer hardware and software that may be necessary to operate a computer-based (~~pavement~~) maintenance management system.
 - (b) Pavement management system training not otherwise provided by the county road administration board. This can include software usage, pavement condition surveying, and other specialized training directly related to the operation and maintenance of a computer-based pavement management system.

(c) Payment for related services such as data entry, pavement condition surveys, and rental of specialized PMS-related equipment such as road raters.

Acquisition of equipment other than computer hardware as described in (a) of this subsection is not eligible.

(2) Direct and attributable indirect costs associated with paved surface preservation and rehabilitation activities on existing roadways, and maintenance management activities related to all county arterials including the following:

- (a) Nonstructural resurfacing projects. These include thin asphalt concrete overlays (one-inch or less); bituminous seal coats (single and double); slurry seals, sand seals, and fog seals; associated tack coats, paving fabrics, and preleveling; and associated surface grinding and planing.
- (b) Structural resurfacing projects. These include thick asphalt concrete overlays (greater than one inch); portland cement concrete overlays; associated tack coats, paving fabrics, and preleveling; associated surface grinding and planing; and hot/cold bituminous road mixes.
- (c) Associated activities. These include crack sealing (bituminous and portland cement pavements); full-depth, structural patching done in preparation for structural or non-structural overlays or seals; portland cement pavement joint reconstruction undersealing, panel jacking and panel replacement; and other related activities as are directly attributable to nonstructural and structural resurfacing projects.

(d) Maintenance management activities. These include creating maintenance management reports and training in maintenance management per the requirements listed in chapter 136-11 WAC.

(3) Resurfacing work associated with the reconstruction and/or widening of existing paved arterials. This participation is limited as follows:

(a) The present roadway is a paved county arterial as defined by WAC 136-300-050;

(b) The county's approved pavement management system has identified the existing pavement as requiring resurfacing within two years of the expected reconstruction/widening project completion date;

(c) The reconstruction/widening project will bring the roadway to at least the lane and shoulder width standards and non-CAPA funding requirements of this section;

(d) The CAPA participation will be limited to the resurfacing portion of the project as described in this section.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-300-090 Submittal of annual report. The county road administration board shall prepare and distribute to all counties standard reporting forms for use by the county engineer to annually summarize the pavement preservation and maintenance management activities, both CAPA and non-CAPA funded, in his or her county. For all CAPA-funded work, the report will require a specific listing of roads improved including a definition of scope of work and the amount of CAPA funds expended, as well as a listing of the county's share of CAPA funds used for maintenance management.

At any time prior to April 1st of the year following, the county engineer shall, in conjunction with the annual construction report required by WAC 136-16-050 submit an annual summary of pavement preservation activities on the entire paved road system. This report shall be on the approved forms or in an equivalent format.

WSR 06-05-087
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 14, 2006, 1:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-01-069.

Title of Rule and Other Identifying Information: Medical aid rules—Conversion factors and maximum daily fees, WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501, on March 21, 2006, at 1:00 p.m.

Date of Intended Adoption: April 18, 2006.

Submit Written Comments to: Tom Davis, P.O. Box 44322, Olympia, WA 98504-4322, e-mail dato235@LNI.wa.gov, fax (360) 902-4249, by March 28, 2006.

Assistance for Persons with Disabilities: Contact Tom Davis by March 16, 2006, TTY (360) 902-5797 or fax (360) 902-4249.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule is to update the department's payment rates for health care services by: (1) Changing the conversion factor used to calculate payment levels for services payable through the resource based relative value scale (RBRVS) fee schedule; (2) changing the conversion factor used to calculate payment for anesthesia services; and (3) increasing the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(2), increase the RBRVS conversion factor from \$52.23 to \$54.22.

WAC 296-20-135(3), increase the anesthesia conversion factor from \$2.90 to \$2.97.

WAC 296-23-220 and 296-23-230, increase the maximum daily rate for physical and occupational therapy services from \$107.45 to \$109.92.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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: (1) Increasing the conversion factors used to calculate maximum payment for services paid with the resource based relative value scale fee schedule; (2) increasing the conversion factor used to calculate maximum payment for anesthesia services; and (3) increasing the maximum daily payment for physical and occupational therapy services. The conversion factor updates are made in accordance with WAC 296-20-132 Determination of conversion factor adjustments. The anticipated effect of this rule change is to allow injured workers continued access to health care services.

Name of Proponent: Department of labor and industries.

Name of Agency Personnel Responsible for Drafting: Tom Davis, Tumwater, Washington, (360) 902-6687; Implementation and Enforcement: Robert Malooly, Assistant Director, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adoption is exempt under RCW 34.05.328 (5)(b)(vi) and 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

February 14, 2006

Gary Weeks

Director

AMENDATORY SECTION (Amending WSR 05-09-062, filed 4/19/05, effective 7/1/05)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of (~~(\$52.23))~~ \$54.22. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of (~~(\$2.90)~~) \$2.97 per minute, which is equivalent to (~~(\$43.50)~~) \$44.55 per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 05-18-030, filed 8/30/05, effective 10/1/05)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist or a physical therapist assistant serving under the direction of a licensed physical therapist. In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$107.45) + (\$104.12)~~) \$109.92 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary

office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 05-18-030, filed 8/30/05, effective 10/1/05)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee

maximums, the provider's usual and customary charge, or (~~(\$107.45) [\$104.12]~~) \$109.92 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

management's maximum allowable fiscal growth rate factor for fiscal year 2006. The fee increase is necessary to help cover the costs of ongoing services for the elevator, factory assembled structures, and plumber certification programs.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapters 18.106, 43.22, and 70.87 RCW.

Statute Being Implemented: Chapters 18.106, 43.22, and 70.87 RCW.

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: Sally Elliott, Tumwater, Washington, (360) 902-6411; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department is exempt from preparing a small business economic impact statement under RCW 34.05.328 (5)(b)(vi), since the purpose of this rule making is to set and adjust fees based upon the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2006.

A cost-benefit analysis is not required under RCW 34.05.328. The department is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) because the rule making is setting and adjusting fees based upon the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2006.

February 14, 2006

Gary Weeks

Director

WSR 06-05-088
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed February 14, 2006, 1:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-01-070.

Title of Rule and Other Identifying Information: Fee increases specialty compliance programs, the department is proposing a fee increase for the following rules: Elevators (chapter 296-96 WAC), factory assembled structures (chapters 296-150C, 296-150F, 296-150M, 296-150T, and 296-150V WAC), and plumber certification (chapter 296-400A WAC).

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA, on April 10, 2006, at 1:00 p.m.

Date of Intended Adoption: May 2, 2006.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by April 11, 2006.

Assistance for Persons with Disabilities: Contact Sally Elliott by April 1, 2006, at (360) 902-6411 or yous235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to increase fees 2.82% (rounded down to the nearest tenth of a dollar), which is the office of financial

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-00922 What are the fees associated with licensing? The following are the department's elevator license fees:

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Elevator contractor/mechanic application fee (not required for renewal of valid license)	Per application	\$(51.50) <u>52.90</u>
Elevator contractor/mechanic examination fee	Per application	\$(154.50) <u>158.80</u>
Reciprocity application fee*	Per application	\$(51.50) <u>52.90</u>
Elevator mechanic license	2 years	\$(403.00) <u>105.90</u>
Elevator contractor license	2 years	\$(403.00) <u>105.90</u>

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Temporary elevator mechanic license	30 days	\$((25.70)) <u>26.40</u>
Elevator mechanic/contractor timely renewal fee**	2 years	\$((103.00)) <u>105.90</u>
Elevator mechanic/contractor late renewal fee***	2 years	\$((206.00)) <u>211.80</u>
Training provider application/renewal fee	2 years	\$((103.00)) <u>105.90</u>
Continuing education course fee by approved training provider****	1 year	Not applicable
Replacement of any licenses		\$((15.40)) <u>15.80</u>
Refund processing fee		\$((30.90)) <u>31.70</u>

- * Reciprocity application is only allowed for applicants who are applying for licensing based upon possession of a valid license that was obtained in state(s) with which the department has a reciprocity agreement.
- ** Renewals will be considered "timely" when the renewal application is received on or prior to the expiration date of the license.
- *** Late renewal is for renewal applications received no later than ninety days after the expiration of the licenses. If the application is not received within ninety days from license expiration, the licensee must reapply and pass the competency examination.
- **** This fee is paid directly to the continuing education training course provider approved by the department.

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01010 What are the installation permit fees for conveyances, material lifts, and hoists and how are they calculated? Installation permit fees are based on the total cost of the conveyance and the labor to install the conveyance. The following permit fees apply to the construction or relocation of all conveyances and material lifts:

TOTAL COST OF CONVEYANCE	FEE
\$0 to and including \$1,000	\$((51.50)) <u>52.90</u>
\$1,001 to and including \$5,000	((77.20)) <u>79.30</u>
\$5,001 to and including \$7,000	((128.70)) <u>132.30</u>

TOTAL COST OF CONVEYANCE	FEE
\$7,001 to and including \$10,000	((154.50)) <u>158.80</u>
\$10,001 to and including \$15,000	((206.00)) <u>211.80</u>
OVER \$15,000	((288.40)) <u>296.50</u> plus
Each additional \$1,000 or fraction thereof.	((7.20)) <u>7.40</u>

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01012 What are the permit fees for alterations to conveyances, material lifts, and hoists and how are they calculated? Permit fees are based on the total cost of the equipment, materials and labor to perform the alteration. The following permit fees apply to the alteration of all conveyances and material lifts:

TOTAL COST OF ALTERATION	FEE
\$0 to and including \$1,000	\$((51.50)) <u>52.90</u>
\$1,001 to and including \$5,000	((77.20)) <u>79.30</u>
\$5,001 to and including \$7,000	((128.70)) <u>132.30</u>
\$7,001 to and including \$10,000	((154.50)) <u>158.80</u>
\$10,001 to and including \$15,000	((206.00)) <u>211.80</u>
OVER \$15,000	((206.00)) <u>211.80</u>
Each additional \$1,000 or fraction thereof.	\$ ((7.20)) <u>7.40</u>

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01027 Are initial installation permit fees refundable? Your initial installation permit fees are refundable if the installation work has not been performed minus a processing fee unless your permits have expired. No refunds will be issued for expired permits. All requests for refunds must be submitted in writing to the elevator section and must identify the specific permits and the reasons for which the refunds are requested.

The processing fee for each refund is \$((~~30.90~~)) 31.70

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01030 What is the process for installation and alteration plan approval? Prior to the start of construction, you must submit to the department for approval two copies of plans for new installations or major alterations. To be approved, the plan must comply with the latest adopted edition of the American Society of Mechanical Engineers (ASME), the National Electrical Code (NEC) and applicable Washington Administrative Codes (WAC). In addition, the plans must include all information necessary in determining whether each installation/alteration complies with all appli-

cable codes. You must keep a copy of the approved plan on the job site until the department has witnessed all acceptance tests. Any alterations to the approved plan must be submitted to the department for approval before a final inspection will be conducted. The nonrefundable fees for reviewing your plans are:

For each installation/major alteration. \$((25.70)) 26.40
If more than two sets of plans are submitted, the fee for each additional set \$((10.30)) 10.50

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01035 Are there inspection fees? Yes. The initial inspection of a conveyance or for the initial inspection of construction, alteration or relocation of a conveyance is included with your permit fee. Once the department has approved the initial installation of the conveyance you will be issued a temporary operating permit that is valid for 30 days. Prior to the expiration of the 30-day permit the application for an annual operating permit and the appropriate fees must be paid to the department. Once the department has received the appropriate fees and application you will be issued your first annual operating permit. You are required to renew your annual operating permit yearly.

The following inspections require an additional inspection fee:

(1) **Reinspection.** If a conveyance does not pass an initial inspection and an additional inspection is required, the fee for each reinspection of a conveyance is \$((103.00)) 105.90 per conveyance plus \$((50.00)) 51.40 per hour for each hour in addition to the first hour.

The department may waive reinspection fees.

(2) **Inspecting increases in the height (jumping) of personnel and material hoists.**

The fee for inspecting an increase in the height (jumping) of each personnel hoist or material hoist is \$((103.00)) 105.90 plus \$((51.50)) 52.90 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

(3) **Variance inspections.**

(a) The fee for an on-site variance inspection is \$((154.50)) 158.80 per conveyance plus \$((51.50)) 52.90 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

(b) The fee for a variance that does not require an on-site inspection is \$((51.50)) 52.90 per conveyance. The individual requesting the variance must provide the department with pictures, documentation, or other information necessary for the department to review the variance. The department may conduct an on-site variance inspection to verify the information provided or if it determines that an inspection is necessary. If an on-site variance inspection is performed, the fees in (a) of this subsection will apply.

(4) **"Red tag" status fee.** The annual fee for a conveyance in "Red tag" status is \$((25.70)) 26.40.

Note: You must provide the department with written approval from the building official, indicating that the conveyance is not required for building occupancy, when you apply to have the conveyance placed in voluntary red tag status.

(5) **Decommission inspection.** The fee for performing a decommission inspection is \$((51.50)) 52.90. Once the decommission inspection has been performed and approved, the conveyance will no longer require annual inspections until such time that the conveyance is brought back into service. Prior to operating the conveyance, a new inspection and annual operating permit must be obtained.

(6) **Voluntary inspections by request.** The owner or potential purchaser of a building within the department's jurisdiction may request a voluntary inspection of a conveyance. The fee for this inspection will be \$((103.00)) 105.90 per conveyance and \$((51.50)) 52.90 per hour for each hour in addition to 2 hours plus the standard per diem and mileage allowance granted to department inspectors. The owner/potential purchaser requesting the voluntary inspection will not be subject to any penalties based on the inspector's findings.

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01040 What is the fee for testing and inspecting regular elevators used as temporary elevators to provide transportation for construction personnel, tools, and materials only?

(1) The fee for the inspecting and testing of regular elevators used as temporary elevators is \$((82.40)) 84.70, in addition to any other fees required in this chapter. This fee purchases a 30-day temporary use permit that may be renewed at the department's discretion.

(2) When this temporary use permit is purchased, a notice declaring that the equipment has not received final approval from the department must be conspicuously posted in the elevator.

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01045 What are the inspection requirements and fees for conveyances in private residences?

(1) Chapter 70.87 RCW requires the department to inspect all new, altered or relocated conveyances operated exclusively for single-family use in private residences. Prior to inspection, you must complete a permit application as described in WAC 296-96-01005 and pay the appropriate fee listed in WAC 296-96-01010.

(2) Chapter 70.87 RCW allows the department to inspect conveyances operated exclusively for single-family use in private residences when the department is investigating an accident or an alleged or apparent violation of the statute or these rules.

(3) No annual inspection and operating permit is required for a private residence conveyance operated exclusively for single-family use unless the owner requests it. When an owner requests an inspection and an annual operating permit, the following fee must be paid prior to an inspection:

TYPE OF CONVEYANCE	FEE
Each inclined stairway chair lift in private residence	\$((24.10)) <u>24.70</u>

Each inclined wheel chair lift in a private residence	((24.10)) <u>24.70</u>
Each vertical wheel chair lift in a private residence	((30.40)) <u>31.20</u>
Each dumbwaiter in a private residence.	((24.10)) <u>24.70</u>
Each inclined elevator at a private residence	((85.70)) <u>88.10</u>
Each private residence elevator	((55.20)) <u>56.70</u>
Duplication of a lost, damaged or stolen operating permit	((10.30)) <u>10.50</u>

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01050 How do I get a supplemental inspection? Any person, firm, corporation or governmental agency can request a supplemental inspection from the department by paying a fee of \$((61.80)) 63.50 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. This fee is for inspections occurring during regular working hours.

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01055 Are technical services available and what is the fee? You may request elevator field technical services from the department by paying a fee of \$((61.80)) 63.50 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. These field technical services may include code evaluation, code consultation, plan examination, code interpretation and clarification of technical data relating to the application of the department's conveyance rules. Field technical services do not include inspections.

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01060 Can I request an after hours inspection and what is the fee? You may request an inspection outside of normal business hours, which are 7:00 a.m. to 5:00 p.m., if an inspector is available and the inspection is authorized by the department. The minimum fee for an after-hours inspection is \$((77.20)) 79.30 and \$((77.20)) 79.30 per hour for each hour in addition to the first hour plus the standard per diem and mileage allowance granted to department inspectors. This fee is in addition to any other fees required for your project.

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01065 What are the annual operating permits fees? An annual operating permit will be issued to you upon payment of the appropriate fee:

TYPE OF CONVEYANCE	FEE
Each hydraulic elevator	\$((103.00)) <u>105.90</u>
Each roped-hydraulic elevator	((128.70)) <u>132.30</u>
plus for each hoistway opening in excess of two	((40.30)) <u>10.50</u>
Each cable elevator	((128.70)) <u>132.30</u>
plus for each hoistway opening in excess of two	((40.30)) <u>10.50</u>
Each cable elevator traveling more than 25 feet without an opening—for each 25 foot traveled	((40.30)) <u>10.50</u>
Each limited-use/limited-application (—LULA) elevator	((103.00)) <u>105.90</u>
Each escalator	((85.60)) <u>88.00</u>
Each dumbwaiter in other than a private residence	((55.20)) <u>56.70</u>
Each material lift	((103.00)) <u>105.90</u>
Each incline elevator in other than a private residence	((110.70)) <u>113.80</u>
Each belt manlift	((103.00)) <u>105.90</u>
Each stair lift in other than a private residence	((55.20)) <u>56.70</u>
Each wheel chair lift in other than a private residence	((55.20)) <u>56.70</u>
Each personnel hoist	((103.00)) <u>105.90</u>
Each grain elevator personnel lift	((85.60)) <u>88.00</u>
Each material hoist	((103.00)) <u>105.90</u>
Each special purpose elevator	((103.00)) <u>105.90</u>
Each private residence elevator installed in other than a private residence	((103.00)) <u>105.90</u>
Each casket lift	((85.60)) <u>88.00</u>
Each sidewalk freight elevator	((85.60)) <u>88.00</u>
Each hand-powered manlift or freight elevator	((58.00)) <u>59.60</u>
Each boat launching elevator	((85.60)) <u>88.00</u>
Each auto parking elevator	((85.60)) <u>88.00</u>

Each moving walk	((85.60)) <u>88.00</u>
Duplication of a damaged, lost or stolen operating permit	((10.30)) <u>10.50</u>

Between 91 and 180 days	((257.50)) <u>264.70</u>
Between 181 and 270 days	((412.10)) <u>423.70</u>
Between 271 and 360 days	((515.10)) <u>500.00</u>
Each 30 days after 360 days	((515.10)) <u>500.00</u>

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-96-01070 What are the civil (monetary) penalties for violating the conveyance permit and operation requirements of chapter 70.87 RCW and this chapter? (1) Any licensee, installer, owner or operator of a conveyance who violates a provision of chapter 70.87 RCW or this chapter shall be subject to the following civil penalties:

- (a) Operation of a conveyance without a permit:
 - First violation..... ~~\$((154.50))~~
158.80
 - Second violation
 - Each additional violation
- (b) Installation of a conveyance without a permit:
 - First violation..... ~~\$((154.50))~~
158.80
 - Second violation
 - Each additional violation
- (c) Relocation of a conveyance without a permit:
 - First violation..... ~~\$((154.50))~~
158.80
 - Second violation
 - Each additional violation
- (d) Alteration of a conveyance without a permit:
 - First violation..... ~~\$((154.50))~~
158.80
 - Second violation
 - Each additional violation
- (e) (i) Operation of a conveyance for which the department has issued a red tag or has revoked or suspended an operating permit or operation of a decommissioned elevator..... ~~\$((515.10))~~
500.00
 - (ii) Removal of a red tag from a conveyance
- (f) Failure to comply with a correction notice:
 - Within 90 days..... ~~\$((403.00))~~
105.90

- Note: Penalties (~~(cumulate)~~) are cumulative
- (g) Failure to submit official written notification that all corrections have been completed:
 - Within 90 days..... ~~\$((403.00))~~
105.90
 - Between 91 and 180 days
 - Between 181 and 270 days
 - Between 271 and 360 days
 - Each 30 days after 360 days

- Note: Penalties (~~(cumulate)~~) are cumulative
- (h) Failure to notify the department of each accident to a person requiring the services of a physician or resulting in a disability exceeding one day may result in a ~~\$((515.10))~~ 500.00 penalty per day. The conveyance must be removed from service until the department authorizes the operation of the conveyance. This may require an inspection and the applicable fees will be applied. Failure to remove the conveyance from service may result in an additional ~~\$((515.10))~~ 500.00 penalty per day.

(2) A violation as described in subsection (1)(a), (b), (c), and (d) of this section will be a "second" or "additional" violation only if it occurs within one year of the first violation.

(3) The department must serve notice by certified mail to an installer, licensee, owner, or operator for a violation of chapter 70.87 RCW, or this chapter.

AMENDATORY SECTION (Amending WSR 05-23-002, filed 11/3/05, effective 12/4/05)**WAC 296-150C-3000 Commercial coach fees.**

INITIAL FILING FEE	\$(32.30) <u>33.20</u>
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	\$(222.80) <u>229.00</u>
INITIAL FEE - ONE YEAR DESIGN	\$(91.20) <u>93.70</u>
RENEWAL FEE	\$(38.60) <u>39.60</u>
RESUBMIT FEE	\$(65.10) <u>66.90</u>
ADDENDUM (Approval expires on same date as original plan)	\$(65.10) <u>66.90</u>
ELECTRONIC PLAN SUBMITTAL FEE \$4.90 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW (Plan review for educational, institutional or health care facilities and other buildings)	
Electrical Plan submission fee	\$(65.10) <u>66.90</u>
Service/feeder Ampacity:	
0 - 100	\$(28.80) <u>29.60</u>
101 - 200	\$(35.90) <u>36.90</u>
201 - 400	\$(67.40) <u>69.30</u>
401 - 600	\$(79.50) <u>81.70</u>
601 - 800	\$(102.50) <u>105.30</u>
801 - 1000	\$(125.40) <u>128.90</u>
Over 1000	\$(136.10) <u>139.90</u>
Over 600 volts surcharge	\$(21.50) <u>22.10</u>
Thermostats:	
First	\$(12.70) <u>13.00</u>
Each additional	<u>3.00</u>
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$(11.60) <u>11.90</u>
Each additional circuit or zone	<u>2.00</u>
Generators, refer to appropriate service/feeder ampacity fees	
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$(77.10) <u>79.20</u>
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders Ampacity	((207)) <u>212.80</u> plus
Service/feeder	\$(189.80) <u>195.10</u>
Additional Feeder	\$(36.00) <u>37.00</u>
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders	((207)) <u>212.80</u> plus
Service/feeder	\$(100.70) <u>103.50</u>
Additional Feeder	\$(25.70) <u>26.40</u>
MEDICAL GAS PLAN REVIEW:	
SUBMISSION FEE	\$(62.40) <u>64.10</u>
FIRST STATION	\$(62.40) <u>64.10</u>
EACH ADDITIONAL STATION	\$(22.80) <u>23.40</u>

RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	\$((99.30)) 102.10
INITIAL FEE - ONE YEAR DESIGN	\$((60.10)) 61.70
RENEWAL FEE	\$((60.10)) 61.70
ADDENDUM	\$((60.10)) 61.70
PLANS APPROVED BY PROFESSIONALS	
	\$((45.30)) 46.50
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	
	\$((12.20)) 12.50
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((65.10)) 66.90
TRAVEL (Per hour)	\$((65.10)) 66.90
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$((65.10)) 66.90
TRAVEL (Per hour*)	\$((65.10)) 66.90
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((97.40)) 100.10
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	\$((19.70)) 20.20
EACH ADDITIONAL SECTION	\$((12.20)) 12.50
((ALTERATION	\$32.30))
REISSUED-LOST/DAMAGED	\$((12.20)) 12.50
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((65.10)) 66.90
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$((12.20)) 12.50
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments	
** Per state guidelines	
*** Actual charges incurred	

AMENDATORY SECTION (Amending WSR 05-23-002, filed 11/3/05, effective 12/4/05)**WAC 296-150F-3000 Factory-built housing and commercial structure fees.**

INITIAL FILING FEE	\$((57.30)) 58.90
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (CODE CYCLE)	\$((282.80)) 290.70
INITIAL FEE - ONE YEAR DESIGN	\$((165.70)) 170.30
RENEWAL FEE	\$((57.30)) 58.90
RESUBMIT FEE	\$((82.80)) 85.10
ADDENDUM (Approval expires on same date as original plan.)	\$((82.80)) 85.10

ELECTRONIC PLAN SUBMITTAL FEE \$4.80 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW (Plan review for educational, institutional or health care facilities and other buildings):	
Electrical Plan submission fee	\$(63.10) <u>64.80</u>
Service/feeder Ampacity:	
0 - 100	\$(28.00) <u>28.70</u>
101 - 200	\$(34.90) <u>35.80</u>
201 - 400	\$(65.30) <u>67.10</u>
401 - 600	\$(77.10) <u>79.20</u>
601 - 800	\$(99.30) <u>102.10</u>
801 - 1000	\$(121.50) <u>124.90</u>
Over 1000	\$(131.80) <u>135.50</u>
Over 600 volts surcharge	\$(20.90) <u>21.40</u>
Thermostats:	
First	\$(12.40) <u>12.70</u>
Each additional	\$3.00
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$(11.30) <u>11.60</u>
Each additional circuit or zone	\$2.00
Generators, refer to appropriate service/feeder ampacity fees	
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) will be charged per hour or fraction of an hour*	\$(74.60) <u>76.70</u>
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders Ampacity	((207)) 212.80 plus
Service/feeder	\$(189.80) <u>195.10</u>
Additional Feeder	\$(36.00) <u>37.00</u>
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders	((207)) 212.80 plus
Service/feeder	\$(100.70) <u>103.50</u>
Additional Feeder	\$(25.70) <u>26.40</u>
MEDICAL GAS PLAN REVIEW:	
SUBMISSION FEE	\$(78.60) <u>80.80</u>
FIRST STATION	\$(78.60) <u>80.80</u>
EACH ADDITIONAL STATION	\$(28.60) <u>29.40</u>
RECIPROCAL PLAN REVIEW:	
INITIAL FEE-MASTER DESIGN	\$(126.50) <u>130.00</u>
INITIAL FEE-ONE YEAR DESIGN	\$(76.50) <u>78.60</u>
RENEWAL FEE	\$(76.50) <u>78.60</u>
ADDENDUM	\$(76.50) <u>78.60</u>
PLANS APPROVED BY DESIGN PROFESSIONALS	\$(57.30) <u>58.90</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$(14.80) <u>15.20</u>

DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((73.30)) <u>75.30</u>
TRAVEL (Per hour*)	\$((73.30)) <u>75.30</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$((73.30)) <u>75.30</u>
TRAVEL (Per hour*)	\$((73.30)) <u>75.30</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION	\$((233.80)) <u>240.30</u>
EACH ADDITIONAL SECTION	\$((21.20)) <u>21.70</u>
REISSUED-LOST/DAMAGED	\$((57.30)) <u>58.90</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((73.30)) <u>75.30</u>
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	\$((31.80)) <u>32.60</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$((11.90)) <u>12.20</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

AMENDATORY SECTION (Amending WSR 05-24-020, filed 11/29/05, effective 1/1/06)

WAC 296-150M-3000 Manufactured/mobile home fees.

INITIAL FILING FEE	\$((31.40)) <u>32.20</u>
DESIGN PLAN FEES:	
STRUCTURAL ALTERATION - MASTER DESIGN (CODE CYCLE)	\$((126.60)) <u>130.10</u>
STRUCTURAL ALTERATION - ONE YEAR DESIGN	\$((84.90)) <u>87.20</u>
RENEWAL FEE	\$((37.80)) <u>38.80</u>
RESUBMITTAL FEE	\$((63.10)) <u>64.80</u>
ADDENDUM (Approval expires on the same date as original plan.)	\$((63.10)) <u>64.80</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((4.80)) <u>4.90</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
INSPECTION	
MECHANICAL	
Heat Pump	\$31.80
Combination Heat Pump (new) and Furnace (replacement)	\$42.40
Air Conditioning	\$31.80
Combination Air Conditioning (new) and Furnace (replacement)	\$42.40
Furnace Installation (gas*** or electric)	\$31.80

Gas*** Piping	\$31.80
Wood Stove	\$31.80
Pellet Stove	\$31.80
Gas*** Room Heater	\$31.80
Gas*** Decorative Appliance	\$31.80
Range: Changing from electric to gas***	\$31.80
Gas*** Water Heater Replacement	\$21.20
Water Heater: Changing from electric to gas***	\$21.20
Any combination of Furnace, Range, and Water Heater changing from electric to gas*** and includes Gas Piping charge	\$63.70
ELECTRICAL	
Heat Pump	\$42.40
Heat Pump (when home is prewired for a heat pump)	\$10.60
Combination Heat Pump (new) and Furnace (replacement)	\$53.10
Air Conditioner	\$42.40
Air Conditioner (when home is prewired for an air conditioner)	\$10.60
Combination Air Conditioner (new) and Furnace (replacement)	\$53.10
Furnace Installation (gas or electric)	\$42.40
Wood Stove (if applicable)	\$42.40
Pellet Stove (if applicable)	\$42.40
Gas*** Room Heater (if applicable)	\$42.40
Gas*** Decorative Appliance (if applicable)	\$42.40
Range: Changing from gas*** to electric	\$42.40
Electric Water Heater Replacement	\$42.40
Electric Water Heater replacing Gas*** Water Heater	\$42.40
Each added or modified 120 volt circuit (maximum charge is two circuits)	\$42.40
Each added 240 volt circuit (for other than Heat Pumps, Air Conditioners, Furnaces, Water Heaters, Ranges, Hot Tubs or Spas)	\$42.40
Hot Tub or Spa (power from home electrical panel)	\$42.40
Replace main electrical panel	\$42.40
Low voltage fire/intrusion alarm	\$42.40
Fire Safety	\$42.40
Any combination of Furnace, Range and Water Heater changing from electric to gas***	\$42.40
PLUMBING	
Fire sprinkler system (also requires a plan review)	\$21.20
Each added fixture	\$21.20
Replacement of water piping system (this includes two inspections)	\$95.60
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	\$42.40
Reroofs (may require a plan review)	\$74.30
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	\$74.30
Other structural changes (may require a plan review)	\$74.30
Fire Safety (may also require an electrical fire safety inspection)	\$42.40
MISCELLANEOUS	
Other structural changes (may require a plan review)	\$74.30
Plan Review	\$84.90
OTHER REQUIRED INSPECTIONS (Per hour*)	\$58.40
ALL REINSPECTIONS (Per hour*)	\$58.40
Refund	\$10.60
INSIGNIA FEES:	
ALTERATION	\$10.60
FIRE SAFETY CERTIFICATE	\$10.60
REISSUED - LOST/DAMAGED	\$10.60

IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	\$((28-70)) 29.50
Second and succeeding inspections of unlabeled sections (Per hour*)	\$((63-10)) 64.80
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (Per hour*separate from other fees)	\$((63-10)) 64.80
Red tag removal at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$((63-10)) 64.80
Increased frequency surveillance (Per hour* plus travel time* and mileage**)	\$((63-10)) 64.80
Attendance at manufacturers training classes (Per hour* only)	\$((63-10)) 64.80
Subpart "I" investigations (Per hour* plus travel time* and mileage**)	\$((63-10)) 64.80
Alterations to a labeled unit (Per hour* plus travel time* and mileage**)	\$((63-10)) 64.80
IPIA Issues/Responses (Per hour* Plus travel time* and mileage**)	\$((63-10)) 64.80
Monthly surveillance during a regularly scheduled IPIA audit (Per hour*plus travel time* and mileage**)	\$((63-10)) 64.80
Monthly surveillance at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$((63-10)) 64.80
Plant certifications, recertifications and addenda updates (Per hour* plus travel time* and mileage** per each inspector)	\$((63-10)) 64.80
Response to HBT Audit during a regularly scheduled IPIA audit (Per hour*)	\$((63-10)) 64.80
Response to HBT Audit at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time*and mileage**)	\$((63-10)) 64.80
Alternative construction (AC) letter inspections at placement site (Per hour* plus travel time*and mileage**)	\$((63-10)) 64.80
Replacement of HUD labels (Per hour* plus travel time* and mileage**)	\$((63-10)) 64.80
State Administrative Agency (SAA) inspection fee (Per hour* plus travel time* and mileage**)	\$((63-10)) 64.80
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour plus travel time* and mileage**)	\$((58-40)) 60.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$11.90
VARIANCE INSPECTION FEE	\$84.90
HOMEOWNER REQUESTED INSPECTION	\$84.90
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	\$84.90
DEMOLITION OF A MOBILE/MANUFACTURED HOME	\$84.90
NOTE: Local jurisdictions may have other fees that apply.	
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Gas means all gases; natural, propane, etc.	

AMENDATORY SECTION (Amending WSR 05-12-032, filed 5/24/05, effective 6/30/05)

WAC 296-150T-3000 Factory-built temporary worker housing fees.

INITIAL FILING FEE	\$((45-30)) 46.50
DESIGN PLAN FEES:	
INITIAL ONE YEAR DESIGN	\$((130-70)) 134.30
RENEWAL FEE	\$((45-30)) 46.50
RESUBMIT FEE	\$((65-10)) 66.90
ADDENDUM (Approval expires on same date as original plan)	\$((65-10)) 66.90
ELECTRONIC PLAN SUBMITTAL FEE \$4.80 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$((77-20)) 79.30
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$((12-20)) 12.50

DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$(65.10) <u>66.90</u>
TRAVEL (Per hour)*	\$(65.10) <u>66.90</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$(65.10) <u>66.90</u>
TRAVEL (Per hour*)	\$(65.10) <u>66.90</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION	\$(183.20) <u>188.30</u>
EACH ADDITIONAL SECTION	\$(17.80) <u>18.30</u>
REISSUED-LOST/DAMAGED	\$(45.30) <u>46.50</u>
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders Ampacity	(207) <u>212.80</u> plus
Service/feeder	\$(189.80) <u>195.10</u>
Additional Feeder	\$(36.00) <u>37.00</u>
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders	(207) <u>212.80</u> plus
Service/feeder	\$(100.70) <u>103.50</u>
Additional Feeder	\$(25.70) <u>26.40</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$(65.10) <u>66.90</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free per year)	\$(12.20) <u>12.50</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments	
** Per state guidelines	
*** Actual charges incurred	

AMENDATORY SECTION (Amending WSR 05-23-002, filed 11/3/05, effective 12/4/05)

WAC 296-150V-3000 Conversion vendor units and medical units—Fees.

INITIAL FILING FEE	\$(32.30) <u>33.20</u>
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	\$(222.80) <u>229.00</u>
INITIAL FEE - ONE YEAR DESIGN	\$(91.20) <u>93.70</u>
RENEWAL FEE	\$(38.90) <u>39.90</u>
RESUBMIT FEE	\$(65.10) <u>66.90</u>
ADDENDUM (Approval expires on same date as original plan)	\$(65.10) <u>66.90</u>
ELECTRONIC PLAN SUBMITTAL FEE \$4.80 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	

ELECTRICAL PLAN REVIEW (Plan review for educational, institutional or health care facilities and other buildings)	
Electrical plan submission fee	\$((65.10)) <u>66.90</u>
Service/feeder ampacity:	
0 - 100	\$((28.80)) <u>29.60</u>
101 - 200	\$((35.90)) <u>36.90</u>
201 - 400	\$((67.40)) <u>69.30</u>
401 - 600	\$((79.50)) <u>81.70</u>
601 - 800	\$((102.50)) <u>105.30</u>
801 - 1000	\$((125.40)) <u>128.90</u>
Over 1000	\$((136.10)) <u>139.90</u>
Over 600 volts surcharge	\$((21.50)) <u>22.10</u>
Thermostats:	
First	\$((12.70)) <u>13.00</u>
Each additional	\$3.00
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$((11.60)) <u>11.90</u>
Each additional circuit or zone	\$2.00
Generators, refer to appropriate service/feeder ampacity fees	
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$((77.10)) <u>79.20</u>
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	\$((99.30)) <u>102.10</u>
INITIAL FEE - ONE YEAR DESIGN	\$((60.10)) <u>61.70</u>
RENEWAL FEE	\$((60.10)) <u>61.70</u>
ADDENDUM	\$((60.10)) <u>61.70</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$((12.20)) <u>12.50</u>
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((65.10)) <u>66.90</u>
TRAVEL (Per hour)*	\$((65.10)) <u>66.90</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((97.40)) <u>100.10</u>
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$((65.10)) <u>66.90</u>
TRAVEL (Per hour*)	\$((65.10)) <u>66.90</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	

PARKING***	
AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	\$((18.80)) 19.30
((ALTERATION	\$32.30))
REISSUED-LOST/DAMAGED	\$((12.20)) 12.50
EXEMPT	\$((32.30)) 33.20
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders Ampacity	((207)) 212.80 plus
Service/feeder	\$((189.80)) 195.10
Additional Feeder	\$((36.00)) 37.00
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders	((207)) 212.80 plus
Service/feeder	\$((100.70)) 103.50
Additional Feeder	\$((25.70)) 26.40
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((65.10)) 66.90
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$((12.20)) 12.50
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

AMENDATORY SECTION (Amending WSR 05-11-061, filed 5/17/05, effective 6/30/05)

WAC 296-400A-045 What fees will I have to pay? The following are the department's plumbers fees:

(1) Fees related to journeyman and specialty plumber certification:

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Examination application	Per examination	\$((118.70)) 122.00
Reciprocity application*	Per application	\$((118.70)) 122.00
Trainee certificate**	One year	\$((35.50)) 36.50
Temporary permit (not applicable for backflow assembly maintenance and repair specialty)	90 days	\$((59.10)) 60.70
Journeyman or residential specialty certificate***	Two years (fee may be prorated based on months)	\$((95.10)) 97.70
Backflow assembly maintenance and repair specialty certificate	Two years (fee may be prorated based on months)	\$((65.70)) 67.50
Medical gas endorsement application	Per application	\$((43.80)) 45.00
Medical gas endorsement***	One year	\$((32.70)) 33.60
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.
Reinstatement fee for residential and journeyman certificates		\$((190.50)) 195.80
Reinstatement fee for backflow assembly maintenance and repair specialty certificates		\$((109.70)) 112.70
Replacement fee for all certificates		\$((16.20)) 16.60

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Refund processing fee		\$((25.70)) <u>26.40</u>
Unsupervised trainee endorsement		\$((25.70)) <u>26.40</u>
Inactive status fee		\$((25.70)) <u>26.40</u>
Certified letter fee		\$((25.70)) <u>26.40</u>
Continuing education new course fee*****		\$((154.50)) <u>158.80</u>
Continuing education renewal course fee*****		\$((77.20)) <u>79.30</u>
Continuing education classes provided by the department		\$12 per continuing education training hour \$8 per continuing education training hour for correspondence and internet courses

- * Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement.
- ** The trainee certificate shall expire one year from the date of issuance and must be renewed on or before the date of expiration.
- *** This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birth date.
The annual renewal of a Medical Gas Piping Installer Endorsement shall include a continuity affidavit verifying that brazing work has been performed biannually.
- **** This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement. **This fee is not paid to the department.**
- ***** This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**
- ***** This fee is for a three-year period or code cycle.

- (2) If your birth year is:
 - (a) In an even-numbered year, your certificate will expire on your birth date in the next even-numbered year.
 - (b) In an odd-numbered year, your certificate will expire on your birth date in the next odd-numbered year.

Submit Written Comments to: Sally Elliott, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by March 23, 2006.

Assistance for Persons with Disabilities: Contact Sally Elliott by March 10, 2006, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This CR-102 continuance is being filed in order to change the public hearing date. The new public hearing date is March 23, 2006, at 8:30 a.m. in Tumwater at the department of labor and industries

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 49.12 RCW and chapter 499, Laws of 2005 (SSB 5850).

Statute Being Implemented: Chapter 49.12 RCW.

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: Rich Ervin, Tumwater, (360) 902-5310; Implementation and Enforcement: Patrick Woods, Tumwater, (360) 902-6348.

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.

February 14, 2006
Gary Weeks
Director

WSR 06-05-089
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed February 14, 2006, 1:07 p.m.]

Continuance of WSR 06-03-109.
Preproposal statement of inquiry was filed as WSR 05-13-147.

Title of Rule and Other Identifying Information: Family care, chapter 296-130 WAC.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., S117, Tumwater, WA, on March 23, 2006, at 8:30 a.m.

Date of Intended Adoption: April 18, 2006.

WSR 06-05-097
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed February 14, 2006, 4:10 p.m.]

Original Notice.

Title of Rule and Other Identifying Information: Washington blueberry commission marketing order, chapter 16-550 WAC.

Hearing Location(s): WSU Research and Extension Center, Allmendinger Center, 7612 Pioneer Way East, Puyallup, WA, on March 30, 2006, at 1:00 p.m.

Date of Intended Adoption: August 14, 2006.

Submit Written Comments to: Deborah Axelson, Commodity Commission Coordinator, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, e-mail daxelson@agr.wa.gov, fax (360) 902-2092, by March 30, 2006, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Rochelle Painter at (360) 902-2060, by March 20, 2006, TTY (360) 902-1996.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During past legislative sessions, significant amendments were made to the Washington blueberry commission's enabling statute, chapter 15.65 RCW. These statutory changes prompted the proposed amendments to chapter 16-550 WAC. The proposed amendments expand the commission's policy and purpose statements, update the definitions, update the commission member selection process, add additional power and duties to benefit the industry, update meeting and administrative procedures and expand the commission's information and education rule. These proposed amendments are intended to achieve consistency with the statute, as well as, improve the readability and clarity of the marketing order. The following marketing order sections are affected by the proposed amendments:

New sections WAC 16-550-005 Marketing order for Washington blueberries—Policy statement and 16-550-006 Marketing order purposes; amending WAC 16-550-010 Definitions, 16-550-020 Blueberry commodity board, 16-550-040 Assessments and collections and 16-550-060 Termination of order; and repealing WAC 16-529-030 Marketing order purposes.

Reasons Supporting Proposal: The proposed amendments are intended to make the marketing order consistent with the commodity commission enabling statute, chapter 15.65 RCW, and to implement the petition received from the Washington blueberry commission in accordance with RCW 15.65.050.

Statutory Authority for Adoption: RCW 15.65.047, 15.65.050, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 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: Any rule proposal that results from this rule-making process will not be adopted unless the proposed rules are also approved in a referendum of affected blueberry producers conducted pursuant to chapter 15.65 RCW.

Name of Proponent: Washington blueberry commission, governmental.

Name of Agency Personnel Responsible for Drafting: Deborah Axelson, Olympia, Washington, (360) 902-1802; Implementation and Enforcement: Washington Blueberry Commission, Bow, Washington, (360) 766-6150, and Department of Agriculture, Olympia, Washington, (360) 902-1802.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Any adoption of amendments to chapter 16-550 WAC would ultimately be

determined by a referendum vote of the affected parties. A formal small business economic impact statement under chapter 19.85 RCW is not required because of the exemption granted in RCW 15.65.570(2).

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington blueberry commission are not named agencies in RCW 34.05.328 (5)(a)(i).

February 14, 2006
William E. Brookreson
Deputy Director

NEW SECTION

WAC 16-550-005 Marketing order for Washington blueberries—Policy statement. (1) The marketing of blueberries within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that its blueberries be properly promoted by:

(a) Enabling producers of blueberries to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the blueberries they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of blueberries within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the blueberry industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that blueberries be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's blueberries.

(b) Increase the sale and use of Washington state's blueberries in local, domestic, and foreign markets.

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's blueberries.

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's blueberries and products.

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of blueberries produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through the adoption of this marketing order.

(4) The Washington state blueberry commodity board exists primarily for the benefit of the people of the state of Washington and its economy, and with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to blueberries under the provisions of this marketing order.

NEW SECTION

WAC 16-550-006 Marketing order purposes. This marketing order is to promote the general welfare of the state

and for the purpose of maintaining existing markets or creating new or larger local, domestic, and foreign markets; or increasing production efficiency, ensuring a fair regulatory environment; or increasing per capita consumption of blueberries in Washington state. The Washington state blueberry commodity board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

(1) To carry out the purposes of the order, the board may provide for a program in one or more of the following areas:

(a) Establish plans and conduct programs for marketing, sales, promotion and/or other programs for advertising, sales, promotion and/or other programs for maintaining present markets and/or creating new or larger markets for blueberries. Such programs shall be directed toward increasing the sale of blueberries without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of blueberries nor disparage the quality, value, sale or use of any other agricultural commodity. The board may also engage in cooperative efforts in the domestic or foreign marketing of blueberries.

(b) Provide for research in the production, processing, irrigation, transportation, handling, and/or marketing of blueberries and expend the necessary funds for such purposes. Insofar as practicable, research shall be carried on by experiment stations of Washington State University, but, if in the judgment of the board, said experiment stations do not have the facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the board.

(c) Provide by rules for:

(i) Establishing uniform labels and labeling requirements for blueberries or any products thereof, requiring producers, handlers and other persons to conform to standards for the placing of labels, trademarks, insignia or brands on containers or packages: Provided, That all licensed blueberry dealers and brokers are entitled to use on the face of their product any particular trademark, insignia, brand or label that they may now have or will have. That established brands, labels, trademarks or insignias may be properly used in selling or commercially disposing of blueberries and blueberry products or in offering the same for sale, advertising and/or delivering said blueberries or blueberry products;

(ii) Providing for inspection and enforcement to ascertain and effectuate compliance.

(d) The board may authorize use of any money received and of any persons employed thereunder for legal proceedings, of any type and in the name of any person, directed to enforcement of this or any other law in force in the state of Washington relating to the prevention of unfair trade practices.

(e) Conduct programs for the purpose of providing information and education including:

(i) Marketing information and services for producers of blueberries for the verification of grades, standards, weights, tests, and sampling of quality and quantity of blueberries purchased by handlers from affected producers.

(ii) Information and services enabling producers to meet their resource conservation objectives.

(iii) Blueberry-related education and training.

(f) Subject to the provisions of the act, provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of blueberries produced in Washington state to any elected official or officer or employee of any agency.

(2) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for advertising and promotion of blueberries.

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of the affected commodity may be encouraged, expanded, improved, or made more efficient.

AMENDATORY SECTION (Amending Order 2068, filed 12/13/90, effective 1/13/91)

WAC 16-550-010 Definitions of terms. Definitions for terms used in this chapter are also found in chapter 15.65 RCW, Washington State Agricultural Commodity Boards Act. For the purpose of this marketing order, the following additional definitions shall apply:

(1) "Director" means the director of agriculture of the state of Washington or his or her duly appointed representative.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Act" means the Washington State Agricultural ~~((Enabling Act of 1964))~~ Commodity Boards Act or chapter 15.65 RCW.

(4) "Person" means any ~~((person))~~ individual, firm, ~~((association or))~~ corporation, limited liability company, trust, association, partnership, society or any other organization of individuals, or any unit or agency of local or state government.

(5) "Affected producer" or "producer" means any person who produces blueberries in commercial quantities in the state of Washington, or who sells or stores blueberries in the state of Washington for fresh market or for processing. "To produce" means to act as a producer. For the purposes of the blueberry marketing order, "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(6) "Commercial quantity" means any blueberries produced, or stored, for a market by a producer in any calendar year.

(7) "Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing, storing, or distributing blueberries not produced by him/her. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(8) "Blueberry commodity board" hereinafter referred to as "board" or "commission" means the commodity board formed under the provisions of WAC 16-550-020 of this blueberry order.

(9) "Blueberries" means and includes all kinds, varieties, and hybrids of "vaccinium corym bosum" and "vaccinium australe" grown and marketed in the state of Washington.

(10) "Marketing season" or "fiscal year" means the twelve-month period beginning ~~((with July))~~ January 1 ~~((of any year))~~ and ending ~~((with the last day of June following))~~ December 31, both dates being inclusive.

(11) "Producer-handler" means any person who acts both as a producer and as a handler with respect to blueberries. A producer-handler shall be deemed to be a producer with respect to the blueberries which he/she produces and a handler with respect to the blueberries which he/she handles, including those produced by himself/herself.

(12) "Affected area" means the state of Washington.

(13) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(14) "Affected unit" means one pound net of blueberries.

AMENDATORY SECTION (Amending WSR 00-10-022, filed 4/24/00, effective 5/25/00)

WAC 16-550-020 Blueberry commodity board. (1) **Administration.** The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of seven members. Six members shall be affected producers appointed or elected as provided in this ~~((article))~~ section. The director shall appoint one member of the board who is neither an affected producer nor a handler to represent the ~~((department and the public))~~ director. The position representing the director shall be a voting member.

(i) Director-appointed affected producer positions on the board shall be designated as positions two, four and six.

(ii) Elected affected producer positions on the board shall be designated as positions one, three and five.

(iii) The position representing the director who is neither an affected producer nor a handler shall be designated as position seven.

(b) For the purpose of nomination, appointment, and election of producer members of the board, the affected area shall be the entire state of Washington.

(3) **Board membership qualifications.** The ~~((affected))~~ producer members of the board ~~((shall))~~ must be practical producers of blueberries and ~~((shall))~~ each must be a citizen~~((s))~~ and resident~~((s))~~ of ~~((the))~~ this state ~~((of Washington))~~, over the age of ~~((twenty-five))~~ eighteen years, ~~((each of whom is and has))~~. Each producer board member must be and have been actually engaged in producing blueberries within the state of Washington for a period of five years and has, during that time, derived a substantial portion of his/her income therefrom and ~~((who))~~ is not engaged in business, directly or indirectly, as a handler or other dealer.

(4) **Term of office.**

(a) The term of office for members of the board shall be three years and one-third of the membership as nearly as possible shall be elected each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions

one through six and the member ~~((appointed by))~~ representing the director position seven.

(c) The term of office for the initial board members shall be as follows:

Positions one and two - until June 30, 1970

Positions three and four - until June 30, 1971

Positions five, six and seven - until June 30, 1972

(d) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members in positions two, four and six shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order.

(5) ~~Nomination (and election) of elected or director-appointed board members.~~

(a) Each year the director shall call ~~((for))~~ a nomination meeting for elected and/or director-appointed producer board members. ~~((Such))~~ The meeting(s) shall be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(b) Notice of ~~((every such))~~ a nomination meeting shall be published in a newspaper of general circulation within the major production area not less than ten days in advance of the date of ~~((such))~~ the meeting and, in addition, written notice of every ~~((such))~~ meeting shall be given to all affected producers according to the list maintained by the ~~((director pursuant to RCW 15.65.200 of the act))~~ board pursuant to RCW 15.65.295.

(c) Nonreceipt of notice by any interested person shall not invalidate the proceedings at ~~((such))~~ the nomination meeting.

(d) Any qualified affected producer may be nominated orally for membership on the board at ~~((such))~~ the nomination meeting(s). Nominations may also be made within five days after ~~((any such))~~ the nomination meeting by written petition filed with the director, signed by not less than five affected producers.

~~((b) At the inception of this order, nominations may be made at the issuance hearing.))~~ (e) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

(6) Election or advisory vote of board members.

~~((Members of the board shall be elected by secret mail ballot within the month of May))~~ An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of May. Each affected producer shall be entitled to one vote. ~~((Affected producer))~~ Elected members of the board shall be elected by a majority of the votes cast by the affected producers. ~~((Each affected producer shall be entitled to one vote.))~~

(b) If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) An advisory vote shall be conducted for producer board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a

board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the major production area not less than ten days in advance of the date of ~~((such))~~ the election or advisory vote. Not less than ten days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of such affected producers maintained by the ~~((director in accordance with RCW 15.65.200))~~ board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications.

(e) Nonreceipt of a ballot by any affected producer shall not invalidate the election or advisory vote of any board member.

(7) Vacancies ~~((prior to election))~~.

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position became vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(8) **Quorum.** A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) **Board compensation.** No member of the board shall receive any salary except that each member may be compensated in accordance with RCW 43.03.230 and shall be reimbursed for subsistence, lodging, and mileage in accordance with RCW 43.03.050 and 43.03.060, as provided for in RCW 15.65.270. The board may adopt, by resolution, provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from monies collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. Such expenses and costs may be paid by check, draft or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

(f) To establish a "blueberry board marketing revolving fund" and ~~((such))~~ the fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys and other financial transactions made and done pursuant to this order. ~~((Such))~~ Records, books and accounts shall be audited at least every five years subject to procedures and methods lawfully prescribed by the state auditor. ~~((Such))~~ Books and accounts shall be closed as of the last day of each fiscal year of the state of Washington. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for ~~((such))~~ a bond or bonds shall be paid by the board from assessments collected. ~~((Such))~~ A bond shall not be necessary if any ~~((such))~~ board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. At least thirty days prior to the beginning of its fiscal year, the board shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books and minutes of board meetings shall be kept at such headquarters.

(k) To adopt rules ~~((and regulations))~~ of a technical or administrative nature for the operation of the board, subject to the provisions of chapter 34.04 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act, along with the necessary authority and procedure for obtaining such information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(p) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW.

(q) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(r) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of blueberries.

(s) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general.

(t) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(u) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of blueberries including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each affected producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(w) To maintain a list of the names and addresses of persons who handle blueberries within the affected area and data on the amount and value of the blueberries handled for a minimum three-year period by each person pursuant to RCW 15.65.280.

(x) To maintain a list of names and addresses of all affected persons who produce blueberries and the amount, by unit, of blueberries produced during the past three years pursuant to RCW 15.65.295.

(y) To maintain a list of all persons who handle blueberries and the amount of blueberries handled by each person during the past three years pursuant to RCW 15.65.295.

(z) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(aa) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

(11) Procedures for board.

(a) The board shall hold regular meetings, at least quarterly, with the time and date thereof to be fixed by resolution of the board and the meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days

prior to the meeting by written notice to each producer and by regular wire news services and radio-television press.

(c) The board shall establish by resolution, the time, place and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice to a member of any special meeting may be waived by a waiver thereof ~~((by each))~~ from that member of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

AMENDATORY SECTION (Amending WSR 01-05-047, filed 2/15/01, effective 3/18/01)

WAC 16-550-040 Assessments and collections. (1) Assessments.

(a) The annual assessment on all varieties of blueberries shall be four-tenths of a cent per affected unit (pound).

(b) For the purpose of collecting assessments, the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment.

(c) Subsequent to the first sale no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped or sold, both inside and outside the state.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of ~~((the))~~ this order during or with respect to any season or year, may be refunded on a pro rata basis at the close of ~~((such))~~ the season or year or at the close of ~~((such))~~ a longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of ~~((such))~~ this marketing ~~((agreement or))~~ order, to all persons from whom ~~((such))~~ moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate ~~((such))~~ the policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in ~~((such))~~ a specified amount as may be determined by the board pursuant to the provisions of the act and the order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of ~~((such))~~ the assessment or ~~((such))~~ other sum on or before the date due, the board may, and is hereby authorized, to add to ~~((such))~~ the unpaid assessment or sum an amount not exceeding ten percent of the ~~((same))~~ unpaid assessment to defray the cost of enforcing the collecting of ~~((the same))~~ it. In the event of failure of ~~((such))~~ a person or persons to pay any ~~((such))~~ due and payable assessment or other ~~((such))~~ sum, the board may bring a civil action against ~~((such))~~ the person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent ~~((thereon))~~, and ~~((such))~~ the action shall be tried

and judgment rendered as in any other cause of action for debt due and payable.

AMENDATORY SECTION (Amending Order 1116, filed 5/14/69, effective 6/15/69)

WAC 16-550-060 Termination of the order. ~~((The order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers favor or assent such dissolution. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether such termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of the affected producers file written application with him for such termination. The termination shall not, however, become effective until the expiration of the marketing season-))~~ Termination shall be accomplished pursuant to RCW 15.65.183 through 15.65.193.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-550-030 Marketing order purposes.

WSR 06-05-103

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed February 14, 2006, 4:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-136.

Title of Rule and Other Identifying Information: Part 2 of 2; new sections WAC 388-550-5125 Payment method—PIIDSH and 388-550-5425 Upper payment limit (UPL) for inpatient hospital services; and amending WAC 388-550-5150 Payment method—GAUDSH, 388-550-5200 Payment method—SRHAPDSH method, 388-550-5210 Payment method—SRHIAAPDSH, 388-550-5220 Payment method—NRHIAAPDSH, 388-550-5400 Payment method—PHDSH, and 388-550-5450 Supplemental distributions to approved trauma service centers.

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 behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 21, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 22, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., March 21, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 17, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules add language to clarify, update, and ensure clear and consistent policies for the certified public expenditure (CPE) program, the disproportionate share hospital (DSH) program, and the trauma program; add an additional requirement that peer group E hospitals are not eligible for certain DSH programs; add a new section that identifies the criteria for considering a hospital's eligibility for the psychiatric indigent inpatient disproportionate share hospital (PIIDSH) payment and that PIIDSH payments are determined using a prospective payment method; replace "medical assistance administration" and "MAA" with "the department"; add language that requires hospitals to annually submit a copy of their charity and bad debt policy; repeal WAC 388-550-6800 and provide updated language in new section, WAC 388-550-5425 regarding the upper payment limit (UPL) for inpatient hospital services; and delete language that allows payment through the ratio of costs-to-charges (RCC) payment method when the department determines that the psychiatric services provided to a client eligible under a state-only administered program qualify for a special exemption.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Statute Being Implemented: RCW 74.08.090, 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: Kathy Sayre, P.O. Box 45533, Olympia, WA 98504-5533, (360) 725-1342; Implementation and Enforcement: Ayuni Wimpee, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1835.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on businesses affected by them. 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 Ayuni Wimpee, P.O. Box 45510, Health and Recovery Services Administration, Olympia, WA 98504-5510, phone (360) 725-1835, fax (360) 753-9152, e-mail wimpeah@dshs.wa.gov.

February 9, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-550-5125 Payment method—PIIDSH. (1) Effective July 1, 2003, a hospital is eligible for the psychiat-

ric indigent inpatient disproportionate share hospital (PIIDSH) payment if the hospital:

- (a) Meets the criteria in WAC 388-550-4900 (2)(b) through (4)(a);
- (b) Is an in-state or bordering city hospital;
- (c) Provides services to clients eligible under the psychiatric indigent inpatient (PII) program. See WAC 388-865-0217 for more information regarding the PII program; and
- (d) Qualifies under Section 1923(d) of the Social Security Act.

(2) The department determines the PIIDSH payment for each eligible hospital using a prospective payment method, in accordance with WAC 388-550-4800.

AMENDATORY SECTION (Amending WSR 03-13-055, filed 6/12/03, effective 7/13/03)

WAC 388-550-5150 Payment method—GAUDSH.

(1) ~~((The medical assistance administration (MAA) considers))~~ A hospital is eligible for the general assistance-unemployable disproportionate share hospital (GAUDSH) payment if the hospital:

- (a) Meets the criteria in WAC 388-550-4900 (2)(b) ~~((and))~~ through (4)(a);
- (b) Is an in-state or ~~((border area))~~ bordering city hospital;
- (c) Provides services to clients under the medical care services program; and
- (d) Has a low-income utilization rate (LIUR) of one percent or more.

(2) ~~((MAA))~~ The department determines the GAUDSH payment for each eligible hospital, using a prospective payment method, in accordance with WAC 388-550-4800, except that the payment is not reduced by the additional three percent specified in WAC 388-550-4800(4).

AMENDATORY SECTION (Amending WSR 04-12-044, filed 5/28/04, effective 7/1/04)

WAC 388-550-5200 Payment method—SRHAPDSH.

(1) The ~~((medical assistance administration (MAA)))~~ department makes small rural hospital assistance program disproportionate share hospital (SRHAPDSH) payments to qualifying small rural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for a SRHAPDSH payment, a hospital must:

- (a) Not be a peer group E hospital;
- (b) Meet the criteria in WAC 388-550-4900 (2)(b) ~~((and))~~ through (4)(a);
- ~~((b))~~ (c) Be an in-state hospital;
- ~~((c))~~ (d) Be a small rural hospital with fewer than seventy-five acute licensed beds; and
- ~~((d))~~ (e) For the SRHAPDSH program year to be implemented for state fiscal year (SFY) beginning July 1, 2002, the city or town must have a nonstudent population of fifteen thousand five hundred or less.

For each subsequent SFY, the nonstudent population requirement is increased cumulatively by two percent.

(3) ~~((MAA))~~ The department pays hospitals qualifying for SRHAPDSH payments from a legislatively appropriated

pool. ~~((MAA))~~ The department determines each hospital's individual SRHAPDSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the SRHAPDSH payment is to be made, ~~((MAA))~~ the department calculates each hospital's profitability margin based on the most recent, completed year-end data using audited financial statements from the hospital.

(b) ~~((MAA))~~ The department determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) ~~((MAA))~~ The department:

(i) Identifies the individual hospital's most recent, completed SFY Medicaid reimbursement amounts. These amounts are based on historical data considered to be complete; then

(ii) Multiplies the Medicaid reimbursement amount by the individual hospital's assigned profit factor (1.1 or 1.0) to identify a revised Medicaid reimbursement amount; then

(iii) Divides the revised Medicaid reimbursement amount by the sum of the revised Medicaid reimbursement amounts for all qualifying hospitals during the same period.

(4) ~~((MAA's))~~ The department's SRHAPDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for Medicaid clients and uninsured indigent patients for that hospital unless an exception is identified by federal regulation. ~~((MAA))~~ The department reallocates dollars as defined in the state plan.

AMENDATORY SECTION (Amending WSR 05-12-132, filed 6/1/05, effective 7/1/05)

WAC 388-550-5210 Payment method—~~((SRHAPDSH))~~ SRHIAPDSH.

(1) The ~~((medical assistance administration (MAA)))~~ department makes small rural hospital indigent ~~((adult))~~ assistance program disproportionate share hospital ~~((SRHAPDSH))~~ (SRHIAPDSH) payments to qualifying small rural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an ~~((SRHAPDSH))~~ SRHIAPDSH payment, a hospital must:

- (a) Not be a peer group E hospital;
- (b) Meet the criteria in WAC 388-550-4900 (2)(b) ~~((and))~~ through (4)(a);
- ~~((b))~~ (c) Be an in-state hospital that provided charity services to clients during the most recent, completed fiscal year;
- ~~((c))~~ (d) Be a small rural hospital with fewer than seventy-five acute licensed beds; and

~~((d))~~ (e) For state fiscal year (SFY) beginning July 1, 2003, be located in a city or town that has a nonstudent population of fifteen thousand eight hundred ten or less. For each subsequent SFY, the nonstudent population requirement is increased cumulatively by two percent.

(3) ~~((MAA))~~ The department pays hospitals qualifying for ~~((SRHAPDSH))~~ SRHIAPDSH payments from a legislatively appropriated pool. ~~((MAA))~~ The department deter-

mines each hospital's individual ~~((SRHIAAPDSH))~~ SRHI-APDSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the ~~((SRHIAAPDSH))~~ SRHIAPDSH payment is to be made, ~~((MAA))~~ the department calculates each hospital's profitability margin based on the most recent, completed year-end data using audited financial statements from the hospital.

(b) ~~((MAA))~~ The department determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) ~~((MAA))~~ The department:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's allowed charity charges; then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's charity costs; then

(iii) Multiplies the hospital's charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of revised costs by dividing its revised cost amount by the sum of the revised charity cost amounts for all qualifying hospitals during the same period.

(4) ~~((MAA's SRHIAAPDSH))~~ The department's SRHI-APDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for Medicaid clients and uninsured indigent patients for that hospital unless an exception is identified by federal regulation. ~~((MAA))~~ The department reallocates dollars as defined in the state plan.

AMENDATORY SECTION (Amending WSR 05-12-132, filed 6/1/05, effective 7/1/05)

WAC 388-550-5220 Payment method—~~((NRHIAAPDSH))~~ NRHIAPDSH. (1) The ~~((medical assistance administration (MAA)))~~ department makes nonrural hospital indigent ~~((adult))~~ assistance program disproportionate share hospital ~~((NRHIAAPDSH))~~ (NRHIAPDSH) payments to qualifying nonrural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an ~~((NRHIAAPDSH))~~ NRHIAPDSH payment, a hospital must:

(a) Not be a peer group E hospital;

~~((and))~~ through (4)(a);

~~((b))~~ (c) Be an in-state or bordering city hospital that provided charity services to clients during the most recent, completed fiscal year; and

~~((e))~~ (d) Be a hospital that does not qualify as a small rural hospital as defined in WAC 388-550-5210.

(3) ~~((MAA))~~ The department pays hospitals qualifying for ~~((NRHIAAPDSH))~~ NRHIAPDSH payments from a legislatively appropriated pool. ~~((MAA))~~ The department determines each hospital's individual ~~((NRHIAAPDSH))~~ NRHI-

APDSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the ~~((NRHIAAPDSH))~~ NRHIAPDSH payment is to be made, ~~((MAA))~~ the department calculates each hospital's profitability margin based on the most recent, completed year-end data using audited financial statements from the hospital.

(b) ~~((MAA))~~ The department determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) ~~((MAA))~~ The department:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's allowed charity charges; then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's charity costs; then

(iii) Multiplies the hospital's charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of the ~~((NRHIAAPDSH))~~ NRHIAPDSH revised costs by dividing the hospital's revised cost amount by the total charity costs for all qualifying hospitals during the same period.

(4) ~~((MAA's NRHIAAPDSH))~~ The department's NRHI-APDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for Medicaid clients and uninsured indigent patients for the hospital unless an exception is identified by federal regulation. ~~((MAA))~~ The department reallocates dollars as defined in the state plan.

AMENDATORY SECTION (Amending WSR 05-12-132, filed 6/1/05, effective 7/1/05)

WAC 388-550-5400 Payment method—PHDSH. (1) The ~~((medical assistance administration's (MAA's)))~~ department's public hospital disproportionate share hospital (PHDSH) program is a public hospital program for:

(a) Public hospitals located in the state of Washington that are:

(i) Owned by public hospital districts; and

(ii) Not certified by the department of health (DOH) as a critical access hospital;

(b) Harborview Medical Center; and

(c) University of Washington Medical Center.

(2) ~~((MAA))~~ The department pays hospitals eligible under this program a payment equal to the hospital's individual disproportionate share hospital (DSH) payment limit calculated according to WAC 388-550-4900. The resulting amount is multiplied by the federal matching assistance percentage in effect for Washington State at the time of the payment. This amount is sent to the hospital.

(3) Hospitals receiving payment ~~((#))~~ under this DSH program must certify that funds have been spent on uncompensated care at the hospital equal to or in excess of the payment amount before applying the federal matching assistance

percentage. ~~((Certified funds cannot include federal funds or money used to match federal funds.))~~

NEW SECTION

WAC 388-550-5425 Upper payment limit (UPL) payments for inpatient hospital services. (1) Each state fiscal year, in accordance with legislative direction and established prospective payment methods, the department creates an upper payment limit (UPL) payment pool that provides supplemental payments for inpatient hospital services to a hospital provider of Title XIX Medicaid services that is classified as either a:

(a) Washington state-owned or state-operated hospital; or

(b) Nonstate government-owned hospital.

(2) UPL payments for inpatient hospital services are subject to:

(a) Federal approval for federal matching funds; and

(b) A department analysis of the Medicare UPL for hospital payment.

(3) The department determines each payment year's UPL payment for inpatient hospital services by:

(a) Using the charge and payment data from the department's payment system for inpatient hospital services for the base year; and

(b) Calculating the cumulative difference between Medicare payments and Title XIX payments, including third party liability payment for all eligible hospitals during the most recent state fiscal year.

(4) UPL payments for inpatient hospital services:

(a) Are determined for participating eligible hospitals during each federal fiscal year;

(b) Are paid by the department on a periodic basis to one or more of the participating eligible hospitals; and

(c) Must be used by the receiving hospital(s) to improve health care services to low income patients.

AMENDATORY SECTION (Amending WSR 04-19-113, filed 9/21/04, effective 10/22/04)

WAC 388-550-5450 Supplemental distributions to approved trauma service centers. (1) The department's trauma care fund (TCF) is an amount legislatively appropriated to DSHS each biennium for the purpose of supplementing the ~~((medical assistance administration's (MAA's)))~~ department's payments to eligible trauma service centers for providing qualified trauma services to eligible Medicaid fee-for-service clients. Claims for trauma care provided to clients enrolled in ~~((MAA's))~~ the department's managed care programs are not eligible for supplemental distributions from the TCF.

(2) Beginning with trauma services provided after June 30, 2003, ~~((MAA))~~ the department makes supplemental distributions from the TCF to qualified hospitals, subject to the provisions in this section.

(3) To qualify for supplemental distributions from the TCF, a hospital must:

(a) Be designated or recognized by the department of health (DOH) as an approved Level 1, Level 2, or Level 3 adult or pediatric trauma service center ~~((No distinction is~~

~~made between a governmental and nongovernmental hospital));~~

(b) Meet the provider requirements in this section and other applicable WAC;

(c) Meet the billing requirements in this section and other applicable WAC;

(d) Submit all information ~~((MAA))~~ the department requires to ensure services are being provided; and

(e) Comply with DOH's Trauma Registry reporting requirements.

(4) Supplemental distributions from the TCF are:

(a) For qualified hospitals, determined as a percentage of a fixed amount ~~((for))~~ per quarter. Each eligible hospital's share per quarter is based on ~~((all of the following:~~

~~((i) The relative))~~ the amount paid by ~~((MAA))~~ the department to that hospital for inpatient and outpatient trauma care the hospital provides to Medicaid clients ~~((per))~~ during that quarter ~~((in a state fiscal year (SFY). MAA determines the amount of care provided to Medicaid clients by date of service, not date of payment; and~~

~~((ii) The amount paid by MAA to hospitals that receive transferred trauma cases, regardless of the clients' Injury Severity Score (ISS) (a summary rating system for traumatic anatomic injuries))), expressed as a percentage of the following total:~~

(i) The department's payments to Level 1, Level 2, and Level 3 trauma service centers for qualified Medicaid trauma cases in that quarter. The department determines the countable payment per quarter for trauma care provided to Medicaid clients based on date of service, not date of payment;

(ii) The department's payments to Level 1, Level 2, and Level 3 hospitals for trauma cases transferred in during that quarter. A Level 1, Level 2, or Level 3 hospital that receives a transferred trauma case from any lower level hospital is eligible for the enhanced payment, regardless of the client's Injury Severity Score (ISS). An ISS is a summary rating system for traumatic anatomic injuries; and

(iii) The department's payments to Level 2 and Level 3 hospitals for qualified trauma cases (those that meet or exceed the ISS criteria in subsection (4)(b) of this section) that are transferred to a higher level designated trauma service center during that quarter.

(b) Paid only for a Medicaid trauma case that meets:

(i) The ISS of thirteen or greater for an adult trauma patient (a client age fifteen or older);

(ii) The ISS of nine or greater for a pediatric trauma patient (a client younger than age fifteen); or

(iii) The conditions of subsection (4)(c) ~~((of this section are met)).~~

(c) Made to hospitals, as follows, for a trauma case that is transferred:

(i) ~~((The receiving hospital))~~ A hospital that receives the transferred trauma case qualifies for payment regardless of the ISS if the hospital is designated or recognized by DOH as an approved Level 1, Level 2, or Level 3 adult or pediatric trauma service center; ~~((and))~~

(ii) ~~((The transferring hospital))~~ A hospital that transfers the trauma case qualifies for payment only if:

(A) It is designated or recognized by DOH as an approved Level 2 or Level 3 adult or pediatric trauma service center; and

(b) The ISS requirements in (b)(i) or (b)(ii) of this subsection are met.

(iii) A hospital that DOH designates or recognizes as an approved Level 4 or Level 5 trauma service center does not qualify for supplemental distributions for transferred trauma cases, even when the transferred cases meet the ISS criteria in subsection (4)(b) of this section.

(d) Not funded by disproportionate share hospital (DSH) funds; and

(e) Not distributed by ~~((MAA))~~ the department to:

(i) Trauma service centers designated or recognized as Level 4 or Level 5; ~~((or))~~

(ii) Critical access hospitals (CAHs); or

(iii) Any hospital for follow-up surgical services related to the qualifying trauma incident but provided to the client after the client has been discharged for the initial qualifying injury.

~~(5) ((MAA makes supplemental distributions from the TCF to eligible hospitals as follows))~~ Distributions for an SFY are divided into five "quarters" and paid as follows:

~~(a) ((Quarterly payments are made, subject to the following:~~

~~(i))~~ (i)) Each quarterly distribution paid by the department from the TCF totals twenty percent of the amount designated by the department for that SFY;

(b) The first quarterly supplemental distribution from the TCF is made six months after the SFY begins;

~~((ii) Each quarterly supplemental distribution from the TCF totals twenty percent of the amount designated by MAA for that SFY. If claims data for any quarter indicate an insufficient number of paid claims, MAA may adjust the percentage to allow for an equitable distribution from the TCF for that quarter. See (4)(a) of this subsection.~~

~~(b) A final supplemental distribution from the TCF is:~~

~~(ii))~~ (c) Subsequent quarterly payments are made approximately every four months after the first quarterly payment is made, except as described in subsection (d);

(d) The "fifth quarter" final distribution from the TCF for the same SFY is:

(i) Made one year after the end of the SFY; ~~((and))~~

(ii) Based on the SFY that the TCF designated amount relates to; and

(iii) Distributed based on each eligible hospital's percentage of the total payments made by the department to all designated trauma service centers for qualified trauma cases during the relevant fiscal year.

(6) For purposes of the supplemental distributions from the TCF, all of the following apply:

(a) ~~((MAA))~~ The department may consider a request for a claim adjustment submitted by a provider only if the request is received by ~~((MAA))~~ the department within one year from the date of the initial trauma service;

(b) ~~((MAA))~~ The department does not allow any carry-over of liabilities for a supplemental distribution from the TCF after a date specified by ~~((MAA))~~ the department as the last date to make adjustments to a trauma claim for an SFY. WAC 388-502-0150(7) does not apply to TCF claims;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total amount of supplemental distributions from the TCF disbursed to eligible hospitals by ~~((MAA))~~ the department in any ~~((current))~~ biennium cannot exceed the amount appropriated by the legislature for that biennium. ~~((MAA))~~ The department has the authority to take whatever actions necessary to ensure ~~((MAA))~~ the department stays within the ~~((current))~~ TCF appropriation.

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

WSR 06-05-104

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed February 14, 2006, 4:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-136.

Title of Rule and Other Identifying Information: Part 1 of 2; amending WAC 388-550-3300 Hospital peer groups and cost caps, 388-550-4300 Hospitals and units exempt from the DRG payment method, 388-550-4600 Hospital selective contracting program, 388-550-4650 "Full cost" public hospital certified public expenditure (CPE) payment program, 388-550-4900 disproportionate share payments and 388-550-5000 Payment method—LIDSH; and repealing WAC 388-550-6800 Proportionate share payments for inpatient hospital services.

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 behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 21, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 22, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., March 21, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 17, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules add language to clarify, update, and ensure clear and consistent policies for the certified public expenditure (CPE) program, the disproportionate share hospital (DSH) program, and the trauma program; add an additional requirement that peer group E hospitals are not eligible for certain DSH programs; add a new section that identifies the criteria for considering a hospital's eligibility for the psychiatric indigent inpatient disproportionate share hospital (PIIDSH) payment and that

PIIDSH payments are determined using a prospective payment method; replace "medical assistance administration" and "MAA" with "the department"; add language that requires hospitals to annually submit a copy of their charity and bad debt policy; repeal WAC 388-550-6800 and provide updated language in new section, WAC 388-550-5425 regarding the upper payment limit (UPL) for inpatient hospital services; and delete language that allows payment through the ratio of costs-to-charges (RCC) payment method when the department determines that the psychiatric services provided to a client eligible under a state-only administered program qualify for a special exemption.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Statute Being Implemented: RCW 74.08.090, 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: Kathy Sayre, P.O. Box 45533, Olympia, WA 98504-5533, (360) 725-1342; Implementation and Enforcement: Ayuni Wimpee, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1835.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule and concluded that no new costs will be imposed on businesses affected by them. 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 Ayuni Wimpee, P.O. Box 45510, Health and Recovery Services Administration, Olympia, WA 98504-5510, phone (360) 725-1835, fax (360) 753-9152, e-mail wimpeah@dshs.wa.gov.

February 9, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-12-132, filed 6/1/05, effective 7/1/05)

WAC 388-550-3300 Hospital peer groups and cost caps. (1) For rate-setting purposes the department groups hospitals into peer groups and establishes cost caps for each peer group. The department sets hospital reimbursement rates at levels that recognize the costs of reasonable, efficient, and effective providers.

(2) The six ~~((medical assistance administration (MAA)))~~ hospital peer groups are:

- (a) Group A, rural hospitals;
- (b) Group B, urban hospitals without medical education programs;
- (c) Group C, urban hospitals with medical education program;
- (d) Group D, specialty hospitals or other hospitals not easily assignable to the other five groups;

(e) Group E, public hospitals participating in the "full cost" public hospital certified public expenditure (CPE) program; and

(f) Group F, critical access hospitals.

(3) ~~((MAA))~~ The department uses a cost cap at the seventieth percentile for hospitals in peer groups B and C. All other peer groups are exempt from the cost cap~~((-))s~~ for the following reasons:

(a) ~~((MAA exempts))~~ Peer group A hospitals ~~((from the cost cap))~~ because they are paid under the ratio of costs-to-charges (RCC) methodology for Medicaid claims.

(b) ~~((MAA exempts))~~ Peer group D hospitals ~~((from the cost cap))~~ because they are specialty hospitals without a common peer group on which to base comparisons.

(c) ~~((MAA exempts))~~ Peer group E hospitals ~~((from the cost cap))~~ because they are paid under the ~~((ratio of costs-to-charges(-)))~~RCC~~((+))~~ methodology for ~~((Medicaid and GAU))~~ inpatient claims.

(d) ~~((MAA exempts))~~ Peer group F hospitals ~~((from the cost cap))~~ because they are paid under the departmental weighted costs-to-charges (DWCC) methodology for Medicaid claims.

(4) ~~((MAA))~~ The department calculates ~~((a peer group's))~~ cost caps for peer groups B and C based on the hospitals' base period costs after subtracting:

(a) Indirect medical education costs, in accordance with WAC 388-550-3250(2), from the aggregate operating and capital costs of each hospital in the peer group; and

(b) The cost of outlier cases from the aggregate costs in accordance with WAC 388-550-3350(1).

(5) ~~((MAA))~~ The department uses the lesser of each individual hospital's calculated aggregate cost or the peer group's seventieth percentile cost cap as the base amount in calculating the individual hospital's adjusted cost-based conversion factor. After the peer group cost cap is calculated, ~~((MAA))~~ the department adds back to the individual hospital's base amount its indirect medical education costs and appropriate outlier costs, as determined in WAC 388-550-3350(2).

(6) In cases where corrections or changes in an individual hospital's base-year cost or peer group assignment occur after peer group cost caps are calculated, ~~((MAA))~~ the department updates the peer group cost caps involved only if the change in the individual hospital's base-year costs or peer group assignment will result in a five percent or greater change in the seventieth percentile of costs calculated for either its previous peer group category, its new peer group category, or both.

AMENDATORY SECTION (Amending WSR 05-12-132, filed 6/1/05, effective 7/1/05)

WAC 388-550-4300 Hospitals and units exempt from the DRG payment method. (1) Except when otherwise specified, inpatient services provided by hospitals and units that are exempt from the diagnosis-related group (DRG) payment method are reimbursed under the ratio of costs-to-charges (RCC) payment method described in WAC 388-550-4500.

(2) Subject to the restrictions and limitations listed in this section, the department exempts the following hospitals and

units from the DRG payment method for inpatient services provided to Medicaid-eligible clients:

(a) Peer group A hospitals, as described in WAC 388-550-3300(2). Exception: Inpatient services provided to clients eligible under the following programs are reimbursed through the DRG payment method:

- (i) General assistance programs; and
- (ii) Other state-only administered programs.

(b) Peer group E hospitals, as described in WAC 388-550-3300(2). See WAC 388-550-4650 for how the department calculates payment to Peer group E hospitals.

(c) Peer group F hospitals (critical access hospitals).

(d) Rehabilitation units when the services are provided in ~~((medical assistance administration (MAA)))~~ department-approved acute physical medicine and rehabilitation (acute PM&R) hospitals and designated distinct rehabilitation units in acute care hospitals.

~~((MAA))~~ The department uses the same criteria as the Medicare program to identify exempt rehabilitation hospitals and designated distinct rehabilitation units. Exception: Inpatient rehabilitation services provided to clients eligible under the following programs are covered and reimbursed through the DRG payment method:

- (i) General assistance programs; and
- (ii) Other state-only administered programs.

(e) Out-of-state hospitals excluding hospitals located in designated bordering cities as described in WAC 388-501-0175. Inpatient services provided in out-of-state hospitals to clients eligible under the following programs are not covered or reimbursed by the department:

- (i) General assistance programs; and
- (ii) Other state-only administered programs.

(f) Military hospitals when no other specific arrangements have been made with the department. Military hospitals may individually elect or arrange for one of the following payment methods in lieu of the RCC payment method:

- (i) A negotiated per diem rate; or
- (ii) DRG.

(g) Nonstate-owned specifically identified psychiatric hospitals and designated hospitals with Medicare certified distinct psychiatric units. The department uses the same criteria as the Medicare program to identify exempt psychiatric hospitals and distinct psychiatric units of hospitals.

(i) Inpatient psychiatric services provided to clients eligible under the following programs are reimbursed through the DRG payment method:

- (A) General assistance programs; and
- (B) Other state-only administered programs.

~~((ii))~~ ~~((If the department determines that the psychiatric services provided to a client eligible under a program listed in subsection (2)(g)(i) of this section qualify for a special exemption, the services may be reimbursed by using the ratio of costs to charges (RCC) payment method.~~

~~((iii))~~ Regional support networks (RSNs) that arrange to reimburse nonstate-owned psychiatric hospitals and designated distinct psychiatric units of hospitals directly, may use the department's payment methods or contract with the hospitals to reimburse using different methods. Claims not paid directly through an RSN are paid through the department's ~~((MMS))~~ payment system.

(3) The department limits inpatient hospital stays that are exempt from the DRG payment method and identified in subsection (2) of this section to the number of days established at the seventy-fifth percentile in the current edition of the publication, "*Length of Stay by Diagnosis and Operation, Western Region*," unless the stay is:

(a) Approved for a specific number of days by the department, or for psychiatric inpatient stays, by the regional support network (RSN);

(b) For chemical dependency treatment which is subject to WAC 388-550-1100; or

(c) For detoxification of acute alcohol or other drug intoxication.

(4) If subsection (3)(c) of this section applies to an eligible client, the department will:

(a) Pay for three-day detoxification services for an acute alcoholic condition; or

(b) Pay for five-day detoxification services for acute drug addiction when the services are directly related to detoxification; and

(c) Extend the three- and five-day limitations for up to six additional days if either of the following is invoked on a client under care in a hospital:

(i) Petition for commitment to chemical dependency treatment; or

(ii) Temporary order for chemical dependency treatment.

AMENDATORY SECTION (Amending WSR 05-12-132, filed 6/1/05, effective 7/1/05)

WAC 388-550-4600 Hospital selective contracting program.

(1) The department designates selective contracting areas (SCA) in which hospitals participate in competitive bidding to provide hospital services to Medicaid clients. Selective contracting areas are based on historical patterns of hospital use by Medicaid clients.

(2) The department requires Medicaid clients in a selective contracting area obtain their elective (nonemergent) inpatient hospital services from participating or exempt hospitals in the SCA. Elective (nonemergent) inpatient hospital services provided by nonparticipating hospitals in an SCA shall not be reimbursed by the department, except as provided in WAC 388-550-4700.

(3) The department exempts from the selective contracting program those hospitals that are:

(a) In an SCA but designated by the department as remote. The department designates hospitals as remote ~~((; hospitals meeting))~~ when they meet the following criteria:

(i) Located more than ten miles from the nearest hospital in the SCA;

(ii) Having fewer than seventy-five beds; and

(iii) Having fewer than five hundred Medicaid admissions in a two-year period.

(b) Owned by health maintenance organizations (HMOs) and providing inpatient services to HMO enrollees only;

(c) Children's hospitals;

(d) State psychiatric hospitals or separate (freestanding) psychiatric facilities;

(e) Out-of-state hospitals located in nonbordering cities, and out-of-state hospitals in bordering cities not designated as selective contracting areas;

(f) Peer group E hospitals; and

(g) Peer group F hospitals (critical access hospitals).

(4) ~~((MAA))~~ The department:

(a) Negotiates with selectively contracted hospitals a negotiated conversion factor (NCF) for inpatient hospital services provided to Medicaid clients.

(b) Calculates its maximum financial obligation for a Medicaid client under the hospital selective contract in the same manner as DRG payments using cost-based conversion factors (CBCFs).

(c) Applies NCFs to Medicaid clients only. ~~((MAA))~~ The department uses CBCFs in calculating payments for medical care services clients.)

AMENDATORY SECTION (Amending WSR 05-12-132, filed 6/1/05, effective 7/1/05)

WAC 388-550-4650 "Full cost" public hospital certified public expenditure (CPE) payment program. (1) ~~The ((medical assistance administration's (MAA's)) department's "full cost" public hospital certified public expenditure (CPE) payment program ((is a public hospital program that pays eligible hospitals the same amount as the Medicaid federal match portion of the "full cost" of covered medically necessary services. MAA uses the ratio of costs to charges methodology described in WAC 388-550-4500 to determine "full cost.")) provides payments to participating hospitals based on the "full cost" of covered medically necessary services and requires the expenditure of local funds in lieu of state funds to qualify for federal matching funds. The department's payments to participating hospitals equal the federal matching amount for allowable costs. The department uses the ratio of costs-to-charges method described in WAC 388-550-4500 to determine "full cost."~~

(2) Only the following facilities are reimbursed through the "full cost" public hospital CPE payment program:

(a) Public hospitals located in the state of Washington that are:

(i) Owned by public hospital districts; and

(ii) Not certified by the department of health (DOH) as a critical access hospital;

(b) Harborview Medical Center; and

(c) University of Washington Medical Center.

(3) Payments made under the CPE payment program are limited to medically necessary services provided to medical assistance clients eligible for inpatient hospital services ~~((provided to clients eligible under the Medicaid and general assistance-unemployable (GA-U) fee-for-service programs)).~~

(4) Each hospital described in subsection (2) of this section is responsible to provide certified public expenditures as the required state match for claiming federal Medicaid funds. ~~((Certified public expenditures cannot include federal funds or money used to match federal funds.))~~

(5) ~~((Payments made by MAA))~~ The department determines the actual payment for inpatient hospital services under the CPE payment program ((equal)) by:

(a) Multiplying the hospital's Medicaid RCC rate ((times allowable charges times)) by the covered charges (to determine allowable costs), then;

(b) Subtracting the client's responsibility and any third party liability (TPL) from the amount derived in (a) of this subsection, then;

(c) Multiplying the state's ((Medicaid)) federal ((match percentage)) matching assistance percentage (FMAP) by the amount derived in (b) of this subsection.

~~((6) Client responsibility and third party liability as identified on the hospital claim or by MAA are deducted from the basic payment to determine MAA's actual payment for that admission.))~~

AMENDATORY SECTION (Amending WSR 05-12-132, filed 6/1/05, effective 7/1/05)

WAC 388-550-4900 Disproportionate share payments. As required by section 1902 (a)(13)(A) of the Social Security Act, the ~~((medical assistance administration (MAA)) department~~ gives consideration to hospitals that serve a disproportionate number of low-income clients with special needs by making a payment adjustment to eligible hospitals ((per)) in accordance with legislative direction and established prospective payment methods. ((MAA)) The department considers this adjustment a disproportionate share hospital (DSH) payment.

(1) To qualify for a DSH payment for each state fiscal year (SFY), an in-state or bordering city hospital provider must submit to ~~((MAA)) the department~~, the hospital's completed and final DSH application by the due date specified in that year's application letter. ~~((The application due date will not be less than sixty days after MAA makes the application available.))~~

(2) A hospital is a disproportionate share hospital eligible for the low-income disproportionate share hospital (LIDSH) program for a specific SFY if the hospital submits a DSH application for that specific year in compliance with subsection (1) and if both the following apply:

(a) The hospital's Medicaid inpatient utilization rate (MIPUR) is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, or ~~((its))~~ the hospital's low-income utilization rate (LIUR) exceeds twenty-five percent; and

(b) At least two obstetricians who have staff privileges at the hospital have agreed to provide obstetric services to eligible individuals at the hospital. For the purpose of establishing DSH eligibility, "obstetric services" is defined as routine nonemergency delivery of babies. This requirement for two obstetricians with staff privileges does not apply to a hospital:

(i) That provides inpatient services predominantly to individuals under eighteen years of age; or

(ii) That did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted.

(3) For hospitals located in rural areas, "obstetrician" means any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(4) ~~((MAA))~~ The department may consider a hospital a disproportionate share hospital for programs other than the LIDSH program if the hospital submits a DSH application for the specific year and meets the following criteria for the year specified in the application:

(a) The hospital has a MIPUR of not less than one percent; and

(b) The hospital meets the requirement of subsection (2)(b) of this section.

(5) ~~((MAA))~~ To determine a hospital's eligibility for any DSH program, the department uses the criteria in this section and the information derived from the DSH application submitted by the hospital, subject to the following:

(a) Charity care. If the hospital's DSH application and audited financial statement for the relevant fiscal year do not agree on the amount for charity care, the department uses the lower amount claimed.

(b) Bad debt. If the hospital's DSH application does not allocate bad debt between insured and uninsured patients, the department assigns the entire amount of bad debt to insured patients.

(c) Total inpatient hospital days. If the hospital's DSH application lists a total number of inpatient hospital days that is lower than the total number in the hospital's Medicare cost report, the department uses the higher number to determine the hospital's MIPUR. The department may use the lower number to determine the hospital's MIPUR if, within ten business days of the department's written notification to the hospital of the discrepancy, the hospital submits documentation that supports the lower number of inpatient hospital days listed on the DSH application. Acceptable documentation includes, but is not limited to, a revised cost report submitted to Medicare that shows the correct data.

(6) Hospitals must submit annually to the department a copy of the hospital's charity and bad debt policy as part of the individual hospital's DSH application.

(7) The department administers the low-income disproportionate share hospital (LIDSH) program and may administer any of the following DSH programs:

(a) General assistance-unemployable disproportionate share hospital (GAUDSH);

(b) Small rural hospital assistance program disproportionate share hospital (SRHAPDSH);

(c) Small rural hospital indigent ~~((adult))~~ assistance program disproportionate share hospital ~~((SRHIAAPDSH))~~ (SRHIAPDSH);

(d) Nonrural hospital indigent ~~((adult))~~ assistance program disproportionate share hospital ~~((NRHIAAPDSH))~~ (NRHIAPDSH); ~~((and))~~

(e) Public hospital disproportionate share hospital (PHDSH); and

(f) Psychiatric indigent inpatient disproportionate share hospital (PIIDSH).

~~((6) MAA))~~ (8) The department allows a hospital to receive any one or all of the DSH payment adjustments discussed in subsection ~~((5))~~ (7) of this section when the hospital:

(a) Meets the requirements in subsection (4) of this section; and

(b) Meets the eligibility requirements for the particular DSH payment program, as discussed in WAC 388-550-5000 through 388-550-5400.

~~((7) MAA))~~ (9) The department ensures each hospital's total DSH payments do not exceed the individual hospital's DSH limit, defined as:

(a) The cost to the hospital of providing services to Medicaid clients, including clients served under Medicaid managed care programs;

(b) Less the amount paid by the state under the non-DSH payment provision of the state plan;

(c) Plus the cost to the hospital of providing services to uninsured patients;

(d) Less any cash payments made by uninsured clients; and

(e) Plus any adjustments required and/or authorized by federal regulation.

~~((8) MAA's))~~ (10) The department's total annual DSH payments ~~((must not))~~ cannot exceed the state's DSH allotment for the federal fiscal year.

If the ~~((MAA))~~ department's statewide allotment is exceeded, ~~((MAA))~~ the department may adjust future DSH payments to each hospital to compensate for the amount overpaid. Adjustments will be made in the following program order:

(a) PHDSH;

(b) SRHAPDSH;

~~((b) NRHIAAPDSH))~~ (c) NRHIAPDSH;

~~((c) SRHIAAPDSH))~~ (d) SRHIAPDSH;

~~((d))~~ (e) GAUDSH;

(f) PIIDSH; and

~~((e))~~ (g) LIDSH(~~(; and~~

~~(f) PHDSH))~~.

AMENDATORY SECTION (Amending WSR 03-13-055, filed 6/12/03, effective 7/13/03)

WAC 388-550-5000 Payment method—LIDSH. (1)

A hospital ~~((serving))~~ that is not a peer group E hospital but serves the department's clients is eligible for a low-income disproportionate share hospital (LIDSH) payment adjustment if the hospital meets the requirements of WAC 388-550-4900~~((2))~~ (1) through (3).

~~((2))~~~~((The medical assistance administration (MAA) pays))~~ Hospitals considered eligible under the criteria in subsection (1) of this section receive LIDSH payments. The total LIDSH payment amounts equal the funding set by the state's appropriations act for LIDSH. The amount that the state appropriates for LIDSH may vary from year to year.

(3) ~~((MAA))~~ The department distributes LIDSH payments to ~~((individual))~~ each LIDSH eligible hospital~~((s))~~ using ~~((the))~~ a prospective payment method ~~((for each LIDSH eligible hospital))~~. ~~((MAA))~~ The department determines the standardized Medicaid inpatient utilization rate (MIPUR) by:

(a) Dividing the hospital's MIPUR by the average MIPUR of all LIDSH-eligible hospitals; then

(b) Multiplying the hospital's standardized MIPUR by the hospital's most recent DRG payment method rebased case

mix index, and then by the hospital's most recent fiscal year Title XIX admissions; then

(c) Multiplying the product by an initial random base amount; and then

(d) Comparing the sum of all annual LIDSH payments to the appropriated amount. If the amounts differ, ~~((MAA))~~ the department progressively selects a new base amount by successive approximation until the sum of the LIDSH payments to hospitals equals the legislatively appropriated amount.

(4) After each applicable state fiscal year, ~~((MAA))~~ the department will not make changes to the LIDSH payment distribution that has resulted from calculations identified in subsection (3)~~((e))~~ of this section. However, hospitals may still submit corrected DSH application data to ~~((MAA))~~ the department after June 15 and prior to July 1 of the applicable state fiscal year to correct calculation of the MIPUR or low income utilization rate (LIUR) for historical record keeping. See WAC 388-550-5550 for rules regarding public notice for changes in Medicaid payment rates for hospital services.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-550-6800 Proportionate share payments for inpatient hospital services.

WSR 06-05-109

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed February 15, 2006, 9:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-01-063.

Title of Rule and Other Identifying Information: State ferries and toll bridges, WAC 468-300-010, 468-300-020, 468-300-040, and 468-300-220.

The proposed rules revise the subject WACs by increasing the passenger and vehicle tolls specified in the WACs.

Hearing Location(s): Puget Sound Regional Council, 1011 Western Avenue, 5th Floor, Seattle, WA, on March 23, 2006, at 10:00 a.m. - 12 noon.

Date of Intended Adoption: March 23, 2006.

Submit Written Comments to: Raymond G. Deardorf, WSF Planning Director, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, e-mail Deardorf@wsdot.wa.gov, fax (206) 515-3499, by March 23, 2006.

Assistance for Persons with Disabilities: Contact Transportation Commission Office by March 23, 2006, TTY (360) 705-7070 or (206) 515-3460.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to raise the ferry tolls within the specified WACs. The revisions follow the annual review of Washington State Ferries' (WSFs') farebox revenue needs.

No major effects are anticipated.

Reasons Supporting Proposal: WSF's need for additional farebox revenue.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.326.

Statute Being Implemented: RCW 47.56.030 and 47.60.326.

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

Name of Proponent: Washington state department of transportation and Washington state ferries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Raymond G. Deardorf, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, (206) 515-3491.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered this rule and determined that it does not affect more than 10% of one industry or 20% of all industry.

A cost-benefit analysis is not required under RCW 34.05.328. WSF is anticipated to take in more farebox revenue from the proposed fare increase at the rate of approximately \$5,400,000 per year. Ridership dropoff stemming from the fare increase will not cause a net reduction in farebox revenues. Previous experience with fare hikes has shown that WSF gains more money in fare increases that it loses from reduced ridership, if any.

February 15, 2006
A Daniel O'Neal, Chair
Transportation Commission

AMENDATORY SECTION (Amending WSR 05-10-041, filed 4/28/05, effective 6/1/05)

WAC 468-300-010 Ferry passenger tolls.

EFFECTIVE 03:00 A.M. JUNE 1, 2005

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	((Frequent User Commuter)) <u>Multiride</u> <u>Media 20 Rides</u> ¹	Monthly Pass ⁵	Bicycle Surcharge ^{2,6}
Via Passenger-Only Ferry						
*Seattle-Vashon	((8.10)) <u>8.50</u>	((4.00)) <u>4.25</u>	((6.90)) <u>7.20</u>	((68.80)) <u>72.00</u>	((110.10)) <u>115.20</u>	1.00
Via Auto Ferry						
*Fautleroy-Southworth	((4.70)) <u>5.00</u>	((2.30)) <u>2.50</u>	((3.80)) <u>4.00</u>	((37.60)) <u>40.00</u>	((60.20)) <u>65.00</u>	1.00

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	(Frequent User Commuter) <u>Multiride</u> Media 20 Rides ¹	Monthly Pass ⁵	Bicycle Surcharge ^{2,6}
*Seattle-Bremerton						
*Seattle-Bainbridge Island						
*Edmonds-Kingston	((6.10)) 6.50	((3.00)) 3.25	((4.90)) 5.20	((48.80)) 52.00	((78.10)) 84.20	1.00
Port Townsend-Keystone	((2.35)) 2.50	((1.15)) 1.25	((1.90)) 2.00	((37.60)) 40.00	((60.20)) 65.00	0.50
*Fautleroy-Vashon						
*Southworth-Vashon						
*Pt. Defiance-Tahlequah	((4.00)) 4.20	((2.00)) 2.10	((3.20)) 3.40	((32.00)) 33.60	((51.20)) 54.80	1.00
*Mukilteo-Clinton	((3.60)) 3.85	((1.80)) 1.90	((2.90)) 3.10	((28.80)) 30.80	((46.10)) 50.30	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sunday-Tuesday	((9.10)) 9.60	((4.50)) 4.80	((7.30)) 7.70	((65.70)) 69.25	N/A	2.00 ⁷
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Wednesday-Sat- urday	((10.10)) 10.65	((5.00)) 5.30	((8.10)) 8.55	((65.70)) 69.25	N/A	2.00 ⁷
Between Lopez, Shaw, Orcas and Friday Harbor ⁴	N/C	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	((14.70)) 15.60	((7.30)) 7.80	((11.80)) 12.50	N/A	N/A	4.00 ⁸
From Lopez, Shaw, Orcas and Fri- day Harbor to Sidney@	((5.50)) 5.85	((2.75)) 2.90	((4.50)) 4.90	N/A	N/A	1.00 ⁹
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ³	((20.20)) 21.45	((10.05)) 10.70	((16.30)) 17.20	N/A	N/A	5.00 ¹⁰

(@) These fares rounded to the next multiple of \$.25. All (other) fares rounded to the next multiple of (\$.10) \$0.05.

* These routes operate as a one-point toll collection system.

¹(FREQUENT USER COUPONS) MULTIRIDE MEDIA - Shall be valid only for 90-days from date of purchase after which time the tickets shall not be accepted for passage. (Unused coupons) Remaining value will not be eligible for refund or exchange. Subsequent to the implementation of the Electronic Fare System (EFS) in the fall of 2005, this will be replaced by a 20 ride card valid for 90 days from the date of purchase. For mail order deliveries, WSF may add additional days to allow for delivery times. Starting (May 1, 2006) on the earliest fare change opportunity (May 1 or the second Sunday in October) at a minimum 6 months after completion of the Electronic Fare System (EFS), purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers qualifying for the senior/disabled and youth fares.

²BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

³ROUND TRIP - Round trip (tickets) passage for international travel available for trips beginning or ending on one of the Islands served.

⁴INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

⁵PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. (It is) Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass. A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount. (Passes may be available in monthly, quarterly or annual denominations.) The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user.

⁶BICYCLE (PASS) PERMIT - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney for a \$20.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.

⁷BICYCLE SURCHARGE - This becomes \$4.00 during peak season ((first Sunday in) May 1 until the second Sunday in October).

⁸BICYCLE SURCHARGE - This becomes \$6.00 during peak season.

⁹BICYCLE SURCHARGE - This becomes \$2.00 during peak season.

¹⁰BICYCLE SURCHARGE - This becomes \$8.00 during peak season.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 80% of full fare rounded to the next multiple of \$0.10.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a Medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a volume-based back-end discount to match frequent user policies and rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. On a monthly basis, discount credits for each account will be calculated based on equivalent multiride media level of usage. The credits will be based on the discount policies and rates offered to frequent users applicable on the date of travel.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors

and staff. ((Starting September 1, 1999,)) All school groups require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect. Due to space limitations, authorized school groups will not be permitted to use one of the passenger-only routes without prior WSF approval.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into ((multiple trip books)) multiride media as a customer convenience. ((These books)) This media shall be valid only until the first of May following the date of purchase, after which time the coupons shall not be accepted for passage. ((Unused coupons are not refundable.)) Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

PEAK SEASON SURCHARGE - A 20% surcharge shall be applied to passengers from ((the first Sunday in)) May 1 to the second Sunday in October, except those using frequent user fare media, on the Anacortes to Lopez, Shaw, Orcas and Friday Harbor routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into ((multiple trip books)) multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

AMENDATORY SECTION (Amending WSR 05-10-041, filed 4/28/05, effective 6/1/05)

WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.

EFFECTIVE 03:00 A.M. JUNE 1, 2005

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver ⁴	Vehicle Under 20' Over Height Charge ¹	((Frequent User Commuter)) <u>Multiride Media 20 Rides²</u>
Fauntleroy-Southworth Port Townsend/Key-stone	((8.20)) 8.70	((7.00)) 7.45	((8.20)) 8.70	((131.20)) 139.20
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((10.60)) 11.25	((9.05)) 9.60	((10.60)) 11.25	((169.60)) 180.00
*Fauntleroy-Vashon *Southworth-Vashon				
*Pt. Defiance-Tahlequah	((13.60)) 14.40	((11.60)) 12.30	((13.60)) 14.40	((108.80)) 115.20
Mukilteo-Clinton	((6.30)) 6.65	((5.40)) 5.65	((6.30)) 6.65	((100.80)) 106.40
10 Rides - 5 Round Trips				
*Anacortes to Lopez - Sunday-Tuesday	((22.00)) 23.35	((17.40)) 18.55	((22.00)) 23.35	((91.50)) 97.15
*Lopez - Wednesday-Saturday	((24.40)) 25.90	((19.30)) 20.55	((24.40)) 25.90	((91.50)) 97.15
*Shaw, Orcas - Sunday-Tuesday	((26.40)) 27.95	((21.80)) 23.15	((26.40)) 27.95	((109.90)) 116.45
*Shaw, Orcas - Wednesday-Saturday	((29.30)) 31.05	((24.20)) 25.70	((29.30)) 31.05	((109.90)) 116.45
*Friday Harbor - Sunday-Tuesday	((31.40)) 33.25	((26.80)) 28.45	((31.40)) 33.25	((130.50)) 138.40
*Friday Harbor - Wednesday-Saturday	((34.80)) 36.90	((29.70)) 31.55	((34.80)) 36.90	((130.50)) 138.40
Between Lopez, Shaw, Orcas and Friday Harbor ³	((13.90)) 15.45	((13.90)) 15.45	((13.90)) 15.45	((55.60)) 61.80
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	((39.50)) 41.90	((32.10)) 34.10	((39.50)) 41.90	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations ⁶	((24.50)) 26.90	((17.10)) 19.10	((39.50)) 41.90	N/A

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver ⁴	Vehicle Under 20' Over Height Charge ¹	((Frequent User Commuter)) Multiride Media 20 Rides ²
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((11.75)) <u>12.45</u>	((9.00)) <u>9.50</u>	((11.75)) <u>12.45</u>	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁷	((4.75)) <u>5.45</u>	((2.00)) <u>2.50</u>	((11.75)) <u>12.45</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((51.25)) <u>54.35</u>	((41.10)) <u>43.60</u>	((51.25)) <u>54.35</u>	N/A

EFFECTIVE 03:00 A.M. JUNE 1, 2005

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ¹ One Way((@))	Motorcycle w/Sr Citizen or Disabled Driver Stowage ¹ One Way((@))	Motorcycle Oversize Charge ¹	Motorcycle Frequent User Commuter 20 Rides ² ((@))
Fauntleroy-Southworth Port Townsend/Key-stone	((3.60)) <u>4.05</u>	((2.40)) <u>2.80</u>	((1.25)) <u>1.55</u>	((57.60)) <u>64.80</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((4.60)) <u>5.25</u>	((3.05)) <u>3.60</u>	((1.55)) <u>2.00</u>	((73.60)) <u>84.00</u>
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	((6.00)) <u>6.75</u>	((4.00)) <u>4.65</u>	((2.00)) <u>2.55</u>	((48.00)) <u>54.00</u>
Mukilteo-Clinton	((2.70)) <u>3.15</u>	((1.80)) <u>2.15</u>	((0.90)) <u>1.25</u>	((43.20)) <u>50.40</u>
*Anacortes to Lopez - Sunday-Tuesday	((11.70)) <u>13.05</u>	((7.10)) <u>8.25</u>	((2.60)) <u>3.45</u>	((97.50)) <u>108.75</u>
*Lopez - Wednesday-Saturday	((13.00)) <u>14.50</u>	((7.90)) <u>9.15</u>	((2.90)) <u>3.85</u>	((97.50)) <u>108.75</u>
*Shaw, Orcas - Sunday-Tuesday	((12.60)) <u>14.20</u>	((8.00)) <u>9.40</u>	((3.50)) <u>4.60</u>	((105.00)) <u>118.15</u>
*Shaw, Orcas - Wednesday-Saturday	((14.00)) <u>15.75</u>	((8.90)) <u>10.40</u>	((3.90)) <u>5.10</u>	((105.00)) <u>118.15</u>
*Friday Harbor - Sunday-Tuesday	((13.60)) <u>15.55</u>	((9.00)) <u>10.75</u>	((4.50)) <u>5.95</u>	((113.30)) <u>129.40</u>
*Friday Harbor - Wednesday-Saturday	((15.10)) <u>17.25</u>	((10.00)) <u>11.90</u>	((5.00)) <u>6.60</u>	((113.30)) <u>129.40</u>
Between Lopez, Shaw, Orcas and Friday Harbor ³	((4.00)) <u>4.75</u>	((4.00)) <u>4.75</u>	((4.00)) <u>4.75</u>	N/A
Anacortes to Sidney and Sidney to all destinations	((19.75)) <u>22.20</u>	((12.35)) <u>14.40</u>	((5.05)) <u>6.60</u>	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations ⁶	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((7.25)) <u>7.50</u>	((4.50)) <u>4.55</u>	((1.75)) <u>1.65</u>	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁷	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	((27.00)) <u>29.70</u>	((16.85)) <u>18.95</u>	((6.80)) <u>8.25</u>	N/A

((~~@~~) These fares rounded to the next multiple of \$0.10-) All ((~~other~~)) fares rounded to the next multiple of ((~~\$.25~~)) \$0.05.
 * These routes operate as a one-point toll collection system.

¹SIZE - All vehicles up to 20' in length and under 7'6" shall pay the vehicle under 20' toll. Vehicles up to 20' but over 7'6" in height shall pay an overheight charge of 100% of the vehicle full fare. Motorcycles with trailers, sidecars, or any vehicle licensed as a motorcycle with three or more wheels will pay an oversize motorcycle charge of 100% of the motorcycle full fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

²((~~FREQUENT USER COUPONS~~)) MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the ((~~ticket~~)) media shall not be accepted for passage. ((~~Unused coupons~~)) Remaining value will not be eligible for refund. ((~~Subsequent to the implementation of the Electronic Fare System (EFS)~~

in the fall of 2005, this will be replaced by a 20 ride (10 ride in the San Juan Islands) card valid for 90 days from the date of purchase. From)) For mail order deliveries, WSF may add additional days to allow for delivery time. Starting on ((~~May 1, 2006~~)) the earliest fare change opportunity (May 1 or the second Sunday in October) at a minimum 6 months after completion of the Electronic Fare System (EFS), purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers qualifying for the senior/disabled and youth fares.

³INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

⁴SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

⁵ROUND TRIP - Round trip ((tickets)) passage for international travel available for trips beginning or ending on one of the islands served.

⁶RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

⁷RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from the first Sunday in May to the second Sunday in October except those using ((frequent user coupons)) multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using ((frequent user coupons)) multiride media.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at

no cost to clients, program would offer a volume-based back-end discount to match frequent user policies and rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. On a monthly basis, discount credits for each account will be calculated based on equivalent multiride media level of usage. The credits will be based on the discount policies and rates offered to frequent users applicable on the date of travel.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into ((multiple trip books)) multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE ((BOOKS)) MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. ((These books)) This media shall be valid only until the first of May following the date of purchase after which time the ((coupons)) media shall not be accepted for passage. ((Unused coupons are not refundable.)) Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

AMENDATORY SECTION (Amending WSR 05-10-041, filed 4/28/05, effective 6/1/05)

WAC 468-300-040 Oversize vehicle ferry tolls.

EFFECTIVE 03:00 A.M. JUNE 1, 2005

ROUTES	Oversize Vehicle Ferry Tolls ¹								Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver								
	20' To Under 30' Under 7'6" High	20' To Under 30' Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'		
Fauntleroy-Southworth	((12.50))	((24.60))	((32.80))	((41.00))	((49.20))	((57.40))	((65.60))		
Port Townsend/Keystone	13.05	26.10	34.80	43.50	52.20	60.90	69.60	0.90	
Seattle-Bainbridge Island									
Seattle/Bremerton	((16.00))	((31.80))	((42.40))	((53.00))	((63.60))	((74.20))	((84.80))	((1.10))	
Edmonds-Kingston	16.90	33.75	45.00	56.25	67.50	78.75	90.00	1.15	
*Fauntleroy-Vashon									
*Southworth-Vashon	((20.50))	((40.80))	((54.40))	((68.00))	((81.60))	((95.20))	((108.80))	((1.40))	
*Pt. Defiance-Tahlequah	21.60	43.20	57.60	72.00	86.40	100.80	115.20	1.45	

ROUTES	Oversize Vehicle Ferry Tolls ¹							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Mukilteo-Clinton	(9.50) 10.00	(18.90) 19.95	(25.20) 26.60	(31.50) 33.25	(37.80) 38.90	(44.10) 46.55	(50.40) 53.20	0.70
*Anacortes to Lopez - Sunday-Tuesday ²	(33.00) 35.05	(66.00) 70.05	(88.00) 93.40	(110.00) 116.75	(132.00) 140.10	(154.00) 168.45	(176.00) 186.80	(2.20) 2.35
*Anacortes to Shaw, Orcas - Sunday-Tuesday ²	(39.75) 41.95	(79.20) 83.85	(105.60) 111.80	(132.00) 139.75	(158.40) 167.70	(184.80) 195.65	(211.20) 223.60	(2.70) 2.80
*Anacortes to Friday Harbor - Sunday-Tuesday	(43.50) 48.00	(87.00) 96.00	(116.00) 128.00	(145.00) 160.00	(174.00) 192.00	(203.00) 224.00	(232.00) 256.00	(2.90) 3.20
*Anacortes to Lopez - Wednesday-Saturday ²	(36.75) 38.85	(73.20) 77.70	(97.60) 103.60	(122.00) 129.50	(146.40) 155.40	(170.80) 181.30	(195.20) 207.20	(2.50) 2.60
*Anacortes to Shaw, Orcas - Wednesday-Saturday ²	(44.00) 46.60	(87.90) 93.15	(117.20) 124.20	(146.50) 155.25	(175.80) 186.30	(205.10) 217.35	(234.40) 248.90	(3.00) 3.15
*Anacortes to Friday Harbor - Wednesday-Saturday	(48.00) 53.35	(96.00) 106.65	(128.00) 142.20	(160.00) 177.75	(192.00) 213.30	(224.00) 248.85	(256.00) 289.40	(3.20) 3.60
Between Lopez, Shaw, Orcas and Fri- day Harbor ³	(21.00) 23.20	(41.70) 46.35	(55.60) 61.80	(69.50) 77.25	(83.40) 92.70	(97.30) 108.15	(111.20) 123.60	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations - Recreational Vehicles and Buses	(59.25) 62.85	(59.25) 62.85	(79.00) 83.80	(98.75) 104.75	(118.50) 125.70	(138.25) 146.65	(158.00) 167.60	(2.00) 2.10
Anacortes to Sidney and Sidney to all destinations - Commercial Vehicles	(59.25) 62.85	(118.50) 125.70	(158.00) 167.60	(197.50) 209.50	(237.00) 251.40	(276.50) 293.30	(316.00) 335.20	(4.00) 4.20
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations - Recreational Vehicles and Buses	(44.25) 47.85	(44.25) 47.85	(64.00) 68.80	(83.75) 89.75	(103.50) 110.70	(123.25) 131.65	(143.00) 152.60	(2.00) 2.10
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations ⁵ - Commer- cial Vehicles	(44.25) 47.85	(103.25) 110.70	(143.00) 152.60	(182.50) 194.50	(222.00) 236.40	(261.50) 278.30	(301.00) 320.20	(4.00) 4.20
Lopez, Shaw, Orcas and Friday Harbor to Sidney - Recreational Vehicles and Buses	(17.75) 18.70	(17.75) 18.70	(23.50) 4.90	(29.50) 31.15	(35.25) 37.35	(41.25) 43.60	(47.00) 49.80	(0.75) 0.65
- Commercial Vehicles	(17.75) 18.70	(35.25) 37.35	(47.00) 49.80	(58.75) 62.25	(70.50) 74.70	(82.25) 87.15	(94.00) 99.60	(1.20) 1.25
Travelers with advanced reservations (\$7 fee) from								
Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁶ - Recreational Vehicles and Buses	(10.75) 11.70	(10.75) 11.70	(16.50) 17.90	(22.50) 24.15	(28.25) 30.35	(34.25) 36.60	(40.00) 42.80	(0.60) 0.65
- Commercial Vehicles	(10.75) 11.70	(28.25) 30.35	(40.00) 42.80	(51.75) 55.25	(63.50) 67.70	(75.25) 80.15	(87.00) 92.60	(0.60) 1.25
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴ - Recreational Vehicles and Buses	(77.00) 81.55	(77.00) 81.55	(102.30) 108.70	(128.25) 135.90	(153.75) 163.05	(179.50) 190.29	(205.00) 217.40	2.75
- Commercial Vehicles	(77.00) 81.55	(153.75) 163.05	(205.00) 217.40	(256.25) 271.75	(307.50) 326.10	(358.75) 380.45	(410.00) 434.80	(5.20) 5.45

¹OVERSIZE VEHICLES - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles (~~11 feet in width or wider~~) wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 20-30 feet in length and over 7'6" in height shall be charged the 20-30 foot length and under 7'6" in

height fare for vehicles equipped with wheelchair lift or other mechanism designed to accommodate the person with the disability.

²TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: (~~June 1, 2005~~) May 1, 2006 - April 30, 2007, (~~(\$37.50)~~) \$48.25 base season, (~~(\$50.00)~~) \$65.25 peak season.

³INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be

obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

⁴ROUND TRIP - Round trip ((tickets)) passage for international travel available for trips beginning or ending on one of the islands served.

⁵RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

⁶RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

COMMERCIAL VEHICLE RESERVATION FEES - For commercial vehicles traveling with reservations a participation fee (\$200 for summer schedule season, \$100 for each of the other schedule seasons) will be charged. Fees will be collected when reservations are confirmed.

PEAK SEASON SURCHARGE - A peak season surcharge of 25% shall apply to all oversize vehicles, except for Anacortes to Lopez, Shaw, Orcas, and Friday Harbor. The senior citizen discount shall apply to the driver of an oversize vehicle. A 35% surcharge will apply to oversized vehicles traveling from Anacortes to Lopez, Shaw, Orcas and Friday Harbor.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

DISCOUNT FROM REGULAR TOLL - Effective June 1, 2005, through fall of 2005, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in ((fall 2005)) spring 2006, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

((BULK NEWSPAPERS - Per 100 lbs. \$2.20

⁴(Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.10 per 100 lbs.)

Daily Newspapers, in bundles, and medical supplies, to be received and delivered without receipt and subject to owner's

risk, will be transported between ferry terminals on regular scheduled sailings.

EXPRESS SHIPMENTS - A flat handling charge of \$25.00 per parcel is charged.

(Shipments exceeding 100 lbs. assessed \$8.30 for each 25 lbs. or fraction thereof.)

Express shipments will be handled on scheduled sailings when no other means of shipment is available to shipper. Shipments must be of a size and weight that can easily be handled by carrier's employees.

Carrier reserves the right to refuse shipment of any item. Carrier assumes no liability for loss or damage to any shipment. Minimum rate for any shipment shall be the rate for 100 pounds.

San Juan inter-island express shipments will be handled at \$5.00 per parcel.

MEDICAL SUPPLIES - A flat handling charge of \$5.00 per shipment is charged.)

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

AMENDATORY SECTION (Amending WSR 05-10-041, filed 4/28/05, effective 6/1/05)

WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system. Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from July 1, ((2004)) 2005, through June 30, ((2005)) 2006:

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Jumbo Mark II	\$ ((1,191.00)) <u>1,388.00</u>	\$ ((1,019.00)) <u>1,207.00</u>
Jumbo	((1,151.00)) <u>1,346.00</u>	((991.00)) <u>1,178.00</u>
Super	((1,102.00)) <u>1,278.00</u>	((949.00)) <u>1,117.00</u>
Evergreen	((822.00)) <u>903.00</u>	((695.00)) <u>769.00</u>
Issaquah	((871.00)) <u>977.00</u>	((743.00)) <u>843.00</u>
Steel	((687.00)) <u>752.00</u>	((586.00)) <u>645.00</u>
Rhododendron	((646.00)) <u>688.00</u>	((545.00)) <u>581.00</u>
Hiyu	((455.00)) <u>659.00</u>	((398.00)) <u>552.00</u>
((Passenger Only	521.78	445.57
Passenger Only	595.00	516.34)
Fast Ferry		

The rate for an individual charter will be calculated by:

(1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;

(2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and

(3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by an appropriate profit margin based on market conditions, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.

authority; cost and fairness. The proposed rules are reasonable and necessary. The proposal repeals some existing rules that are no longer necessary, adds new rules, updates, and clarifies other rules to reflect current requirements and practices.

Statutory Authority for Adoption: RCW 80.01.040, 81.04.160, 81.12.050, 81.68.030, 81.70.270.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Bonnie L. Allen, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1310; Implementation and Enforcement: Carole J. Washburn, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

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

Small Business Economic Impact Statement

Introduction: In May of 2002, the Washington utilities and transportation commission (commission) began a review of the rules in chapters 480-30 and 480-40 WAC regarding passenger transportation (bus) companies operating as charter carriers, excursion carriers, and auto transportation companies. The commission began this review in Docket No. TC-020497 in response to Executive Order 97-02, which requires agencies to review existing rules for readability and content with attention being paid to clarity, intent, statutory authority, need, effectiveness, efficiency, coordination, cost and fairness. The commission also conducted a general revision of the rules to analyze whether they provided the results they were originally intended to achieve and whether they are today consistent with appropriate and lawful policies in light of past commission decisions, legislative actions, and federal preemptions.

The commission held two informal stakeholder workshops with interested persons to discuss issues, draft rule language, receive comments, and explore options. Additional meetings held with smaller groups specifically focused on rate issues including free or reduced rates, promotional fares, rate flexibility, and fuel surcharges.

Commission staff prepared an issues paper and two sets of draft rules that were provided to stakeholders for comment during the CR-101 process. Written stakeholder comments have been helpful to clarify the intent of the proposed rules and effects of the proposed rules on the industry. The commission believes draft rules are now sufficiently developed to proceed to the next phase of the rule making. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared under chapter 19.85 RCW, or explain why an SBEIS was not prepared. *RCW 34.05.320 (1)(k)*.

SBEIS Requirements: The Regulatory Fairness Act, codified in chapter 19.85 RCW, provides that an agency must conduct an SBEIS "if the proposed rule will impose more than minor costs on businesses in an industry." *RCW 19.85.030*. An SBEIS is intended to assist agencies in evaluating any disproportionate impacts of the rule making on small businesses. A business is categorized as "small" under

WSR 06-05-113

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket No. TC-020497—Filed February 15, 2006, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-12-020.

Title of Rule and Other Identifying Information: Chapter 480-30 WAC, Passenger transportation companies.

Hearing Location(s): Washington Utilities and Transportation Commission, Commission Hearing Room 206, 2nd Floor Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on March 29, 2006, at 3:00 p.m.

Date of Intended Adoption: March 29, 2006.

Submit Written Comments to: Carole J. Washburn, Secretary, P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@wutc.wa.gov, fax (360) 586-1150, by March 9, 2006. Please include Docket No. TC-020497 in your comments.

Assistance for Persons with Disabilities: Contact Mary De Young by Monday, March 27, 2006, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would repeal all current rules in chapter 480-30 WAC (except WAC 480-30-999, which is amended), repeal all rules in chapter 480-40 WAC, and consolidate the requirements for passenger transportation companies, including auto transportation companies, passenger charters, and excursion carriers into a single chapter by rewriting and reorganizing chapter 480-30 WAC and including provisions formerly contained in chapters 480-40 and 480-149 WAC.

Affected WACs are chapter 480-30 WAC (retitled and revised) and chapter 480-40 WAC (repealed).

Reasons Supporting Proposal: The proposed rules are intended to implement the requirements of Executive Order 97-02, requiring agencies to review significant rules for need; effectiveness and efficiency; clarity; intent and statutory

the Regulatory Fairness Act if the business employs fifty or fewer employees.

Under RCW 19.85.040(1), agencies must determine whether there is a disproportionate impact on small businesses in the industry, and under RCW 19.85.030(2), consider means to minimize the costs imposed on small businesses. In determining whether there is a disproportionate impact on small businesses, agencies must compare the cost of compliance for small businesses with the cost of compliance for the 10% of businesses that are the largest businesses required to comply with the rule using either the cost per employee, the cost per hour of labor, or the cost per \$100 of sales revenue, as a basis for comparing costs. *See RCW 19.85.040(1).*

SBEIS Evaluation Procedure: The commission determined that an SBEIS is required for the passenger transportation (bus) company rules proposed in Docket No. TC-020497 because the proposed rules may impose more than minor costs on passenger transportation companies operating in Washington state.

Currently, approximately seventy-seven charter carriers, thirty-eight excursion carriers, and twenty-six auto transportation companies (includes airporters and scheduled bus service) hold certificates issued by the commission authorizing passenger transportation services in Washington state. The industry affected by these rules is represented under the following standard industrial classification (SIC) codes:

4111 Local and Suburban Transit: Establishments primarily engaged in furnishing local and suburban mass passenger transportation over regular routes and on regular schedules, with operations confined principally to a municipality, contiguous municipalities, or a municipality and its suburban areas. *Also included in this industry are establishments primarily engaged in furnishing passenger transportation by automobile, bus, or rail to, from, or between airports or rail terminals, over regular routes, and those providing bus and rail commuter services.*

4131 Intercity and Rural Bus Transportation: Establishments primarily engaged in furnishing bus transportation, over regular routes and on regular schedules, the operations of which are principally outside a single municipality, outside one group of contiguous municipalities, and outside a single municipality and its suburban areas charter bus transportation services are classified in Industry Group 414.

4142 Bus Charter Service, Except Local: Establishments primarily engaged in furnishing bus charter service, except local, where such operations are principally outside a single municipality, outside one group of contiguous municipalities, and outside a single municipality and its suburban areas.

Washington state department of revenue data and statistics show that a total of sixty-six taxpayers reported for 2004 under the three SIC codes combined and sixty-seven taxpayers reported under those same three SIC codes for 2003. Since the commission has issued seventy-seven certificates to charter carriers alone, at least some of the companies holding passenger transportation company certificates from the commission may be involved in other business activities and reported under a different SIC code group.

RCW 19.85.040(3) provides that an agency may survey a representative sample of affected businesses to obtain the information for developing an SBEIS. In this instance, the commission mailed a notice of opportunity to comment and an SBEIS questionnaire to each certificated passenger transportation company and other interested parties. The commission gave parties approximately thirty-four days to respond to the questionnaire. The commission believes that is adequate time to provide the information requested in the questionnaire. The notice asked each company to provide information about its expected costs of implementing the draft rules and to provide specific information for each draft rule that the company identifies as having an implementation cost.

Most of the passenger transportation companies did not respond to the questionnaire. It could be that companies are not small businesses, the companies as part of running a business already collect the required information, or if new information is collected the cost resulting from implementing the proposed rules would be minimal. The two companies that responded to the commission's SBEIS questionnaire are both small businesses as defined by the Regulatory Fairness Act. Those companies are:

- SeaTac Shuttle, LLC, (SeaTac) d/b/a Vashon Shuttle, is an airporter service operating under an auto transportation company certificate. The company also holds certificates to provide both charter and excursion carrier services.
- Bremerton Kitsap Airporter, Inc. d/b/a Fort Lewis/McChord Airporter/The Sound Connection, (BK Airporter) is an airporter service operating under an auto transportation company certificate.

Compliance Requirements of the Proposed Rules:

Most of the language in the proposed rules is a restatement of current rules, current requirements, and current policies that result in no change in the cost of compliance. The SBEIS does not examine the existing costs of compliance but only new costs of compliance as a result of proposed new rules or changes in existing rules.

The two companies responding to the questionnaire identified thirty-five rules with cost impacts and the entire section of rules relating to the process of filing for a general rate increase in Section 7.

The rules and cost impacts identified by the responding companies are discussed below:

WAC 480-30-051 Mapping, auto transportation company.

Responding Companies: \$500 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule establishes standards for filed maps. The rule includes options including the use of the free Washington state highway map published by the Washington state department of transportation. Maps are an existing certificate application filing requirement for auto transportation companies.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-056 Records retention, auto transportation company.

Responding Companies: \$50,000 - SeaTac Shuttle. The company provided no information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule requires companies to maintain general business records for three years and establishes other retention periods for other specific records. The rule does not establish new records or new record formats. The requirements of this rule relate to data that each company should already maintain in the normal course of running its business.

Conclusion: The rule establishes retention periods for records companies are already required to maintain. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-071 Reporting requirements.

Responding Companies: \$2,500 - SeaTac Shuttle. The company provided no information about its basis for a cost impact or how it calculated the cost impact.

Discussion: RCW 81.04.080 and WAC 480-30-120 currently require auto transportation companies to file annual reports. Charter rules require charter and excursion carriers to state the number of vehicles operated, provide "other required information," and submit appropriate fees. The annual safety report described in this rule is the "other required information" the commission collects from charter and excursion carriers with each company's annual regulatory fee payment.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-086 Certificates, general. (3)

Responding Companies: \$1,000 - SeaTac Shuttle. The company provided no information about its basis for a cost impact or how it calculated the cost impact.

\$500 per year - BK Airporter. The requirement to carry in each vehicle a copy of the operating authority, complete tariff and operating schedule is costly, time consuming and unnecessary. They must be stored in a binder, updated, and replaced when the vehicles are replaced or when changes are necessary to the three documents. Administration and copying costs are estimated to be \$500 per year.

Discussion: The proposed rule would have required each company to carry a copy of its certificate authority on each vehicle operated. This is an existing requirement for charter and excursion carriers but not for auto transportation companies. The commission has revised the proposed rule and eliminated the requirement for all passenger transportation companies.

Conclusion: The proposed rule does not create new requirements. Removing the requirement that charter and excursion carriers maintain copies of their permits on each vehicle should result in a cost savings.

WAC 480-30-116 Certificates, application docket, protests, and intervention, auto transportation company. (2)

Responding Companies: \$20,000 - SeaTac Shuttle. The company provided no information about its basis for a cost impact or how it calculated the cost impact.

Discussion: Subsection (2) of the proposed rule reflects current commission practice regarding protests filed in auto transportation company certificate application proceedings. The commission has removed language in the proposed rule related to associations that file protests. Removing the language from the proposed rule does not eliminate an association's ability to file a protest but leaves the matter to be decided on a case-by-case basis as it is today.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-136 Certificates, application hearings, auto transportation company. (5)(d)

Responding Companies: \$5,000 - SeaTac Shuttle. The company provided no information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule reflects current commission practice regarding information that it "may" consider in a certificate application filing when determining if territory is already served by another auto transportation company certificate holder.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-156 Certificates, temporary.

Responding Companies: Unknown cost - SeaTac Shuttle. The company provided no information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule implements provisions of RCW 81.68.046 (SSB 5105, chapter 121, Laws of 2005). The new law allows the commission to grant temporary certificates to auto transportation companies. Filing for a temporary certificate is a new option that companies may choose to pursue instead of permanent authority. No company is required to file for a temporary certificate. The application filing fees and filing requirements for temporary certificates are established at a level consistent with those currently in place for permanent certificate applications.

Conclusion: The proposed rule creates a new option for companies to obtain certificate authority but maintains fees and filing requirements at current levels. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-191 Bodily injury and property damage liability insurance.

Responding Companies: \$10,000 - SeaTac Shuttle. The company provided no information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule increases insurance minimums to a level established by the Federal Motor Carrier Safety Administration for interstate passenger motor carriers. Interstate passenger carriers and most intrastate charter and excursion carriers are already required to comply with the higher limits. The responding company holds a charter certificate and already maintains its insurance at the proposed higher limit (\$5,000,000) for the size vehicles they operate. Two auto transportation companies appear to have insurance at \$1,000,000 and will be required to increase their insurance coverage. The limit of \$1,000,000 is higher than the current required minimum for the size vehicles they operate, but lower than the proposed new minimum of \$1,500,000 and as

a result they will be required to raise their insurance minimums.

Conclusion: 96% of the passenger transportation companies are already required to maintain insurance at the proposed higher limits. While there may be a cost impact for those companies that do not currently maintain insurance at the higher limits, the commission believes it is a justified cost that is necessary to bring state insurance minimums up to federal levels and to establish a consistent public safety standard for vehicles operated into, out of, through, and within Washington state.

WAC 480-30-216 Operation of motor vehicles, general. (2)

Responding Companies: \$1,000 - SeaTac Shuttle. The company provided no information about its basis for a cost impact or how it calculated the cost impact.

Discussion: Current rules require auto transportation companies to include governing rules (including baggage rules) in each filed tariff. Subsection (2) of the proposed rule clarifies baggage information that an auto transportation company must include in its tariff rules. The proposed rule does not require auto transportation companies to inspect baggage.

Conclusion: The proposed rule clarifies information for governing rules that a company must already include in its filed tariff. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-216 Operation of motor vehicles, general. (7)

Responding Companies: \$500 - SeaTac Shuttle. The company provided no information about its basis for a cost impact or how it calculated the cost impact.

Discussion: Current rules require auto transportation companies to post "no smoking" signs.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-231 Vehicle and driver identification.

Responding Companies: Unknown cost - SeaTac Shuttle. The company provided no information about its basis for a cost impact or how it calculated the cost impact.

\$750 to \$30,000 - BK Airporter. Installation of electronic signage is estimated to cost \$2,000 per vehicle if extensive modifications to the vehicles are required. If a simple sign is placed in the windshield, a commercially produced sign would cost an estimated \$50.00 each. There are currently fifteen vehicles in use. Estimated cost is \$750 - \$30,000.

Discussion: Current rules require auto transportation companies to display on each vehicle destination signs with lettering no less than three inches tall. The proposed rule requires signage, but does not establish the size or type of sign a company must display.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-236 Leasing vehicles.

Responding Companies: \$500 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule codifies the interpretation of how regulated companies must conduct business

under current law. Vehicles must be properly registered and licensed. When ownership is transferred or assigned (as in a lease) the agreement must be in writing and the company must update its vehicle licensing documents. The proposed rule identifies the information that parties must include in a lease agreement between a passenger transportation company and the person from whom the vehicle is leased, if that person is in a business other than the business of leasing vehicles.

Conclusion: The proposed rule identifies information that companies must include in their lease agreements. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-241 Commission compliance policy.

Responding Companies: \$24,000 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule is a statement of authority and policy and does not create any requirements with which companies must comply.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-281 Tariffs and time schedules, content.

Responding Companies: Impossible to evaluate, potentially infinite - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule restates and clarifies tariff and time schedule requirements currently established in chapters 480-149 and 480-30 WAC.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-286 Tariffs and time schedules, posting.

Responding Companies: \$1,500 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

\$500 per year - BK Airporter. The requirement to carry in each vehicle a copy of the operating authority, complete tariff and operating schedule is costly, time consuming and unnecessary. They must be stored in a binder, updated, and replaced when the vehicles are replaced or when changes are necessary to the three documents. Administration and copying costs are estimated to be \$500 per year.

Discussion: Companies must carry on each vehicle a copy of the schedule and fares for each route that vehicle serves, not the company's complete tariff and operating schedule. Current rules require vehicles to carry copies of their schedules. BK Airporter already satisfies the requirement of the proposed rule by carrying on its vehicles copies of its schedule that include passenger fares.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-316 Tariffs and time schedules, customer notice requirements.

Responding Companies: \$1,500 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule restates and clarifies customer notice requirements currently required in chapters 480-149 and 480-30 WAC, with the exception of posting on a company's web site, if it has one. The proposed rule

acknowledges that in today's world, companies sell tickets and publish their rates and schedules through internet web sites. If a company maintains such a web site, then the company must also publish its customer notice on the web site. The proposed rule is more permissive than current rules. Revisions in the proposed rules increase the instances under which companies may file on one-day notice to the commission rather than the current thirty-day notice to the public.

Conclusion: Companies are currently required to post customer notices at locations including passenger facilities and other locations where tickets are sold. The proposed rule brings that requirement forward to those companies that sell tickets and publish rates and schedules through a web site. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-321 Tariffs and time schedules, notice verification and assistance.

Responding Companies: \$1,000 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: Companies are already required to post customer notices. This proposed rule requires companies to provide the commission a copy of the required customer notice and information about the dates and locations at which the notice was posted. The rule informs companies that they may seek assistance (free of charge) in preparing the notice from the commission's consumer affairs staff. The proposed rule in WAC 480-30-381 allows a company to include its customer notice information in its transmittal letter.

Conclusion: While providing a copy of the customer notice to the commission is a new requirement any new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-326 Tariffs and time schedules, less than statutory notice handling. (4) Notice requirements.

Responding Companies: \$1,500 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The notice requirements for a less than statutory notice (LSN) filing are the same as for a regular filing except that the information is filed with the commission at the time of application for LSN handling. Again, the customer notice copy and posting information may be included in the filing transmittal letter.

Conclusion: While providing a copy of the customer notice to the commission is a new requirement any new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-356 Tariffs and time schedules, tariff rules. Subsection (3)(i).

Responding Comments: Undetermined cost - BK Airport. A taxi from any point on our route to Sea-Tac International Airport cost \$55 to \$125 per one way trip. The frequency of providing alternate transportation for persons whose reservations were missed cannot be estimated; therefore the cost of this rule cannot be determined.

Discussion: Under some circumstances it may be appropriate for companies to offer alternative transportation options, under other circumstances it may not. The proposed rule does not require companies to provide alternative trans-

portation for a customer with a reservation. The proposed rule identifies the subject as one that companies must address in their tariff rules.

Conclusion: The proposed rule clarifies information for governing rules that a company must already include in its filed tariff. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-381 Tariffs and time schedules, filing procedures. (2) Transmittal letter.

Responding Companies: \$2,500 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: Current rules require transmittal letters. The proposed rule clarifies the information that a company must include in its transmittal letter.

Conclusion: The proposed rule clarifies information that companies must include in required transmittal letters. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-381 Tariffs and time schedules, filing procedures. (4)(c) Rate increase filings.

Responding Companies: Unknown, potentially huge - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: Companies must support their rate increase requests. The proposed rule refers to the work papers a company must submit with a general rate increase filing to support its rate increase request. The proposed rule requires the company to prepare its rate case in an organized and systematic manner prior to filing with the commission. The data required by this rule have been submitted by the company directly or at staff's request after the case has been filed. The rule merely requires the company to compile and file the information with its proposed rates.

Conclusion: The proposed rule requires companies to compile and file information with proposed rates rather than after filing with the commission. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-391 Tariffs and time schedules, ticket agent agreements must be filed and approved.

Responding Companies: Undeterminable - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: Current rules require the commission to approve the "form" of any contract or agreement for an agent to sell tickets for an auto transportation company. The proposed rule identifies the minimum information a company must include in such an agreement.

Conclusion: The proposed rule clarifies information that companies must include in ticket agent agreement forms. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-396 Tariffs and time schedules, free and reduced rates.

Responding Companies: \$500 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The use of free and reduced rates is allowed under provisions of RCW 81.24.080. The proposed rule restates in rule the existing requirements for a company to provide service at free or reduced rates.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-421 Tariffs, general rate increase filings and 480-30-426 Tariffs, general rate increase filings, work papers.

Responding Companies: This can be a very expensive process easily running to \$10,000+. It is impossible to set any kind of fixed number on this section - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rules define a general rate increase and describe the work papers companies must provide with proposed rates when filing for a general rate increase. Companies are required to support rate increase requests. The proposed rule requires the company to prepare its rate case in an organized and systematic manner prior to filing with the commission. The data required by this rule have been submitted by the company directly or at staff's request after the case has been filed. The rule merely requires the company to compile and file the information with its proposed rates.

Conclusion: The proposed rule requires companies to compile and file information with proposed rates rather than after filing with the commission. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-436 Tariffs, special or promotional fare tariff filings.

Responding Companies: Cannot fix cost since the potential for a complaint being lodged against the company by the commission for filing this type of request is very real - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: Auto transportation companies are required to charge their published rates. The proposed rule creates a new option, giving auto transportation companies flexibility in establishing special or promotional rates. The rule describes the minimum information a company choosing to use this option must include with its filing.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-446 Availability of information.

Responding Companies: \$5,000 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule does not require companies to create any new information but only to make existing information such as tariffs, schedules, rules, and certificates available to the public for inspection on request. The commission makes its rules available to companies and the public at no charge.

Conclusion: The proposed rule does not create new requirements, so there are no new costs.

WAC 480-30-461 Service or rate complaints.

Responding Companies: Unknown, we have had no complaints - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule describes the consumer complaint process including the company's responsibility to acknowledge, investigate, and respond to consumers and commission staff. The proposed rule also requires companies to maintain a consumer complaint record.

Conclusion: Establishing a complaint record may result in minimal new costs for those companies not already keeping records of consumer complaints. Any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-471 Ticketing requirements.

Responding Companies: \$10,000 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: The proposed rule establishes a new requirement for those companies that do not already provide information to their customers regarding such issues as: Refunds, baggage liability, expiration dates, prohibited items, company phone numbers, and web site. While there is a cost associated [with] providing this information, customers require the information, and the proposed rule provides companies several ways in which they can make the information available to their customers.

Conclusion: There may be more than a minimal cost for those companies not already providing consumers with necessary information required by the proposed rule. To mitigate those costs the proposed rule offers companies a variety of options.

WAC 480-30-476 Baggage liability and claims for loss or damage.

Responding Companies: Cannot be determined as this section is in conflict with RCW and other WAC sections - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: Prior to 1991, the baggage liability limits were fixed in RCW 81.29.050; including provisions requiring companies to offer customers the opportunity to declare higher value. That law was changed, at the agency's request to require the commission to set the limits by rule. The proposed rule establishes \$250 as the minimum baggage liability limit for an adult's fare and \$100 for a child's fare. The rule also requires companies to establish tariff provisions and fees for passengers to declare higher value. The provisions apply only to checked baggage. Checked baggage means passenger baggage that is accepted for transportation but is not carried in the passenger compartment of the vehicle. Most airports do not provide checked baggage service. Baggage is placed in a secured portion of the passenger compartment that is separate from the seating area and accessed from the back of the vehicle.

Conclusion: The proposed rule establishes a minimum baggage liability limit for checked baggage that is consistent with the (adult fare) minimum limit established in federal rule for interstate passenger transportation companies operat-

ing into, out of, or through the state. Companies not already at the federal minimum may see an increased cost. Because baggage liability costs are built into rates, any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-476(2) Delivery of checked baggage.

Responding Companies: \$500 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: Checked baggage has been taken out of the passenger's control and placed with the passenger transportation company for stowage and transport in an area outside of the passenger compartment. If, upon reaching the passenger's destination, the checked baggage cannot be located, the carrier has an obligation to either compensate the passenger for the loss, or to deliver the baggage once it is found. Most airporters do not provide checked baggage service. Baggage is placed in a secured portion of the passenger compartment that is separate from the seating area and accessed from the back of the vehicle.

Conclusion: There may be a cost associated with delivery of lost checked baggage for those companies that accept checked baggage and do not have a delivery policy in place. The cost of delivering a misplaced bag to a local address is less than the cost of compensating a passenger for the loss. Because baggage liability costs are built into rates, any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-476(3) Claims.

Responding Companies: \$500 - SeaTac Shuttle. The company provided no explanation or information about its basis for a cost impact or how it calculated the cost impact.

Discussion: This proposed rule establishes a claims process for lost or damaged baggage. The claims process only applies to "checked baggage" that is not carried in the passenger compartment of the vehicle. Most airporters do not provide checked baggage service. Baggage is placed in a secured portion of the passenger compartment that is separate from the seating area and accessed from the back of the vehicle.

Conclusion: There may be a cost associated with establishing claims forms and making those forms available to customers. Because baggage liability costs are built into rates, any related new cost of compliance is no more than minimal, so mitigation is not required.

WAC 480-30-251 to WAC 480-30-436 Rates and rate methodology, Section 7.

Responding Companies: \$5,000 - \$10,000 - BK Air-
porter. The entire process of filing for a general rate increase is both time consuming and expensive. The preparation of pro-forma income and expense statements, depreciation schedules and other necessary documentation and justifications is excessive and costly. These burdens are too extensive for the average small business owner who is not an accountant and who doesn't have a full-time accountant on his staff. The most recent general rate increase filed by this company took six months of filing and then refiled again before staff approved an incremental rate increase. If our CPA firm responsible for our official accounting performed this task, the estimated cost for documentation preparation

only is \$2,125. See Cox and Lucy, CPA's estimate). Company costs for liaison and follow-up coordination during the entire process are estimated at \$5,000 - \$10,000, depending on the amount of justification required and the complexity of the request. These costs would be greatly diminished if rate methodology were simplified to allow the operator annual "fare zones" and simplified application procedures as discussed in BKA comments to the proposed rules. BKA preparation and processing of gasoline surcharge requests are estimated at \$1,200 per year. If fare zones were implemented, the need for fuel surcharge applications would be eliminated.

Discussion: Part 7 of the proposed rules include WAC 480-30-251 to WAC 480-30-436. The proposed rules reflect current tariff and rate filing requirements. The company's comments reference costs associated with the company's recent rate case and fuel surcharge filings under current rules. The commission will consider rate setting methods in a separate proceeding.

Conclusion: The proposed rule requires companies to compile and file information with proposed rates rather than after filing with the commission. Any related new cost of compliance is no more than minimal, so mitigation is not required.

Savings Resulting from Proposed Rules: The proposed rules authorize an auto transportation company certificate holder to provide charter and excursion carrier service without additional certificates. (Charter and excursion applications are \$150 each.)

The proposed rules consolidate the charter and excursion carrier certificates eliminating the requirement that companies pay for and receive two separate certificates. (Charter and excursion applications are \$150 each.)

By eliminating multiple certificates, the proposed rules also eliminate the requirement that companies identify their vehicles with multiple certificate numbers.

The proposed rules increase the opportunity for companies to make tariff and time schedule filings on a one-day notice to the commission rather than the current thirty-day notice.

The proposed rules no longer require companies to maintain records according to a uniform system of accounts established by the commission, but now allow companies to use general accounting practices.

The proposed rules no longer require companies to pay a fee to replace a lost certificate.

The proposed rules now include a simplified process to reinstate a certificate within thirty days of its cancellation.

The proposed rules no longer require companies to file duplicate or triplicate copies of applications, tariffs, time schedules, insurance forms.

The proposed rules no longer require companies to report or file with the commission vehicle accident reports.

Summary of Findings: The proposed rules include rules that were formerly codified in three separate chapters. Existing requirements are restated to provide clarity and more complete information for companies and passengers. The rules further incorporate state legislative actions; federal preemptive actions; and state agency, federal agency, and

court decisions that affect passenger transportation regulation.

The estimated cost to comply with the proposed rules appears to be reasonable and does not appear to be significant, except for the proposed increase in bodily injury and property damage liability insurance minimums that may affect only a small number (five) of the regulated companies that do not carry insurance at higher limits.

Mitigation: As described above, most of the proposed rules addressed by stakeholders in their response to the SBEIS questionnaire are existing requirements that have no new cost of compliance or compliance costs that are no more than minimal.

Several of the rules that have costs include compliance options, including no cost options. Other proposed rules have been revised and no longer include new compliance costs.

Other rules with implementation costs are necessary and cannot be mitigated.

Conclusion: Chapter 19.85 RCW requires an SBEIS be prepared to assess whether the proposed rules impose more than minor costs on businesses in an industry, in this case, passenger transportation companies including charter carriers, excursion carriers, and auto transportation companies providing airporter services, intercity bus services, intermodal and rural transportation services. Staff mailed surveys designed to obtain information about the cost of compliance with the proposed rules to all certificated passenger transportation companies subject to commission regulation including auto transportation companies, charter carriers, and excursion carriers. Surveys were also sent to other interested parties. Two companies responded.

As the section-by-section analysis shows, the economic impact of the proposed rule revisions is not significant for passenger transportation companies in general or for small businesses in particular. The proposed revisions make the passenger transportation company rules clearer by eliminating duplicative requirements between the various chapters and consolidating into a single chapter those rules that were formerly contained in three chapters. Outdated provisions are eliminated or updated.

Some rules will result in additional costs for companies, but these are not significant.

The following conclusions are based on an analysis of the cost impacts of the proposed rules on passenger transportation companies:

1) Passenger transportation companies will incur costs to comply with some of the proposed rules. Only the following three rules may result in compliance costs that are more than minor, WAC 480-30-191 Bodily injury and property damage liability insurance, 480-30-471 Ticketing requirements, and 480-30-476 Baggage liability and claims for loss or damage.

1) Although it was not possible to directly compare the costs and benefits of implementing the proposed rules, the commission believes that, on balance, the benefits of implementing the proposed rules are at least equal to the costs of compliance; and

2) As can be seen from the discussion above the economic impact of the total rewriting of these rules includes a number of cost reductions. Any prudent increase in costs can

be recovered from customers through rates. It is expected that the proposed rules will not impose any new costs that would cause rates to increase to such a degree as to cause a decrease in passengers and decrease in revenue.

A copy of the statement may be obtained by contacting Washington Utilities and Transportation Commission, Records Center, Docket No. TC-020497, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, phone (360) 664-1234, fax (360) 586-1150, e-mail records@wutc.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

February 15, 2006

Carole J. Washburn

Executive Secretary

Chapter 480-30 WAC

~~((AUTO TRANSPORTATION COMPANIES)) PASSENGER TRANSPORTATION COMPANIES~~

PART 1—GENERAL ADMINISTRATIVE RULES

NEW SECTION

WAC 480-30-001 Purpose of chapter. (1) The legislature has declared that companies operating as auto transportation companies or as charter and excursion carriers in the state of Washington are engaged in businesses that affect the public interest and should be regulated. The purpose of these rules is to administer and enforce chapters 81.68 and 81.70 RCW by establishing the following standards that apply to auto transportation companies and to charter and excursion carriers, to the extent allowed by the individual chapters of law:

- Public safety;
- Fair practices;
- Just, reasonable and sufficient rates;
- Nondiscriminatory application of rates;
- Adequate and dependable service;
- Consumer protection; and
- Compliance with statutes, rules and commission orders.

(2) This chapter replaces rules formerly contained in chapters 480-40 and 480-30 WAC.

(3) In addition to administering and enforcing chapters 81.68 and 81.70 RCW, the rules under this chapter are established to comply with federal law.

NEW SECTION

WAC 480-30-006 Application of rules. (1) The rules in this chapter apply to passenger transportation companies subject to the jurisdiction of the commission under chapter 81.04, 81.68, or 81.70 RCW. The rules apply to all passenger transportation companies, unless a part, rule, or reference within a rule states otherwise. These rules also include various requirements that apply to the companies' customers and to companies applying for certificates.

(2) The tariffs filed by auto transportation companies must conform to these rules. If the commission accepts a tariff or schedule that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-30-046. Tariffs that conflict with these rules and are not specifically approved by the commission are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by filing an informal complaint under WAC 480-07-910 or by filing a formal complaint under WAC 480-07-370.

(4) No deviation from these rules will be permitted without written authorization by the commission. Violation will be subject to penalties as provided by law.

NEW SECTION

WAC 480-30-011 Exempt operations. (1) The commission does not regulate the following passenger transportation operations under this chapter:

(a) Operations conducted wholly within the limits of an incorporated city or town.

(b) Auto transportation company operations from a point in a city or town in the state of Washington for a distance of not more than three road miles beyond the corporate limits of the city or town in which the trip began. The operations must not be part of a journey beyond the three-mile limit, either alone or in conjunction with another vehicle or vehicles.

(c) Commuter ride sharing or ride sharing for persons with special transportation needs under RCW 46.74.010, provided the ride-sharing operation does not compete with nor infringe upon comparable service that was actually provided by an auto transportation company under chapter 81.68 RCW before the ride-sharing operation started.

(d) Municipal corporations and other government entities.

(e) Public transit agencies.

(f) Persons operating vehicles under exclusive contract to a public transit agency.

(g) Persons owning, operating, controlling, or managing taxi cabs, hotel buses, or school buses, when operated as such.

(h) Passenger vehicles carrying passengers on a noncommercial basis, including but not limited to, nonprofit corporations.

(i) Private carriers who, in their own vehicles, transport passengers as an incidental adjunct to some other established private business owned or operated by them in good faith.

(j) Transporting transient air flight crew or in-transit airline passengers between an airport and temporary hotel accommodations under an arrangement between the airline carrier and the passenger transportation company.

(k) Substituting ground transportation for air transportation under an arrangement between the airline carrier and the passenger transportation company in emergency situations arising from the inability of the air carrier to perform air transportation due to adverse weather conditions, equipment failure, or other causes.

(l) Transporting passengers who have had or will have had a prior or subsequent movement by air under a through ticket or common arrangement with an airline or with a connecting out-of-state passenger transportation company.

(m) Any other carrier or company that does not come within the term:

(i) "Auto transportation company" as defined in RCW 81.68.010;

(ii) "Charter party carrier of passengers" as defined in RCW 81.70.020; or

(iii) "Excursion service carrier" as defined in RCW 81.70.020.

NEW SECTION

WAC 480-30-016 Determination of authority. (1) In some instances, a person desiring to transport passengers may be subject to regulation as an auto transportation company under the provisions of chapter 81.68 RCW, a charter and excursion carrier under the provisions of chapter 81.70 RCW, or both chapters, depending on the nature of the services offered and provided.

(2) When determining whether operations require an auto transportation or charter and excursion certificate the commission will consider factors including, but not limited to:

(a) What is the nature of the proposed transportation service?

(b) What is the origin and destination of the proposed transportation?

(c) Who will provide the service?

(d) Who will pay for the service?

(e) How will the rates be assessed? (Time of use, mileage or distance, passenger fares, flat fee, other.)

(f) How will the service be provided?

(g) Will the service be offered to the public?

(h) Will a passenger or group of passengers have exclusive use of the vehicle or will there be shared rides or mixed use?

(i) What type and size vehicle(s) will be used to provide the service?

(j) Who will own the vehicle(s)?

(k) Who will be responsible for the operation and control of the vehicle(s)?

(3) Any person may submit to the commission a detailed written description of a proposed service to transport passengers and request an informal staff determination of the authority required to provide the described service.

NEW SECTION

WAC 480-30-021 Additional requirements. (1) These rules do not relieve any passenger transportation company from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains the authority to impose additional or different requirements on any passenger transportation company in appropriate circumstances, consistent with the requirements of law.

NEW SECTION

WAC 480-30-026 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is still valid.

NEW SECTION

WAC 480-30-031 Procedural rules. The commission's procedural rules are contained in chapter 480-07 WAC. If a rule in this chapter conflicts with a rule in chapter 480-07 WAC, the rule in this chapter applies. Copies of chapter 480-07 WAC are available from the commission records center on request.

NEW SECTION

WAC 480-30-036 Definitions, general. (1) See WAC 480-30-261 for definition of terms used primarily in tariffs and time schedules and WAC 480-30-216 for definitions used in driver and vehicle safety rules.

(2) Unless the language or context indicates that a different meaning is intended, the following definitions apply:

"Agent" means a person authorized to transact business for, and in the name of, another.

"Airporter service" means an auto transportation service that starts or ends at a station served by another type of transportation such as, air or rail transportation. Airporter service is often a premium service that involves handling luggage. Although stops may be made along the way, they are usually limited to picking up or discharging passengers, luggage, and/or express freight bound to or from the airport or depot served.

"Alternate arrangements for passengers" means the travel arrangements made by an auto transportation company that has accepted a trip booking or reservation from a passenger and that is unable to provide the agreed transportation. The alternate arrangements may require travel by another carrier or mode of transportation at no additional cost to the passenger beyond what the passenger would have paid for the original transportation arrangement.

"Application docket" means a commission publication providing notice of all applications requesting auto transportation operating authority, with a description of the authority requested. The commission sends this publication to all persons currently holding auto transportation authority, to all persons with pending applications for auto transportation authority, to affected local jurisdictions or agencies, and to all other persons who asked to receive copies of the application docket.

"Area" means a defined geographical location. Examples include, but are not limited to:

- (a) A specified city or town;
- (b) A specified county, group of counties, or subdivision of the state, e.g., western Washington;
- (c) A zone, e.g., company designated territory; or
- (d) A route, e.g., area within four road miles of Interstate

5.

"Auto transportation company" means every person owning, controlling, operating, or managing any motor-propelled vehicle not usually operated on or over rails, used in the business of transporting persons over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town.

"Between fixed termini or over a regular route" means the fixed points between which an auto transportation company provides service or the route over which an auto transportation company ordinarily operates any motor-propelled vehicle, even though there may be variance whether the variance is periodic or irregular.

"Bus" means a motor vehicle designed, constructed, and/or used for the transportation of passengers.

"Business days" means days of the week excluding Saturdays, Sundays, and official state holidays.

"By-reservation-only service" means transportation of passengers by an auto transportation company, with routes operated only if passengers have made prior reservations.

"Certificate" means:

(a) The certificate of public convenience and necessity issued by the Washington utilities and transportation commission under the provisions of chapter 81.68 RCW to operate as an auto transportation company; or

(b) The certificate issued by the Washington utilities and transportation commission under chapter 81.70 RCW to operate as a charter and excursion carrier in the state of Washington.

"Certificated authority" means:

(a) The territory and services granted by the commission and described in an auto transportation company's certificate of public convenience and necessity; or

(b) Operations in the state of Washington for charter and excursion service carriers.

"Charter party carrier of passengers" or "charter carrier" means every person engaged in the transportation of a group of persons who, pursuant to a common purpose and under a single contract, have acquired the use of a motor bus to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin.

"Claim" means a demand made on a company for payment resulting from a loss sustained through the company's negligence or for inadequate service provided by the company.

"Closed-door service" means a portion of a route or territory in which an auto transportation company is not allowed to pick up or deliver passengers. Closed-door service restrictions must be clearly stated in an auto transportation company's certificate.

"Common purpose" means that a group of persons is traveling together to achieve a common goal or objective. For example, a group of persons traveling together to attend a common function or to visit a common location. For the purposes of these rules it does not mean a group of persons who have no common goal other than transportation to, or from, the airport.

"Commission" means the Washington utilities and transportation commission.

"Common carrier" means any person who transports passengers by motor vehicle over the public highways for compensation.

"Company" means an entity authorized by the commission to transport passengers, for compensation, using a motor vehicle, over the public highways of the state.

"Complaint" means one of two types of actions by a person against a passenger transportation company that the commission regulates:

(a) **"Informal complaints"** are those complaints filed with the commission under the provisions of WAC 480-07-910. Informal complaints are normally investigated and resolved by commission staff.

(b) **"Formal complaints"** are those complaints filed with the commission under the provisions of WAC 480-07-370. In a formal complaint, the burden of proof resides with the complaining party who must prove its assertions in a formal commission proceeding.

"Connecting service" means an auto transportation company service over a route, or routes, that require passengers to transfer from one vehicle to another vehicle operated by either the same company or a different company before reaching the ending point.

"Contract carrier" means a person holding a certificate issued by the commission authorizing transportation of passengers under special and individual contracts or agreements.

"Customer" means a person who purchased transportation services from an auto transportation company.

"Direct route" means an auto transportation company service over a route that goes from the beginning point to the ending point with limited, if any, stops along the way, and traveling only to points located on the specific route without requiring a passenger to transfer from one vehicle to another.

"Discontinuance of service":

(a) **"Permanent discontinuance of service"** means that a company holding auto transportation authority issued by the commission is unable to continue to provide all, or part of, the service authorized by the company's certificate, filed tariff, or filed time schedule and requests commission permission to permanently discontinue all, or part of, its service and relinquish that certificate or portion of that certificate. See WAC 480-30-186.

(b) **"Temporary discontinuance of service"** means that a company holding auto transportation authority issued by the commission is unable to continue to provide all, or part of, the service authorized by the company's certificate, filed tariff, or filed time schedule and requests commission permission to discontinue all, or part of, its service for a specified, limited period of time.

"Door-to-door service" means an auto transportation company service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule.

"Excursion service carrier" or **"excursion carrier"** means every person engaged in the transportation of persons for compensation over any public highway in the state from points of origin within any city, town, or area, to any other location within the state of Washington and returning to that

origin. The service will not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may or may not be regularly scheduled. Compensation for the transportation offered must be computed, charged, or assessed by the excursion service company on an individual fare basis.

"Express freight/package service" means transportation of freight and packages, other than packages or baggage carried or checked by passengers, offered by a passenger transportation company.

"Express passenger service" means auto transportation company service provided between fixed points or stations with few, if any, stops along the route, and is designed to get passengers from origin to destination more quickly than normally scheduled passenger service.

"Federal Motor Carrier Safety Administration" means an agency of the United States Department of Transportation (USDOT) and successor agency to the former Interstate Commerce Commission.

"Filing" means any application, petition, tariff proposal, annual report, comment, complaint, pleading, or other document submitted to the commission.

"Fixed termini" means points of origin and destination that are set, static locations or defined geographic areas. Examples include a city or town, a building or an airport. In addition "fixed termini" can include service between an airport and unlimited points within a defined geographic area.

"Flag stops" means a point along an auto transportation company's normally traveled routes where the company stops only if it receives notification that a passenger wishes to board the vehicle at that point. An auto transportation company must list available flag stops in the company's tariffs and time schedules. Flag stops may only be named at points that provide waiting passengers safe access to the vehicle.

"Group" means:

(a) Two or more passengers traveling together;

(b) A class of passengers to whom special rates and/or rules apply. For example, active military personnel.

"Intermediate point" means a point located on a route between two other points that are specifically named in an auto transportation company's certificate or tariff.

"Intermediate service" means service to an intermediate point.

"Interruption in service" means a period of time during which an auto transportation company cannot provide service listed in its certificate, its filed tariff, or its filed time schedule. An interruption in service is normally short lived, lasting no more than a few hours or a few days.

"Leasing":

(a) **"Leasing authority"** means one auto transportation company allowing another person to operate all, or a portion, of the authority granted to the first company by the commission. A joint application to, and approval from, the commission is required to lease authority. See WAC 480-30-141.

(b) **"Leasing equipment"** means the act of a passenger transportation company to supplement its fleet by acquiring a vehicle(s) from a third party for a specified period of time under contract. See WAC 480-30-236.

"Motor vehicle" or **"vehicle"** means:

(a) As related to auto transportation companies: Every self-propelled vehicle used on the public highways, for the transportation of persons for compensation.

(b) As related to charter and excursion carriers: Every self-propelled vehicle with a manufacturer's seating capacity for eight or more passengers, including the driver, used on the public highways, for the transportation of persons for compensation.

"Named points" means cities, towns, or specific locations that are listed in an auto transportation company's certificate, tariff, or time schedule.

"Nonstop service" means transportation of passengers from point of origin to point of destination without stopping at any intermediate points.

"On-call service" means unscheduled auto transportation company service provided only to those passengers that have by prior arrangement requested service prior to boarding.

"Passenger facility" means a location at which an auto transportation company stations employees and at which passengers can purchase tickets or pay fares for transportation service.

"Passenger transportation company" means an auto transportation company or charter and excursion carrier.

"Person" means an individual, firm, corporation, association, partnership, lessee, receiver, trustee, consortium, joint venture, or commercial entity.

"Premium service" means a type of service provided by an auto transportation company that is outside normal service. Examples include express service, direct route service, and nonstop door-to-door service.

"Private carrier" means a person who transports passengers in the person's own vehicle purely as an incidental adjunct to some other established private business owned or operated by that person in good faith.

"Private motor vehicle" means a vehicle owned or operated by a private carrier.

"Public highway" means every street, road, or highway in this state.

"Public transit agency" means a municipal corporation or agency of state or local government formed under the laws of the state of Washington for the purpose of providing transportation services including, but not limited to, public transportation benefit areas, regional transit authorities, municipal transit authorities, city and county transit agencies.

"Residence" means the regular dwelling place of an individual or individuals.

"Route" means a highway or combination of highways over which an auto transportation company provides passenger service. There are two types of routes:

(a) **"Irregular route"** means travel between points named in an auto transportation company's certificate via any highway or combination of highways the company wishes to operate over. The certificate issued to the company does not list highways to be used, but the company defines routes in its tariffs and time schedules.

(b) **"Regular route"** means an auto transportation company providing passenger transportation over a route named in the certificate issued to the company by the commission.

"Scheduled service" means an auto transportation company providing passenger service at specified arrival and/or departure times at points on a route.

"Single contract" means an agreement between a charter carrier and a group of passengers to provide transportation services at a set price for the group or trip. Under a single contract, passengers are not charged individually.

"Small business" means any company that has fifty or fewer employees.

"Special or promotional fares" means temporary fares for specific services offered for no more than ninety days.

"State" means the state of Washington.

"Subcontracting - auto transportation company" means that an auto transportation company holding authority from the commission contracts with a second auto transportation company to provide service that the original company has agreed to provide, but finds it is unable to provide. See WAC 480-30-166.

"Subcontracting - charter and excursion carrier" means that a charter and excursion carrier holding authority from the commission contracts with a second charter and excursion carrier to provide service that the original carrier has agreed to provide, but finds it is unable to provide.

"Substitute vehicle" means a vehicle used to replace a disabled vehicle for less than thirty days.

"Suspension" means an act by the commission to temporarily revoke a company's certificated authority; or an act by the commission to withhold approval of an auto transportation company's tariff filing.

"Tariff" or **"tariff schedule"** means a document issued by an auto transportation company containing the services provided, the rates the company must assess its customers for those services, and the rules describing how the rates apply.

"Tariff service territory" means a company-defined geographic area of its certificated authority in which a specific tariff applies.

"Temporary certificate" means the certificate issued by the Washington utilities and transportation commission under RCW 81.68.046 to operate as an auto transportation company for up to one hundred eighty days or pending a decision on a parallel filed auto transportation company certificate application.

"Temporary certificate authority" means the territory and services granted by the commission and described in an auto transportation company's temporary certificate.

"Ticket agent agreements" means a signed agreement between an auto transportation company and a second party in which the second party agrees, for compensation, to sell tickets to passengers on behalf of the auto transportation company. See WAC 480-30-391.

"Time schedule" means a document filed as part of an auto transportation company's tariff, or as a separate document, that lists the routes operated by the company including the times and locations at which passengers may receive service and any rules specific to operating those routes.

NEW SECTION

WAC 480-30-041 Change of address. A company must notify the commission in writing of any change in phys-

ical business address, business mailing address, business telephone number, fax number, or e-mail address. This notice must be filed by letter, fax, or e-mail within fifteen days following the change.

NEW SECTION

WAC 480-30-046 Exemptions from rules in chapter 480-30 WAC. The commission may grant an exemption from the provisions of any rule in this chapter consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modification to the rules in this chapter; special rules).

NEW SECTION

WAC 480-30-051 Mapping, auto transportation company. (1) **Software and scale compatibility.** The commission uses geographic information system (GIS) software to track regulated public utility and transportation company operating territories. Auto transportation company maps must meet minimum standards to ensure that those maps are compatible with the commission's GIS mapping system. When required by this chapter to file a map, an auto transportation company must file that map in one of the methods described in (a) and (b) of this subsection.

(a) **Electronic maps.** An auto transportation company may file an electronic map that is compatible with the commission's hardware and software. Before filing its map electronically, a company must contact the commission to determine whether its mapping software is compatible with that used by the commission.

(b) **Paper maps.** An auto transportation company may file a paper map or combination of paper maps using:

- (i) Official state highway maps or comparable highway maps;
- (ii) United States Geological Survey (USGS) maps at a scale of 1:250,000;
- (iii) United States Geological Survey (USGS) maps at a scale of 1:24,000, when necessary to clearly resolve any inconsistencies or to reflect local service territories.

(c) **Availability of maps.** USGS maps are available through the Washington state department of natural resources and various private vendors. The official state highway map is available from the Washington state department of transportation.

(2) **Map detail.** Any map submitted to the commission must:

- (a) Clearly show counties, cities, freeways, highways, roads, streets, county lines, and any other feature described in the application or certificate;
- (b) Be clearly labeled to identify the features described in the certificate;
- (c) Have a north arrow;
- (d) Have a map legend briefly describing the features on the map;
- (e) Have a scale bar showing the distance on the map equal to a defined number of feet, miles or other unit; and
- (f) Have a title box that includes the company's name as shown on the company's auto transportation certificate, the company's registered trade name, the identification number

of the filing to which the map applies, and a contact name and phone number.

NEW SECTION

WAC 480-30-056 Records retention, auto transportation company. (1) **General provisions.** An auto transportation company must keep all business records and reports for at least three years following the date those documents are created unless otherwise specified in subsection (2) of this section or unless a longer retention period is required by another governmental body.

(2) Retention schedule table. The following schedule shows periods that auto transportation companies must preserve various records.

Type of Record:	Retention Period:
1. Original certificate	Until cancellation.
2. Contracts and agreements: (a) Service contracts (management, accounting, financial or legal services) (b) Contracts with employees and employee groups	Until expiration or termination plus three years.
(c) General contracts, leases and agreements	Until termination plus one year.
3. Long-term debt records: Bond indentures, underwritings, mortgages, and other long-term credit agreements	Until redemption plus three years.
4. General and subsidiary ledgers and indexes	Until discontinuance of use plus three years.
5. General journals	Until discontinuance of use plus three years.
6. General cash books	Until discontinuance of use plus three years.

(3) **Customer service records.** An auto transportation company must maintain complete and accurate customer service records.

(a) Company service records include, but are not limited to:

- (i) Daily trip records, by route or by unit of equipment, that show:
 - (A) The schedules operated;
 - (B) The number of passengers carried on each schedule;
 - (C) The point each passenger boarded and disembarked from the vehicle;
 - (D) The fare charged each customer (for example full-fare, children's fare, round-trip fare, free or reduced fare);
 - (E) Any condition causing the vehicle to deviate from the company's filed time schedule by more than thirty minutes. For example, traffic backed up at an accident site, inclement weather, or equipment failure.
- (ii) Records of revenues received.
- (iii) Bills or invoices issued.

- (iv) Records of all reservations.
- (v) Records of all tickets issued.
- (vi) Records of all passenger service provided at free and/or reduced rates.
- (b) Customer service records must be kept on file in the general office of the company for at least three years and are subject to commission inspection.
- (c) Customer service records must be kept in chronological, numerical, or service route order.

NEW SECTION

WAC 480-30-061 Express freight, property transportation. (1) 49 U.S.C. § 14501 preempts state regulation of the routes, rates, and services of property carriers transporting general commodities, other than residential household goods. This preemption includes passenger transportation companies transporting property even if that property is being transported in the same vehicle as passengers.

(2) A passenger transportation company operating under the provisions of this chapter may transport property in the same motor vehicles that it uses to transport passengers without any additional authority or permits from this commission.

(3) When transporting property in a motor vehicle with passengers, the company must ensure that property may be safely and conveniently carried without causing discomfort to the passengers and that it is of an amount that does not disturb the convenience, speed and other essential qualities of the passenger service.

(4) If a passenger transportation company transports property in motor vehicles other than those used to transport passengers under this chapter, then the company must ensure that its operations comply with the motor freight carrier requirements, including permits, insurance, driver, and equipment safety provisions established for property carriers under chapters 81.80 RCW and 480-14 WAC.

**PART 2—ACCOUNTING REQUIREMENTS,
REPORTING REQUIREMENTS AND REGULATORY
FEES**

NEW SECTION

WAC 480-30-066 Accounting requirements, auto transportation company. (1) The commission publishes a uniform system of accounts (USOA) for auto transportation companies. The commission supplies copies of the USOA on request.

(a) The USOA defines accounting, financial, and other procedures the commission uses to determine if rates are fair, just, reasonable, and sufficient.

(b) The USOA contains accounting definitions, listings, and explanations of balance sheet and income statement accounts.

(2) The commission recommends companies maintain their financial and accounting records according to the USOA. Regardless of what accounting system a company uses, the company must maintain its books and records in a manner sufficient to complete the commission-issued annual report form, using figures that reconcile with the USOA.

NEW SECTION

WAC 480-30-071 Reporting requirements. (1) **Auto transportation company annual reports.** An annual report is an end-of-the-year summary of financial and operational activity that each regulated auto transportation company is required to file with the commission.

(a) Each year the commission provides an annual report form and instructions to each company at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual report. A company that does not receive an annual report form must contact the commission to obtain a copy of the form.

(b) A company must file a complete, accurate annual report showing all requested information by May 1 of the succeeding year. Information provided on the annual report must agree with source documents maintained at company offices.

(c) The commission may grant an extension of time allowing the company to file its annual report after the May 1 due date if the commission receives a request for extension before May 1.

(d) The commission may issue penalty assessments or take action to suspend or cancel a certificate if a company fails to file its required annual report.

(e) A company selling, canceling, transferring, or in some other manner discontinuing operations must submit an annual report for that portion of the year in which the company operated.

(2) **Charter and excursion carrier annual safety reports.** An annual safety report is a summary of motor vehicle and safety operating information that each charter and excursion carrier is required to file with the commission.

(a) Each year the commission provides an annual safety report form and instructions to each company at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual safety report. A company that does not receive an annual safety report form must contact the commission to obtain a copy of the form.

(b) A company must file a complete, accurate annual safety report showing all requested information by December 31 of each year. Information provided on the annual safety report must agree with source documents maintained at company offices.

(c) The commission may grant an extension of time allowing the company to file its annual safety report after the December 31 due date if the commission receives a request for extension before December 31.

(d) The commission may issue penalty assessments or take action to suspend or cancel a certificate if a company fails to file its required annual safety report.

(3) **Other reports.** The commission may require a company to file periodic or other special reports.

NEW SECTION

WAC 480-30-076 Regulatory fees. A regulatory fee is an annual assessment paid by each company to cover the costs of regulation.

(1) Auto transportation company regulatory fees.

The maximum auto transportation company regulatory fee is set by statute at two-fifths of one percent of gross intrastate operating revenue.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum fee that an auto transportation company must pay is twenty dollars.

(c) The twenty dollar minimum regulatory fee is waived for any auto transportation company with less than five thousand dollars in gross intrastate operating revenue.

(d) Each auto transportation company must pay its regulatory fee by May 1 of each year.

(2) Charter and excursion carrier regulatory fees.

The charter and excursion carrier regulatory fee is established by commission order.

(a) The minimum fee a charter and excursion carrier must pay is the amount established for a single vehicle.

(b) Each charter and excursion carrier must pay its regulatory fee on or before December 31 of each year to cover the ensuing year beginning February 1.

(3) **Extension of time to pay regulatory fees.** The commission cannot grant extensions for payment of regulatory fees.

(4) **Penalties for late fees.** If a company does not pay its regulatory fee by the due date established in this rule, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

(5) The commission may take action to suspend or cancel a certificate, if a company fails to pay its regulatory fee.

NEW SECTION

WAC 480-30-081 Motor vehicle fund, auto transportation company. (1) In addition to regulatory fees, each auto transportation company must pay mileage fees on each vehicle it operates with a seating capacity over six passengers. RCW 46.16.125 establishes the following mileage fees:

(a) Fifteen cents for each one hundred vehicle miles; or

(b) Twenty cents for each one hundred vehicle miles if the vehicle is propelled by steam, electricity, natural gas, diesel oil, butane, or propane.

(2) The commission transmits mileage fees collected under the provisions of RCW 46.16.125 to the state treasurer to be deposited in the motor vehicle fund.

(3) If a company fails to pay the mileage fees, the company is subject to a penalty of one hundred percent of the payment due.

Auto transportation company certificate application

Application for certificate to provide regular route or fixed termini service. Forms include:
Application for new certificate, to reinstate a previously canceled certificate, to transfer all or a portion of a certificate to a new owner or business structure, to lease all or a portion of a certificate. Note: Auto transportation company certificates include statewide charter and excursion carrier service. No additional application is required.

PART 3—CERTIFICATESNEW SECTION

WAC 480-30-086 Certificates, general. (1) **Certificate required.** A person must have a certificate from the commission before operating as a passenger transportation company in the state of Washington.

(2) **Company name.** The company name is the name of the certificate holder.

(a) A company electing to conduct operations under a trade name must first register the trade name with the commission.

(b) A company must conduct all operations under the company name, a registered trade name, or both. The term "operations" includes, but is not limited to advertising, ticketing, and identifying vehicles.

(c) A company may not operate under a company name or trade name that is similar to that of another company if use of the similar name misleads the public or results in unfair or destructive competitive practices.

(3) **Display.** A company must keep its original certificate on file at its principal place of business open to inspection by any customer, law enforcement officer, or authorized commission representative who asks to see it.

(4) **Replacement.** The commission will replace a lost or destroyed original certificate at no charge.

(5) **Description of certificated authority.** When a company's certificate authority includes boundaries such as cities, towns, streets, avenues, roads, highways, townships, ranges or other descriptions, the boundaries remain established as they existed at the time the commission granted the authority.

(6) Operating within certificated authority.

(a) A company must operate strictly within the authority described in its certificate.

(b) The commission may take administrative action against a company operating outside its certificated authority. Refer to WAC 480-30-241 for information regarding the commission's compliance policy.

NEW SECTION

WAC 480-30-091 Certificates, application fees. (1) The purpose of an application filing fee is to partially cover handling and processing expenses.

(2) The commission establishes the following fees for application filings:

\$200

Auto transportation company certificate extension application	\$150
Application for extension of certificate authority to add new or additional regular route or fixed termini service to an existing auto transportation certificate.	
Auto transportation company temporary certificate application	\$150
Application for new temporary authority or temporary authority to operate pending a commission decision on a parallel filed certificate application.	
Charter and excursion carrier certificate application	\$200
Application for single certificate to provide both charter and excursion carrier service statewide. Forms include: Application for new certificate, to reinstate a previously canceled certificate, to transfer an existing certificate to a new owner or business structure.	
Certificate name change application	\$35
Application to change a company's corporate name, change a trade name, add a new trade name, or change the surname of an individual owner or partner.	
Auto transportation company certificate mortgage application	\$35
Application for permission to mortgage or otherwise encumber an auto transportation company certificate.	

NEW SECTION

WAC 480-30-096 Certificates, application filings, general. (1) A company must submit its certificate application on forms provided by the commission.

(2) Applications must include all requested information, attachments, signed statements, and filing fees.

(a) The commission may reject or defer consideration of an application until the applicant provides all required information;

(b) The commission may reject or defer consideration of an application until the applicant pays any outstanding fees, fines, or penalties; or

(c) The commission may reject or dismiss an application if it includes false, misleading, or incomplete information.

(3) Applications for auto transportation certificate authority must include, but are not limited to:

(a) A complete description of the proposed service including the line, route, or service territory described in terms such as streets, avenues, roads, highways, townships, ranges, cities, towns, counties, or other geographic descriptions;

(b) A map of the proposed line, route, or service territory that meets the standards described in WAC 480-30-051;

(c) A statement of the applicant's assets and liabilities;

(d) A proposed tariff and time schedule;

(e) A statement of conditions that justify the proposed service;

(f) Ridership and revenue forecasts for the first twelve months of operation;

(g) A pro forma balance sheet and income statement for first twelve months of operation;

(h) A list of equipment to be used in providing the proposed service; and

(i) A statement of the applicant's prior experience and familiarity with the statutes and rules that govern the operations it proposes.

(4) The provisions of this rule do not apply to applications for auto transportation company certificate authority to provide intrastate service over an interstate regular route

under a federal grant of authority. Refer to WAC 480-30-101.

NEW SECTION

WAC 480-30-101 Certificates, federal grant of authority, auto transportation company. (1) This rule governs applications for auto transportation company certificates for authority to provide intrastate regular route service under a federal grant of authority under the provisions of 49 U.S.C. § 13902.

(2) A company operating under a federal grant of authority must comply with state filing requirements no later than thirty days after the date the company first begins providing transportation entirely within the state.

(3) The commission will grant an auto transportation company application for certificate consistent with the federal grant of authority and limited to intrastate operations that are conducted together with regularly scheduled interstate operations on the same route.

(a) An application for a certificate filed under the provisions of this rule must be submitted on forms provided by the commission and accompanied by the required auto transportation company certificate application filing fee in WAC 480-30-091.

(b) A copy of the federal order granting authority and any other documents or correspondence relevant to the federal grant of authority must accompany the application.

(c) The application may be published on the commission's application docket for informational purposes only, but is not subject to protest by any party.

NEW SECTION

WAC 480-30-106 Certificates, acquisition of control. (1) **Notice required.** Any person acquiring control of a passenger transportation company through acquisition of the stock of that company must notify the commission in writing within thirty days of the acquisition.

(2) **Content of notice.** Notice may be accomplished by filing a letter with the commission. The letter must include at least the following information:

(a) The name, registered trade names, and certificate number of the acquired company.

(b) The date of acquisition.

(c) The names of the majority stockholders and the percent of stock each holds.

(d) The name, address, telephone number, fax number, and e-mail address of a contact person within the company to whom questions may be directed.

(e) The location (mailing address and physical address) where books and records of the acquired company will be retained.

NEW SECTION

WAC 480-30-111 Certificates, starting service. (1) Filing an application under WAC 480-30-096 does not authorize the applicant to start operations of the type requested or in the territory described in the application. The commission must grant the application and issue a certificate before a company may start the requested service.

(2) This rule does not apply to applications for auto transportation company certificates under a preemptive federal grant of authority to provide intrastate service over an interstate route.

NEW SECTION

WAC 480-30-116 Certificates, application docket, protests, and intervention, auto transportation company.

(1) **Application docket.** The commission publishes a notice of pending certificate applications in the application docket. The commission mails the application docket to each existing auto transportation company certificate holder, to each person with a pending auto transportation company certificate application, to affected local jurisdictions or agencies, and to any other interested person who has asked to receive copies of the application docket. It includes notice of auto transportation company certificate applications for:

(a) New certificate authority.

(b) Extension of existing certificate authority.

(c) Transfer or lease of all or a portion of certificate authority.

(2) **Protests.** An existing auto transportation company certificate holder may file a protest to an application published in the application docket.

(a) **Form of protests.** Protests must:

(i) Be filed within thirty days of the date the commission mailed the application docket.

(ii) Be filed according to the provisions of WAC 480-07-370.

(iii) Be served on the applicant and the applicant's attorney, if one is identified in the application docket.

(iv) Specify the reasons for the protest.

(v) Specify the protestant's interest in the proceeding.

(vi) Specify the approximate number of witnesses the protestant intends to present and an estimate of hearing time required for the protestant's presentation;

fit, willing and able to comply with state law and the require-

(vii) Include the name and address of each person on whose behalf the protest is filed including that person's certificate number, a copy of the certificate authority, and identification of the portion or portions of the protestant's certificate that is the basis for the protest.

(viii) Describe any restrictive amendment that could eliminate the protestant's interest in the application.

(b) **Failure to file protest on time.** A person who fails to file a protest within the thirty-day protest period may not in any way participate further in the proceeding, unless that person can show that the commission did not provide proper notice of the pending application, or that good cause exists for the failure to make a timely protest.

(3) **Intervention.** Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition to be an intervener. Refer to WAC 480-07-355 for information on intervention.

(4) **Applications not subject to the docket and protest provisions of this rule.** This rule does not apply to:

(a) Applications for charter and excursion carrier certificates;

(b) Applications to reinstate a certificate canceled for cause under the provisions of WAC 480-30-181, when the application is filed within thirty days of the certificate cancellation date;

(c) Applications for name change;

(d) Applications to mortgage an auto transportation company certificate;

(e) Applications for an auto transportation company certificate under a federal grant of authority to provide intrastate service over an interstate route; and

(f) Applications for temporary certificate authority.

NEW SECTION

WAC 480-30-121 Certificates, applications, charter and excursion carrier. (1) A person applying for a certificate to provide charter and excursion carrier services must be fit, willing, and able to provide service and to comply with state law and the safety and insurance requirements of this chapter.

(2) The commission will issue to any qualified applicant a certificate to provide charter and excursion carrier services in Washington upon receipt of:

(a) A complete application filing as required by WAC 480-30-096;

(b) Proof of insurance as required by WAC 480-30-191; and

(c) Proof of a passing Commercial Vehicle Safety Alliance (CVSA) safety inspection of each motor vehicle to be operated by the applicant under its certificate.

NEW SECTION

WAC 480-30-126 Certificates, applications, auto transportation company. (1) A person applying for a certificate to provide auto transportation company services must have the knowledge, experience, and resources to conduct the service it proposes in its application. The applicant must be fit, willing and able to comply with state law and the require-

(2) The commission must determine that the public convenience and necessity requires the proposed service when considering an application for a new certificate or extension of an existing certificate.

(3) Auto transportation company certificate applications are subject to the application docket notice and protest provisions of WAC 480-30-116.

(4) The commission may set for hearing any auto transportation company certificate application.

(5) The commission must provide the opportunity for a hearing and determine that an existing auto transportation company is not providing service to the satisfaction of the commission before it may grant a new certificate or extension of an existing certificate to provide service in a territory already served by another auto transportation company, unless the existing auto transportation company or companies do not object to the application by filing a protest under the provisions of WAC 480-30-116.

NEW SECTION

WAC 480-30-131 Certificates, overlapping applications, auto transportation company. (1) The commission may consolidate applications for certificated auto transportation authority for joint consideration if:

(a) The authority requested in the applications overlaps in whole or in part; and

(b) The subsequent application was filed within thirty days of the date the initial application appears on the application docket.

(2) Applications for overlapping authority not filed within thirty days after the initial application appears on the application docket will be decided after the conclusion of proceedings resolving the initial application and any other application qualifying for joint consideration.

(3) When applications consolidated by the commission for joint consideration also contain requests for territory or services not overlapping that requested in the other application, and the nonoverlapping services or territory may be appropriately severed, the commission may decide the nonoverlapping portions of the application separately from the portions that do overlap.

NEW SECTION

WAC 480-30-136 Certificates, application hearings, auto transportation company. (1) Auto transportation company certificate application hearings are governed by the provisions of chapter 480-07 WAC.

(2) When an application has been protested, the commission will generally not consider written statements from witnesses that have not been available for cross examination at hearing.

(3) An applicant must be prepared to present information at hearing, through documents or the testimony of witnesses, including but not limited to, the following:

(a) A description of the service proposed and the cost of that service for the area to be served;

(b) An estimate of the cost of the facilities to be used in providing the proposed service;

(c) The condition of the applicant's equipment and the applicant's program for maintenance and repair;

(d) A statement of the assets available to the applicant that will be used to provide the proposed service;

(e) Prior experience, if any;

(f) Familiarity with the statutes and rules that govern the proposed operations;

(g) The public need for the proposed service.

(i) The commission will not accept as support an applicant's own statements that its proposed service is needed by the public.

(ii) The applicant must support its application with independent witnesses who actually require the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority.

(4) If an applicant requests a certificate or extension of certificate to operate in a territory already served by another certificate holder, the applicant must also show that the existing transportation company or companies will not provide service in that territory to the satisfaction of the commission.

(5) When determining if the territory at issue is already served by another certificate holder the commission may, among other things consider:

(a) The authority of existing companies and whether or not they are serving to the full extent of that authority.

(b) The kinds, means, and methods of service provided.

(c) Whether the type of service provided reasonably serves the market.

(d) Whether the population density warrants additional facilities or transportation.

(e) The topography, character, and condition of the territory into which the proposed services are to be introduced, and the proposed territory's relation to the nearest territory through which transportation service is already provided.

(f) Whether a grant of the requested authority and the resulting increased competition will benefit the public.

NEW SECTION

WAC 480-30-141 Certificates, sale, lease, assignment, transfer or mortgage, auto transportation company. (1) The commission must approve any sale, assignment, lease, transfer, or mortgage of a company's certificate, or any portion of the operating authority described in a company's auto transportation company certificate.

(2) To obtain commission approval for sale, assignment, lease, transfer, or mortgage, the parties to the transaction must jointly file an auto transportation company certificate application with the commission under the provisions of WAC 480-30-096.

(3) The provisions of this rule do not apply to change in ownership resulting from an acquisition of control of a corporation through stock sale or purchase. Refer to WAC 480-30-106.

NEW SECTION

WAC 480-30-146 Certificates, name change. (1) A company must file a name change application under the provisions of WAC 480-30-096 to:

(a) Change its corporate name;

- (b) Change its trade name;
- (c) Add a trade name to a certificate; or
- (d) Change the surname of an individual owner or partner to reflect a change resulting from marriage or other legal action.

(2) When filing a name change application, the applicant must include:

- (a) Copies of any corporate minutes or other legal documents authorizing the name change; and
- (b) Proof that the new name is properly registered with the department of licensing, office of the secretary of state, or other agencies, as may be required.

(3) If a name change results from a change in ownership, including addition or deletion of a partner, the company must file an application to transfer the certificate according to the provisions of WAC 480-30-141.

NEW SECTION

WAC 480-30-151 Certificates, refiling application prohibited, auto transportation company. A person whose application for auto transportation company authority has been denied after hearing, dismissed for failure to appear at a hearing, or who has been found to be in default, may not refile the application for a period of six months from the date of the final order dismissing or denying the application.

NEW SECTION

WAC 480-30-156 Certificates, temporary, auto transportation company. (1) **Temporary certificates prohibited.** The commission is prohibited from granting a temporary certificate to operate in territory that is:

- (a) Contained in an existing certificate, unless the existing certificate holder is not providing service or does not object to the temporary certificate.
- (b) Contained in a pending certificate application unless the temporary certificate application filing is made by the applicant or the applicant does not object to the temporary certificate.

(2) **Requirements.** Temporary certificate applications must meet the general filing requirements of WAC 480-30-096.

(3) **Public interest.** The commission may grant a temporary certificate after determining that granting the requested authority is consistent with the public interest. In determining if the requested temporary authority is consistent with the public interest, the commission will consider factors including, but not limited to:

- (a) The fitness of the applicant.
- (b) The need for the requested service.
- (c) Availability of existing service.
- (d) Any other circumstances indicating that a grant of temporary authority is consistent with the public interest.

(4) **Support statements required.** Applicants for temporary certificates must include signed and sworn support statements from one or more potential customers identifying all pertinent facts relating to need for the proposed service.

(5) **Investigation of applications.** Commission staff will investigate the facts surrounding an application and need for the proposed service before making a recommendation

that the commission grant or deny an application for temporary certificate. The staff investigation will include notice of the temporary certificate application to those companies identified in subsection (1) of this section, and allow twenty days for those companies to object to the temporary certificate application.

(6) **Special terms, conditions, and limitations.** The commission may impose special terms, conditions, and limitations in connection with the grant of any temporary certificate.

(7) **Length of service allowed under temporary certificate.** The commission may grant a temporary certificate for up to one hundred eighty days. If a company files an auto transportation company certificate application and a temporary certificate application within thirty days of each other or files an auto transportation company certificate application within thirty days of the order granting the temporary certificate, then the temporary certificate will continue until the commission grants, denies, or dismisses the parallel certificate application, or until the temporary certificate is otherwise canceled, whichever happens first.

(8) **Docketing.** The commission will publish on its application docket:

(a) A list of temporary certificate applications that the commission considered and granted, including any terms and conditions attached to the grant of such authorities; and

(b) A list of temporary certificate applications the commission considered and denied.

(9) **Protests.** An existing auto transportation company or applicant for certificate may file a protest opposing the grant or denial of a temporary certificate.

(10) **Form of protests.** Protests must:

(a) Be filed with the commission in writing within ten days after the date the commission mails its notice;

(b) Contain a statement of the specific grounds on which the protest is made;

(c) Contain a statement of the protestant's interest in the proceeding;

(d) Be served on the applicant; and

(e) Be served on the applicant's representative, if one is stated in the notice.

(11) **Disposition of protests.** The commission may grant or deny a protest without hearing.

(12) **Brief adjudicative proceedings.** The commission may order a brief adjudicative proceeding on its own motion or at the request of a party.

(13) **Intervention.** Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition to be an intervener. Refer to chapter 480-07 WAC for information on intervention.

NEW SECTION

WAC 480-30-161 Certificates, notice of purchase or condemnation, auto transportation. (1) An auto transportation company must notify the commission in writing within thirty days of a public transit agency purchasing or condemning all or a portion of the company's certificated authority.

(2) Notice must include a cover letter identifying the company, the affected authority, and a copy of the document such as an ordinance, resolution, franchise, contract, or court order that results in the purchase or condemnation of the certificated authority.

NEW SECTION

WAC 480-30-166 Certificates, service agreements, auto transportation company. (1) An auto transportation company may enter into an agreement to allow another certificated auto transportation company to operate in the first company's territory or over its route(s) when the first company:

(a) Holds exclusive authority in the territory or over the route(s) to be served; and

(b) Lacks suitable equipment to adequately serve its route(s) or customers, or is unable to provide service on a temporary basis due to situations such as, but not limited to, road closures or other temporary restrictions imposed by local jurisdictions.

(2) The commission must approve the agreement before any service is provided. To apply for commission approval, the companies must jointly file a copy of the written agreement at least fifteen days before the proposed effective date of the agreement. Companies may request the fifteen-day approval period be waived in the case of an emergency.

(3) The agreement filed with the commission must clearly state:

(a) The first company will charge customers for service provided by the second company at rates contained in the first company's filed tariff.

(b) The first company will pay the second company for providing service in compliance with terms stated in the agreement.

(c) The beginning and ending dates of the agreement.

(d) A provision for early termination of the agreement that includes at least five days' notice to the commission and to each party.

NEW SECTION

WAC 480-30-171 Certificates, suspending and canceling. (1) **Cause for suspension.** The commission may suspend a certificate for cause. Cause includes, but is not limited to:

(a) Failure to maintain evidence of required liability insurance coverage for all areas of a passenger transportation company's operations;

(b) Failure to file an annual report or pay required regulatory fees;

(c) Failure to comply with the rates and rules contained in an auto transportation company's filed tariff;

(d) Failure to comply with an auto transportation company's filed time schedule;

(e) Failure or refusal to comply with operating standards that protect the public health, safety, or welfare;

(f) Allowing others to operate under a provider's certificated authority without having first obtained commission approval;

(g) Operating in a manner that violates the rights of customers and/or constitutes an unfair or deceptive business practice; or

(h) Repeated failure or refusal to comply with laws and rules pertaining to operations of passenger transportation companies.

(2) **Cause for cancellation.** The commission may cancel a certificate for cause. Cause includes, but is not limited to:

(a) Operating without proper insurance;

(b) Failure to file an annual report or pay required fees;

(c) Failure to correct within the time specified in a suspension order all conditions listed in the suspension order that led to the certificate's suspension;

(d) Continued violations of laws and rules affecting the public health, safety, or welfare when the commission has reason to believe the passenger transportation company will not comply with those laws and rules following a specified period of suspension;

(e) Failure to supply requested information needed by the commission in the performance of its regulatory functions; or

(f) Submission of false, misleading or inaccurate information.

(3) **Notice of pending suspension and cancellation.** When the commission believes cause exists to suspend or cancel a certificate, it will issue a notice to the passenger transportation company of the commission's intention to suspend or cancel the authority.

(4) **Contest of suspension and cancellation.** A passenger transportation company may contest the pending suspension and/or cancellation of its certificate by requesting a hearing or brief adjudicative proceeding within ten days following the date of the notice.

NEW SECTION

WAC 480-30-181 Certificates, reinstatement. (1) The commission may reinstate a certificate canceled for cause under the provisions of WAC 480-30-171 if the company:

(a) Corrects all conditions leading to the cancellation; and

(b) Files an application to reinstate authority with the proper application fee within thirty days of the cancellation order service date.

(2) The commission may reinstate a certificate suspended under the provisions of WAC 480-30-171 if the company satisfies the terms of the suspension and all conditions leading to the suspension are corrected.

NEW SECTION

WAC 480-30-186 Certificates, service interruptions or discontinued operations, auto transportation company. (1) **Interruptions in service.**

(a) An auto transportation company must file a written report with the commission and must post appropriate public notice of any interruption in regular service that is likely to continue for more than twenty-four hours.

(i) The written report must contain a full description of the cause for the interruption.

(ii) The written report and notice to the public must state the anticipated duration of the interruption.

(iii) Notice to the commission may be made via regular mail, by fax, or by e-mail.

(b) If an auto transportation company fails to notify the commission of any interruption in service that lasts five or more consecutive days, the commission will consider that the company has forfeited its certificate rights and the commission may institute administrative action to cancel the company's certificate of public convenience and necessity. Exception: The commission may allow resumption of operations after an interruption lasting five or more days if the auto transportation company can show that it was not responsible for the failure to provide service and that failure to notify the commission resulted from conditions outside the control of the company.

(2) **Discontinuance of service.** An auto transportation company must not temporarily or permanently discontinue operations authorized under its certificate without prior approval from the commission.

(a) A company requesting commission approval to discontinue operations must give at least thirty days' written notice to its customers, officials of cities and counties where affected passengers reside, and the commission.

(b) The auto transportation company must file a written request with the commission for approval to discontinue operations. The written request for commission approval must contain at least the following:

(i) The name, telephone number, mailing address, fax number (if any) and e-mail address (if any) of a contact person;

(ii) An explanation of the company's reasons for requesting approval to discontinue operations;

(iii) An explanation of consequences for the company if the commission does not approve the request to discontinue operations;

(iv) A statement of the number of passengers, by class of service provided, who will lose service if the commission approves the discontinuance of operations;

Motor vehicles that:

Have a passenger seating capacity of fifteen or less (including the driver)

Have a passenger seating capacity of sixteen or more (including the driver)

(3) **Insurance filings.** A company must file and maintain a Uniform Motor Carrier Bodily Injury Property Damage Certificate of Insurance (Form E) as a condition of being issued and maintaining a certificate to operate as a passenger transportation company.

(a) The Form E is a standard motor carrier insurance form recognized by the insurance industry and is normally filed with the commission by an insurance company rather than an insurance agent.

(b) The Form E must be issued in the company name exactly as it appears on the company's certificate or application for certificate.

(v) An explanation of options available to the customers who will lose service; and

(vi) If the request is for approval to temporarily discontinue service, the written request must contain a statement declaring the date by which the company will return to service.

(c) Upon receipt of a request to discontinue operations, the commission will assign a docket number to the filing and will act on the request under the commission's normal open meeting process.

(i) In considering the request for approval to discontinue operations, the commission may consider the information required in this section, in addition to other information it deems necessary on a case-by-case basis.

(ii) The commission may attach conditions to any grant of discontinuance of operations that it deems necessary to protect the rights and interests of the public.

PART 4—INSURANCE

NEW SECTION

WAC 480-30-191 Bodily injury and property damage liability insurance. (1) **Insurance coverage.** A company must have bodily injury and property damage liability insurance covering each motor vehicle it operates in the state of Washington.

(a) The insurance policy must be written by an insurance company authorized to write insurance in the state of Washington.

(b) The insurance policy must include the Uniform Motor Carrier Bodily Injury and Property Damage Liability Endorsement (Form F).

(c) If a company operates without the required insurance coverage, the commission may take immediate compliance action as described in WAC 480-30-171.

(2) **Insurance limits.** The minimum limits of required bodily injury and property damage liability insurance for motor vehicles operated by companies are:

Must have bodily injury and property damage insurance or surety bond with the following minimum limits:

\$1,500,000 combined single limit coverage

\$5,000,000 combined single limit coverage

(c) The Form E filing must remain in effect until canceled by a Notice of Cancellation (Form K). The Form K must be filed with the commission by the insurance company not less than thirty days before the cancellation effective date.

(d) A company may file a Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) instead of the Form E.

(4) **Insurance binders.** The commission will accept an insurance certificate or binder for up to sixty days.

(a) An insurance certificate or binder may be canceled by written notice filed with the commission at least ten days before the cancellation effective date.

(b) An insurance certificate or binder must be replaced by a Form E within sixty days of filing, or before the expiration date, whichever occurs first.

(c) Insurance certificates or binders must show:

(i) The commission as the named insurance certificate holder;

(ii) The company name, exactly as it appears on the company's certificate or application for a certificate, as the insured;

(iii) The insurance company name;

(iv) The insurance policy number;

(v) The insurance policy effective and expiration dates;

(vi) The insurance limits of coverage; and

(vii) The agent's or other insurance representative's signature.

NEW SECTION

WAC 480-30-196 Insurance cancellation. If a company's insurance filing is canceled, and a new filing that provides continuous coverage is not filed before the cancellation effective date, the commission may:

(1) Dismiss a company's application for a certificate;

(2) Suspend or cancel a company's certificate under the provisions of WAC 480-30-171.

NEW SECTION

WAC 480-30-201 Self-insurance. (1) A company conducting interstate passenger transportation services that has qualified as a self-insurer under 49 U.S.C. § 13906 may be exempt from the bodily injury and property damage liability insurance filing provisions under these rules, provided the company files with the commission:

(a) A certified copy of the order issued by the Federal Motor Carrier Safety Administration showing that the company has qualified as a self-insurer;

(b) A certified statement that the company is operating under that self-insuring authority; and

(c) A certified statement that the self-insuring authority granted by the Federal Motor Carrier Safety Administration is in full force and effect.

(2) Upon the effective date of an order by the Federal Motor Carrier Safety Administration canceling a company's rights to act as a self-insurer, that company must file with the commission proper bodily injury and property damage liability insurance or surety bond as required by WAC 480-30-191.

PART 5—EQUIPMENT AND DRIVERS

NEW SECTION

WAC 480-30-206 Vehicle licensing. A company must ensure that each vehicle it operates is in compliance with all appropriate state vehicle licensing laws, commission rules, and commission orders.

NEW SECTION

WAC 480-30-211 Commercial vehicle defined.

Unless otherwise stated, for the purposes of the rules in Part 5—Equipment and Drivers, "commercial motor vehicle" means any motor vehicle used by an auto transportation company or charter and excursion carrier to provide passenger transportation services over the public highways of Washington state.

NEW SECTION

WAC 480-30-213 Vehicles and drivers.

(1) The vehicles operated by a passenger transportation company must be owned by or leased to the certificate holder.

(2) The driver of a vehicle operated by a passenger transportation company must be the certificate holder or an employee of the certificate holder.

NEW SECTION

WAC 480-30-216 Operation of motor vehicles, general.

(1) **Discrimination prohibited.** No company operating motor vehicles under the provisions of this chapter will operate a vehicle in intrastate commerce on which the seating of passengers is based on race, color, creed, or national origin.

(2) **Inspection of baggage and other materials passengers wish to be carried in or on a motor vehicle.** Auto transportation companies are responsible for the safety and comfort of all passengers transported. To ensure the safety and comfort of passengers and employees it may be necessary for companies to inspect baggage and other materials to be transported in or on motor vehicles.

(a) Companies must include in their filed tariffs, in information provided to passengers, and on their tickets, information that advises passengers that all baggage and other materials to be carried in or on a motor vehicle is subject to inspection by the company.

(b) The information required by (a) of this subsection must include a list of examples of materials that will not be accepted for transportation. Examples may include, but are not limited to, the following items:

(i) Articles whose transportation as baggage are prohibited by law or regulation;

(ii) Fragile or perishable articles;

(iii) Articles whose dimensions exceed the size limitations in the company's filed tariff;

(iv) Packages, bags, or parcels that are leaking;

(v) Firearms;

(vi) Articles that have foul and obnoxious odors; or

(vii) Items that cause annoyance, discomfort, or harm to persons or property.

(3) Service requirement.

(a) An auto transportation company is a public service company with an obligation to provide service to the satisfaction of the commission to all customers within its certificated authority.

(b) Except to the extent allowed by WAC 480-30-451, no driver or operator of a motor vehicle used in the transportation of passengers by an auto transportation company shall refuse to carry any person presenting him or herself at a reg-

ular stopping place who tenders the appropriate fare. Exception: Companies limiting operations to passengers with prior reservations are not subject to this provision.

(4) **Passenger loading capacity.** No motor vehicle used in the transportation of passengers will carry more passengers than can be carried safely. In no case will a motor vehicle transport more than one hundred fifty percent of its rated seating capacity.

(5) **Standing passengers.** No passenger will be permitted to stand unless the vehicle is equipped with devices designed and permanently installed to provide stability and safety for standing passengers. Even if the vehicle is properly equipped, no passenger will be permitted to stand for a distance exceeding thirty-five miles.

(6) **Reserve equipment.** All auto transportation companies must maintain sufficient reserve equipment to insure the reasonable operation of established routes and fixed time schedules.

(7) **Smoking on motor vehicles.**

(a) Smoking or carrying lit cigars, cigarettes, or other smoking materials is prohibited on vehicles operated by auto transportation companies.

(b) Each auto transportation company must post signs in its vehicles informing passengers that smoking is not permitted.

NEW SECTION

WAC 480-30-221 Vehicle and driver safety requirements. (1) Companies must comply with all state and local laws and rules governing licensing, vehicle safety, and driver safety. Companies must also comply with the parts of Title 49, Code of Federal Regulations (49 CFR), adopted by reference, that are shown in the following chart. Information about 49 CFR, including the version adopted by the commission and where to obtain copies is set out in WAC 480-30-999.

49 CFR Part:		Notes:
Part 40 -	Procedures For Transportation Workplace Drug and Alcohol Testing Programs	Entire Part 40 is adopted and applies to Washington intrastate operations.
Part 382 -	Controlled Substance and Alcohol Use and Testing	Entire Part 382, including definition of commercial motor vehicle, is adopted and applies to Washington intrastate operations.
Part 383 -	Commercial Driver's License Standards; Requirements and Penalties	Entire Part 383, including definition of commercial motor vehicle, is adopted and applies to Washington intrastate operations.
Part 390 -	Safety Regulations, General	Entire Part 390 is adopted and applies to Washington intrastate operations, with the following exceptions: (1) The terms "motor vehicle," "commercial motor vehicle," and "private vehicle" are not adopted. Instead, where those terms are used in Title 49 CFR, they have the meanings assigned to them in WAC 480-30-036 (Motor vehicle and private vehicle) and WAC 480-30-211 (Commercial motor vehicle). (2) Whenever the term "director" is used in Title 49 CFR, it means the commission.
Part 391 -	Qualification of Drivers	Entire Part 391 is adopted and applies to Washington intrastate operations, with the following exceptions: (1) Part 391.49 (alternative physical qualification standards for the loss or impairment of limbs) is not adopted for drivers who operate vehicles exclusively within Washington state. Instead refer to WAC 480-30-226 for intrastate medical waivers.
Part 392 -	Driving of Motor Vehicles	Entire Part 392 is adopted and applies to Washington intrastate operations.
Part 393 -	Parts and Accessories Necessary for Safe Operation	Entire Part 393 is adopted and applies to Washington intrastate operations.
Part 395 -	Hours of Service of Drivers	Entire Part 395 is adopted and applies to Washington intrastate operations.
Part 396 -	Inspection, Repair, and Maintenance	Entire Part 396 is adopted and applies to Washington intrastate operations.

49 CFR Part:		Notes:
Part 397 -	Transportation of Hazardous Materials, Driving and Parking Rules	Entire Part 397 is adopted and applies to Washington intrastate operations.

- (2) Companies must:
- (a) Maintain all motor vehicles in a safe and sanitary condition; and
 - (b) Ensure that vehicles are free of defects likely to result in an accident or breakdown.
- (3) No company, its agents, officers, or employees, will allow any article, commodity, or substance to be loaded in or on any motor vehicle used by the company to transport passengers that is dangerous to the lives and safety of passengers.
- (4) No company, its agents, officers, or employees will allow any article, commodity, or substance to be loaded in or on any motor vehicle used by the company to transport passengers that is prohibited by the hazardous materials rules in Title 49 CFR from being transported on passenger-carrying vehicles.
- (5) All motor vehicles operated under the provisions of this chapter are at all times subject to inspection by the commission or its duly authorized representatives.
- (6) The commission will place out-of-service any motor vehicle having safety defects identified in the *North American Uniform Out-Of-Service Criteria*. Information about the *North American Uniform Out-Of-Service Criteria* including the version adopted and where to obtain copies is set out in WAC 480-30-999. A company must not operate any vehicle placed out-of-service until proper repairs have been completed.
- (7) The commission will place out-of-service any driver meeting criteria identified in the *North American Uniform Out-Of-Service Criteria*. A company must not allow a driver who has been placed out-of-service to operate a motor vehicle until the conditions causing the driver to be placed out-of-service have been corrected.

NEW SECTION

WAC 480-30-226 Intrastate medical waivers. (1) **Department of licensing intrastate medical waiver.** A passenger transportation company may employ a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 CFR Part 391.41, if the driver:

- (a) Only operates motor vehicles intrastate, wholly within the state of Washington; and
 - (b) Has obtained from the Washington state department of licensing an intrastate medical waiver to drive a commercial motor vehicle.
- For the purposes of a department of licensing medical waiver, a commercial motor vehicle means a motor vehicle:
- (i) With a gross vehicle weight rating over 26,000 lbs.;
 - (ii) Transporting sixteen or more passengers, including the driver; or
 - (iii) With a manufacturer's seating capacity of sixteen or more passengers, including the driver.

(2) **Doctor's statement of intrastate medical waiver.** A passenger transportation company may employ a driver

that is not physically qualified to drive a commercial motor vehicle under Title 49 CFR Part 391.41, if the driver:

- (a) Holds a valid Washington state driver's license;
- (b) Has received a doctor's statement that:
 - (i) The driver's medical condition is not likely to interfere with the driver's ability to safely operate a commercial motor vehicle; and
 - (ii) The doctor's opinion is that the driver's condition is likely to remain stable for the two years that the medical certificate is valid.
- (c) Operates commercial motor vehicles intrastate wholly within the state of Washington. For the purposes of a doctor's statement of intrastate medical waiver, a commercial motor vehicle means a motor vehicle:
 - (i) With a gross vehicle weight rating under 26,001 lbs.,
 - (ii) Transporting fifteen or fewer passengers, including the driver, or
 - (iii) With a manufacturer's seating capacity of fifteen or fewer passengers, including the driver.

(3) **Driver qualification files.** A passenger transportation company that employs a driver under an intrastate medical waiver must maintain in the driver's qualification file a copy of the doctor's statement of intrastate medical waiver.

NEW SECTION

WAC 480-30-231 Vehicle and driver identification.

(1) A company must ensure that all motor vehicles operated in the transportation of passengers are properly identified.

(a) Each motor vehicle must display the certificate holder's name (or registered trade name) and certificate number on each side of the vehicle. A company with both intrastate and interstate operations may display its U.S. Department of Transportation identification number in addition to, or in place of, its commission-issued certificate number.

(b) Each motor vehicle operated in regular route service with scheduled stops must display a suitable destination sign.

(c) Each motor vehicle operated in transportation of passengers must display on the vehicle a company identification or unit number.

(d) All identifications must be clearly legible, conspicuous, and of a size that is easily readable.

(e) All identifications, except those displayed on leased or substitute vehicles, must be permanent.

(2) An auto transportation company must ensure that all drivers operating motor vehicles in the transportation of passengers are properly identified. Identification may include, but is not limited to, an identification badge or a uniform with a name tag identifying the driver by name or number.

NEW SECTION

WAC 480-30-236 Leasing vehicles. (1) A passenger transportation company operating a leased vehicle must have a written lease agreement with the owner of the vehicle.

(2) It is the company's responsibility to ensure that:

(a) A copy of the lease is carried in each leased vehicle, unless the vehicle's registration names the certificate holder as registered owner or lessee.

(b) A copy of the lease is kept in the company's files during the effective period of the lease and for at least one year after the lease expires;

(c) A copy of the lease is provided to the owner of the leased vehicle;

(d) The company has complete possession, control, and use of the motor vehicle at all times during the period of the lease;

(e) The leased motor vehicle is properly insured as specified in WAC 480-30-191;

(f) The leased vehicle is properly identified as specified in WAC 480-30-231;

(g) The leased vehicle is operated in compliance with all safety laws and rules, including those regarding vehicle inspection, records, and maintenance; and

(h) The terms of the lease are followed.

(3) If a company leases a vehicle with a driver, the company must also ensure that:

(a) The driver of the leased motor vehicle is on the company's payroll during the lease period;

(b) The driver operates in compliance with all driver qualification, safety and hours of service laws and rules;

(c) The driver is subject to the company's alcohol and controlled substance policies; and

(d) The company maintains appropriate files and paperwork on the driver for a period of at least one year following the expiration of the lease.

(4) The company and the owner of the leased vehicle must specify in the lease who is responsible for all expenses relating to the leased motor vehicle. The lease must contain all information shown in the following sample lease form. If a company uses an alternate form, the company must ensure the alternate form contains all information requested on the sample. These requirements do not apply to substitute vehicles or vehicles leased without drivers from a person principally engaged in the business of leasing vehicles.

Sample lease form.

EQUIPMENT LEASE AGREEMENT							
A copy of this lease must be carried in the leased vehicle unless the vehicle's registration names the certificate holder as registered owner or lessee. Copies must also be maintained in the files of both parties for the length of the lease plus one year following the expiration of the lease.							
Name and address of company leasing vehicle (lessee):				Certificate number:			
Name and address of party from whom the vehicle is being leased (lessor):				Certificate number, if any:			
Vehicle make and year:		Vehicle Serial Number:		Vehicle License Number:			
The lease will become effective at _____ (time) on _____ (date), and will continue until _____ (date) unless canceled in writing prior to that date.							
Compensation that will be paid to owner of vehicle (lessor): \$ _____ per _____ If lease also includes driver, compensation for driver: \$ _____ per _____							
Lessee/Lessor Expense Agreement							
Place an "x" or a checkmark next to each item indication whether the lessee or lessor is responsible for the listed expenses.							
Item	Lessee	Lessor	Item	Lessee	Lessor		
Vehicle Licensing Fees			Equipment Rental Taxes				
Toll and Ferry Charges			Fuel and Oil				
Vehicle Loan Payments			Vehicle Maintenance				
Parts & Tires			Major Vehicle Repairs				
Insurance, Comprehensive			Minor Vehicle Repairs				
Insurance, Theft			Other (explain):				
Insurance, Fire			Other (explain):				
Under the terms of this lease, the lessee must:							
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> ▪ have complete possession, control and use of the vehicle at all times during the lease period ▪ be in complete control of all certificate operations ▪ provide bodily injury and property damage liability insurance </td> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> ▪ ensure that the driver of the leased vehicle is an employee of the lessee ▪ ensure that the vehicle is properly identified ▪ comply with all safety regulations ▪ bill and collect proper tariff rates </td> </tr> </table>						<ul style="list-style-type: none"> ▪ have complete possession, control and use of the vehicle at all times during the lease period ▪ be in complete control of all certificate operations ▪ provide bodily injury and property damage liability insurance 	<ul style="list-style-type: none"> ▪ ensure that the driver of the leased vehicle is an employee of the lessee ▪ ensure that the vehicle is properly identified ▪ comply with all safety regulations ▪ bill and collect proper tariff rates
<ul style="list-style-type: none"> ▪ have complete possession, control and use of the vehicle at all times during the lease period ▪ be in complete control of all certificate operations ▪ provide bodily injury and property damage liability insurance 	<ul style="list-style-type: none"> ▪ ensure that the driver of the leased vehicle is an employee of the lessee ▪ ensure that the vehicle is properly identified ▪ comply with all safety regulations ▪ bill and collect proper tariff rates 						
The parties signing this lease certify that the information shown above is true and correct, that the provisions of the lease will be enforced by both parties, and that all operations conducted with the leased equipment will be conducted in compliance with applicable laws and rules.							
Lessee Signature/Title _____ date signed _____							
Lessor Signature/Title _____ date signed _____							

PART 6—COMPLIANCENEW SECTION**WAC 480-30-241 Commission compliance policy.** (1)

The commission is authorized to administer and enforce laws and rules relating to passenger transportation companies. The commission may delegate authority to the commission staff to inspect equipment, drivers, records, files, accounts, books, and documents. The commission may also delegate to its staff authority to place vehicles and drivers out-of-service and to arrest without warrant, or issue citations to any person found violating this chapter in the presence of its staff as provided under RCW 81.04.460.

(2) The commission encourages voluntary compliance with statutes, rules, and commission orders.

(3) The commission will enforce statutes, rules, and commission orders through:

(a) A program emphasizing education and technical assistance.

(b) A compliance program including:

(i) Investigation and resolution of complaints;

(ii) Safety compliance reviews of drivers and equipment;

(iii) Economic compliance audits including, but not limited to, rates and billing practices of auto transportation companies;

(iv) Coordinated roadside enforcement; and

(v) Cooperative agreements with other agencies to enable effective enforcement and appropriate use of resources.

(4) Where necessary to ensure compliance with statutes, rules, and commission orders, the commission may pursue:

(a) Administrative actions that the commission believes will best ensure future compliance by the violating company, including, but not limited to, warnings, sanctions, or penalty assessments under the provisions of chapter 81.04 RCW;

(b) Suspension or cancellation of a company's certificate:

(i) When the commission believes education and penalties have not been, or will not be, effective to secure compliance;

(ii) For willful violations of legal requirements; or

(iii) For serious actions including, but not limited to, misrepresentation;

(c) Enforcement action against violators based on information collected by commission staff; or

(d) Proceedings in district and superior court.

NEW SECTION**WAC 480-30-246 Sanctions for operating without a valid certificate.** (1) **Operating without a certificate.**

(a) If a representative of the commission or other law enforcement agency observes a company operating as a passenger transportation company without a certificate from the commission, that company is subject to a gross misdemeanor citation, for which the company must appear in court.

(b) If the commission receives information that a company is operating as a passenger transportation company without a certificate, and a commission representative or

other law enforcement agency has not observed those operations, the commission may:

(i) Issue a citation through the court; or

(ii) Contact the company and provide education and technical assistance concerning applicable regulations. This includes giving the company a copy of the applicable laws, rules, and certificate application forms.

(c) If the company continues to operate without a certificate after commission education and technical assistance is offered, the commission may begin an administrative proceeding to classify the company as a regulated company under RCW 81.04.510. If, as a result of that proceeding, the commission formally classifies the company as an auto transportation company or a charter and excursion carrier operating without the required certificate, the commission will issue a cease and desist order under RCW 81.04.510.

(d) If a company operates in violation of a commission order, the commission may impose penalties and/or take legal action in court.

(2) **Operating while certificate is suspended.** A company that operates after the commission suspends the company's certificate is subject to:

(a) Misdemeanor or gross misdemeanor citations, for which the company must appear in district court;

(b) Monetary penalty assessments or other commission administrative actions; or

(c) Commission proceedings to cancel the company's certificate.

(3) **Operating after certificate is canceled.** A company that continues to operate after the commission cancels the company's certificate is subject to:

(a) Misdemeanor or gross misdemeanor citations, for which the company must appear in district court; and

(b) Enforcement proceedings in superior court.

PART 7—TARIFFS, TIME SCHEDULES, RATES, AND RATE FILINGSNEW SECTION

WAC 480-30-251 Charter and excursion carriers not subject to provisions of Part 7. The rules in Part 7 of this chapter relating to tariffs, time schedules, rates, and rate filings apply only to auto transportation companies. Charter and excursion carriers are not subject to the provisions of this part.

NEW SECTION

WAC 480-30-256 Tariffs and time schedules, federal preemption. (1) The commission interprets the provisions of 49 U.S.C. § 14501 as preempting the requirements of state laws and regulations relating to intrastate fares for the transportation of passengers by an interstate motor carrier of passengers operating over a regular route authorized by the Federal Motor Carrier Safety Administration (FMCSA). Because of this federal preemption, the commission will no longer require the filing of rate tariffs or time schedules for the transportation of passengers in Washington intrastate commerce by interstate motor carriers of passengers, if that

transportation is provided over a regular route authorized by the FMCSA.

(2) Auto transportation companies operating in Washington intrastate commerce on routes not authorized by the FMCSA are subject to the tariff and time schedule rules contained in this chapter.

(3) Auto transportation companies operating over routes authorized by the FMCSA and over routes not authorized by the FMCSA must file tariffs and time schedules for those routes not authorized by the FMCSA.

NEW SECTION

WAC 480-30-261 Tariffs and time schedules, definitions used in. Definitions of general terms and terms specific to driver and equipment safety are contained in WAC 480-30-036 and 480-30-216, respectively. Unless the language or context indicates that a different meaning is intended, the following definitions apply:

"Charge" means a rate assessed by an auto transportation company for providing a service other than the transportation of a passenger(s). For example: The charge for carrying extra baggage on board the bus.

"Checked baggage" means passenger baggage that is accepted for transportation but is not carried in the passenger compartment of the vehicle.

"Fare" or "ticket price" means a rate assessed by an auto transportation company for the transportation of a passenger(s).

"Joint fare" means a rate charged by an auto transportation company for the transportation of a passenger(s) that applies from a point located on one auto transportation company's route to a point located on another auto transportation company's route, made by agreement or arrangement between the companies. A joint fare agreement is also known as a through-ticketing agreement.

"Local fare" means a rate charged by an auto transportation company for the transportation of a passenger(s) between stations within a single company's authority.

"Long and short haul clause" means a clause that prohibits an auto transportation company from charging more for a shorter than for a longer haul over the same route.

"Rate" means an amount in a company's tariff approved by the commission or allowed to become effective by operation of law, for services provided by an auto transportation company. For example: Passenger fares, ticket prices, additional baggage charges.

"Sales commission" means a fee paid to an agent for selling tickets on behalf of an auto transportation company.

"Seasonal fares and seasonal time schedules" means filing of tariffs or time schedules naming different fares, routes, or arrival and/or departure times for different periods of the year. For example: A company may offer more scheduled routes during certain periods than it does in others; or, a company may assess different fares in heavily traveled months than it does during off-peak months.

"Through fare" means a single rate applying from point of origin to point of destination that combines two or more rates in one auto transportation company's tariff or rates from two or more auto transportation companies.

NEW SECTION

WAC 480-30-266 Tariffs and time schedules, general. (1) **Tariffs and time schedules no longer subject to chapter 480-149 WAC.** As of the effective date of these rules, those auto transportation companies that are required to file Washington intrastate tariffs and time schedules are no longer subject to tariff and time schedule provisions of the commission's Tariff Circular No. 6 (chapter 480-149 WAC). Auto transportation companies are instead subject to, and must comply with, the tariff and time schedule requirements of this chapter.

(2) **Additional regulatory requirements.** Auto transportation companies are also subject to additional rules regarding tariff and time schedule filings contained in chapter 480-07 WAC, including, but not limited to:

(a) WAC 480-07-160 Confidential information; and

(b) WAC 480-07-145 Filing documents in adjudicative proceedings.

NEW SECTION

WAC 480-30-271 Tariffs and time schedules, must file before starting service. (1) **Tariffs.** No auto transportation company subject to tariff filing requirements of Part 7 of this chapter will provide service until it files a tariff with the commission and the commission approves that tariff or allows it to become effective by operation of law.

(2) **Time schedules.** No auto transportation company subject to time schedule filing requirements of Part 7 of this chapter will provide service until it files a time schedule with the commission and the commission approves that time schedule or allows it to become effective by operation of law.

NEW SECTION

WAC 480-30-276 Tariffs and time schedules, companies must comply with the provisions of filed tariffs and time schedules. (1) **Tariffs.** No auto transportation company may assess rates that are higher, lower, or different from those contained in the company's filed tariff. Further, no auto transportation company may accept a payment for service provided that is higher, lower, or different from the rates contained in the company's filed tariff.

(2) **Time schedules.** An auto transportation company must provide service along all routes, and to all points, listed on the company's filed time schedule. Further, an auto transportation company must make a good faith effort to operate in compliance with the times of arrival and/or departure shown on the company's filed time schedule.

NEW SECTION

WAC 480-30-281 Tariffs and time schedules, content. (1) **Tariffs.** The tariff filed with the commission by an auto transportation company must show all rates it will impose on its customers, together with rules that govern how those rates will be assessed. The tariff must contain, but is not limited to the following sections:

(a) A title page meeting the requirements of WAC 480-30-341;

(b) A rules section meeting the requirements of WAC 480-30-356;

(c) A fares section meeting the requirements of WAC 480-30-281; and

(d) A map meeting the requirements of WAC 480-30-351 and 480-30-051.

(2) **Time schedules.**

(a) The time schedule filed with the commission by an auto transportation company must be filed as a separate document or as a section of the company's tariff. The filed time schedule must provide sufficient information to allow prospective passengers to make informed decisions regarding their travel arrangements.

(b) The time schedule filed by an auto transportation company that provides scheduled service must contain, but is not limited to:

(i) The times of arrival at, and/or departure from, all termini.

(ii) The times of arrival at, and/or departure from, all intermediate points served.

(iii) The distance between all points shown in the schedule.

(iv) A list of all flag stops at which the company will provide service.

(v) A list of points the company is authorized to serve but is not serving, if any, and the reason.

(c) The time schedule filed by an auto transportation company that provides nonscheduled service must contain, but is not limited to:

(i) Days of the week that the company's service is available.

(ii) Hours of the day that the company's service is available.

Example: A carrier providing door-to-door airporter service by reservation only may state in its time schedule that it offers service between the hours of 6:00 a.m. and 12:00 midnight, seven days a week.

ple, "children, under two years of age" or "active military personnel with military identification."

(4) Fares applying during specific periods must be clearly labeled with definitions of those periods. For example: A company may charge one fare during peak service months, and charge a different fare during off-peak service months.

Illustration of rate page:

NEW SECTION

WAC 480-30-286 Tariffs and time schedules, posting. An auto transportation company must maintain a copy of its filed tariff and its filed time schedule in the company's offices and at each passenger facility. Each vehicle operated must carry a copy of the schedule and fares for each route served by that vehicle. The company must make these documents available to customers for inspection on request during the company's regular business hours.

NEW SECTION

WAC 480-30-291 Tariffs, rates, general. (1) Tariffs must provide adult fares, stated in dollars and cents, per passenger, together with the names of the stations or stopping places to or from which those fares apply, arranged in a simple and systematic manner.

(2) The tariff must clearly state whether fares apply "one way" or "round trip."

(3) Fares applying to specific groups of passengers must clearly define the criteria that define that group. For exam-

John Doe Transportation Co., Inc. C-9999, d/b/a John's Buses Tariff No. 2		2nd Revised Page 18 Cancels 1st Revised Page 18		
Rate Schedule				
Fares named below are for adults (persons 12 years of age and over) stated in dollars and cents per person for one-way travel.				
	Between			
And	Spokane	Deer Park	Chewelah	Colville
Spokane	--	#\$3.50 @\$4.50	#\$8.50 @\$9.50	#\$10.50 @\$11.50
Deer Park	#\$3.50 @\$4.50	--	#\$5.00 @\$6.00	#\$7.00 @\$8.00
Chewelah	#\$8.50 @\$9.50	#\$5.00 @\$6.00	--	#\$3.50 @\$4.50
Colville	#\$10.50 @\$11.50	#\$7.00 @\$8.00	#\$3.50 @\$4.50	--
# Fares in effect April through December. @ Fares in effect January through March.				
Note 1: Refer to page ___ for children's fares, group fares, extra baggage charges, etc.				
Note 2: Round-trip fares will be 180 percent of the one-way fares.				
Issued by: John Jones, President				
Issue date: July 6, 2002 Effective Date: August 20, 2002				
(For official use only)				

NEW SECTION

WAC 480-30-296 Tariffs and time schedules, rejection. The commission will reject tariff or time schedule filings that:

- (1) Are not accompanied by the required transmittal letter;
- (2) Are not accompanied by all required documentation;
- (3) Do not contain all required information;
- (4) Do not comply with format rules;
- (5) Are not accompanied by required maps;
- (6) Reflect retroactive rate treatment;
- (7) Are not filed as provided in the notice requirements shown in WAC 480-30-301 through 480-30-316; or
- (8) Contain provisions that conflict with state statutes, commission rules, or an auto transportation company's certificated authority.

NEW SECTION

WAC 480-30-301 Tariffs and time schedules, one business-day notice to the commission. A company must provide at least one business-day notice to the commission for the following filings:

- (1) Initial tariff and time schedule filings that accompany applications for certificated authority;
- (2) Tariff and time schedule adoptions filed under the provisions of WAC 480-30-376; and
- (3) Tariff and time schedule filings whose only purpose is to add a new service option or a service level which has not been previously included in the company's tariff.

NEW SECTION

WAC 480-30-306 Tariffs and time schedules, seven calendar day notice to the commission. A company must provide at least seven calendar days' notice to the commis-

sion for filings whose only purpose is to implement decreases in rates.

NEW SECTION

WAC 480-30-311 Tariffs and time schedules, requiring thirty calendar day notice to the commission. A company must provide at least thirty calendar days' notice to the commission for any filing that will result in an increase in rates to customers.

NEW SECTION

WAC 480-30-316 Tariffs and time schedules, customer notice requirements. (1) **Notice.** Each auto transportation company must provide notice to its customers at least thirty days prior to the stated effective date for any proposed tariff change that would increase recurring or prepaid rates or restrict access to services (e.g., rate increase, route reduction, time schedule change).

(2) **Thirty-day notice to public.** At least thirty days prior to the stated effective date, the company must post a notice in a conspicuous place for each affected route or routes. The published notice must remain posted until the commission takes action on the request. The notice must be posted:

- (a) In each vehicle;
- (b) At each passenger facility; and

(c) On the internet, if the company maintains an internet web site accessible to the public through which it sells its transportation services, posts its rates, or time schedules.

(3) **Content of postings.** The published notice required by this rule must include:

- (a) The date the notice is issued;
- (b) The company's name, address, and telephone number;
- (c) A comparison of current and proposed rates by service, when applicable;
- (d) The requested effective date;
- (e) A description of how customers may contact the company if they have specific questions or need additional information about the proposal;

(f) A description of how customers may contact the commission to comment or oppose the company's proposal.

(4) **Other customer notice.** The commission may require additional notice to customers other than described in this rule when the commission is holding a public hearing in a contested case, or when a company proposal may have a significant impact on customer rates or access to services or when the commission determines that additional customer education is needed.

NEW SECTION

WAC 480-30-321 Tariffs and time schedules, notice verification and assistance. (1) Within five days of making a filing requiring posting of a customer notice under WAC 480-30-316, but no sooner than the date the filing is submitted to the commission, a company must file a statement with the commission's records center that the required notice has been posted. The declaration must include:

- (a) Description of where the notice was posted;
 - (b) Date the notice was posted; and
 - (c) A copy of the customer notice.
- (2) A company may request assistance from the commission's consumer affairs section in preparing notice.

NEW SECTION

WAC 480-30-326 Tariffs and time schedules, less than statutory notice handling. (1) The commission may allow auto transportation company tariff or time schedule filings to become effective with less notice than is shown in WAC 480-30-306 and 480-30-311 when there is an emergency or when good cause is shown. This process is known as "less than statutory notice" (LSN) handling.

(2) **LSN application process.** An auto transportation company filing for LSN handling may use an LSN form supplied by the commission, or a letter containing at least the following information:

- (a) Company identification information:
 - (i) Name and registered trade name;
 - (ii) Certificate number;
 - (iii) Mailing address;
 - (iv) Telephone number, e-mail address, and fax number; and
 - (v) The name and telephone number of a person to contact regarding the filing;
- (b) Tariff or time schedule identification information:
 - (i) The identifying number and title of the tariff or time schedule being amended;
 - (ii) The identifying number and title of the tariff or time schedule item(s) being amended; and
 - (iii) The identifying number of the tariff or time schedule page being amended;
- (c) A concise description of the provisions being proposed;
- (d) A statement of the reason(s) for requesting LSN handling; and
- (e) The effective date requested.

(3) **Dates on pages.** Granting LSN handling is at the discretion of the commission. All tariff or time schedule pages accompanying an application for LSN handling must display the effective date that would apply were the company not requesting LSN handling. If the commission grants the company's request for LSN handling, commission staff will enter the effective date authorized by the commission's order on the tariff or time schedule pages before returning copies to the company.

(4) **Notice requirements.** An auto transportation company requesting LSN handling of a filing must post notice in its offices, passenger facilities, and on all vehicles concurrent with submitting the filing to the commission. The company must file a copy of its public notice with the application for LSN handling.

NEW SECTION

WAC 480-30-331 Tariffs and time schedules, format and size requirements. (1) An auto transportation company must file tariffs and time schedules that:

- (a) Are filed in loose-leaf format;

- (b) Are typed or mechanically printed (not handwritten) using at least ten-point type; and
 - (c) Are printed on eight and one-half inch by eleven-inch paper, with margins of at least one-half inch on each side.
- (2) Auto transportation companies are encouraged to file their tariffs and time schedules electronically, according to established commission policies and procedures.

NEW SECTION

WAC 480-30-336 Tariffs and time schedules, changes must be identified. Each change in rates, times of arrival and/or departure, routes, schedules, or rules must be clearly identified in filed tariffs and time schedules by using one of the following methods:

- (1) By printing the appropriate code symbol immediately to the left of the material being changed. Approved symbols are:

Code Symbol	Used to indicate:
(R) or ▼	Reductions in rates
(A) or ▲	Increases in rates
(C) or ◆	Changes resulting in neither increases nor decreases; also changes in arrival and/or departure times
(N)	New rates, routes, service points, services, or rules
***	Material previously shown has been deleted

- (2) By printing a notice in distinctive type at the location defined in the following table:

If the changes affect:	The notation must state:	The notation must be printed:
All rates on a tariff page or on a tariff supplement page.	All rates on this page are _____ (Company would state in the blank the nature of the changes, using one of following terms: <ul style="list-style-type: none"> • Increases; • Decreases; or • Wording changes resulting in neither increases nor decreases.) 	In the top margin of the page.
All rates in a tariff.	All rates in this tariff are _____ (Company would state in the blank the nature of the changes, using one of following terms: <ul style="list-style-type: none"> • Increases; • Decreases; or • Wording changes resulting in neither increases nor decreases.) 	In the top margin of the title page.
All times of arrival and/or departure.	All times of arrival and/or departure on this page are changed.	In the upper corner of the page.

NEW SECTION

WAC 480-30-341 Tariffs and time schedules, title pages. (1) **Tariff.** The title page of every auto transportation tariff filed with the commission must show at least the following:

- (a) The certificate name of the auto transportation company, its certificate number, and all trade names filed with the commission to which the tariff applies.
- (b) An identifying tariff number.
- (c) The number of any tariff being canceled by the tariff to which the title page applies (canceling a tariff also cancels all supplements applying to that tariff).

- (d) The types of services covered by the tariff. For example: "rates for passenger service" or "rates and time schedule for passenger service."

- (e) A clear description of the territory and routes to which the tariff applies;

- (f) The date the tariff is issued and the date it becomes effective;

- (g) The name, title, telephone number, fax number (if any), e-mail address (if any), and mailing address of the person who files the tariff; and

(h) A box that is at least three-fourths of one inch in height, spans from margin to margin, and is labeled "for official use only."

(2) **Time schedule.** If the time schedule is filed as a separate document, not part of the auto transportation company's tariff, the title page of a time schedule must include the same

information as is required in subsection (1)(a) through (h) of this section. If the time schedule is filed as a section or part of an auto transportation company's tariff, no separate title page is required.

Illustration of a sample tariff title page:

Original Title Page
<p>Tariff No. 2</p> <p>Cancel</p> <p>Tariff No. 1</p> <p>of</p> <p>John Doe Bus Company, Inc. d/b/a John's Buses</p> <p>Certificate No. 1999</p> <p>Naming rates for passenger service In the following described territory:</p> <p>Between Spokane and Olympia, with intermediate stops at Moses Lake, Ellensburg, North Bend, Seattle, and Tacoma and with flag stops at other points on Interstate 90 and Interstate 5</p> <p><u>Issued by:</u> John Jones, President 1234 East Easy Street Any City, Washington Phone: (555) 555-5555 Fax: (555) 555-5556</p>
For official use only

NEW SECTION

WAC 480-30-346 Tariffs and time schedules, page format. (1) **Tariff.** All pages in an auto transportation company's tariff, except the title page, must include the following:

(a) A page header that includes:

- (i) The identifying number of the tariff and canceled number, if any;
- (ii) A page number and canceled number, if any;
- (iii) A revision number and canceled number, if any;
- (iv) The name and certificate number of the company filing the tariff; and
- (v) Any applicable registered trade name.

- (b) A page footer that includes:
 - (i) The name of the person filing the tariff;
 - (ii) The date the page is issued;
 - (iii) The date the page becomes effective; and

- (iv) A box that is at least three-fourths of an inch in height, spanning from margin to margin, that is labeled "for official use only."

Illustration of a sample tariff page:

John Doe Bus Company, Inc. C-9999, d/b/a John's Buses Tariff No. 2	2nd Revised Page 18 Cancels 1st Revised Page 18
Issued by: John Jones, President Issue date: _____ Effective Date: _____	
(For official use only)	

(2) **Time schedule.** An auto transportation company's filed time schedule must:

(a) Be numbered consecutively in the upper right-hand corner, beginning with number one, and must show the number of the time schedule canceled by it, if any. See sample time schedule.

(b) Show the company's identifying information, including but not limited to:

(i) The company's official name, as shown on the company's certificate;

(ii) The company's registered trade name(s), if any; and
(iii) The company's certificate number.

(c) Show all termini and points served.
(d) Show the routes served, including the exact location of each regular stop, each flag stop, and any point to which service is provided.

(e) Show points the company is authorized to serve but is not serving, if any, and the reason.

(f) Show the time of arrival and/or departure from all termini and scheduled stops.

(g) Show the periods in which specific provisions of the time schedule apply. For example, if a company services some routes only on certain days of the week, in certain seasons, or in certain months, that information must be clearly stated on the time schedule.

(h) At the bottom of the page, there must be a box that is at least three-fourths of an inch in height, spans from margin to margin and is labeled "for official use only."

Illustrations of sample time schedules:

Time Schedule No. 2 Cancels Time Schedule No. 1				
<p>TIME SCHEDULE NO. 2 Canceling Time Schedule No. 1 of Walter A. Keys, d/b/a Wenatchee-Cashmere Stage Line PASSENGER SERVICE – both scheduled and door-to-door Between Wenatchee, Washington and Cashmere, Washington With scheduled stops as shown below.</p> <p>Door-to-door service provided, by reservation only, to and from points within 10 miles of the stops named below.</p>				
Routes from Wenatchee To Cashmere	Daily, excluding Sunday -	@Sunday Only-	Daily, excluding Sunday	@Sunday Only -
Wenatchee – Bill’s Hotel, 4 th and Main	11:00a	11:30a	5:30p	6:00p
Wenatchee River Bridge – 7/11 Market	11:15a	11:45a	5:45p	6:15p
Olds Corner – Park and Ride Lot	11:30a	12:00p	6:00p	6:30p
Sunnyslope – 76 Station	12:00p	12:15p	6:15p	6:45p
Monitor – Post Office	12:15p	12:30p	6:30p	7:00p
Cashmere	12:30p	12:45p	6:45p	7:15p
Routes from Cashmere to Wenatchee	Daily, excluding Sunday	@Sunday Only	Daily, excluding Sunday	@Sunday Only
Cashmere	12:40p	12:50p	6:50p	7:20p
Monitor – Post Office	12:55p	1:10p	7:05p	7:35p
Sunnyslope – 76 Station	1:10p	1:25p	7:20p	7:50p
Olds Corner – Park and Ride Lot	1:25p	1:40p	7:35p	8:10p
Wenatchee River Bridge – 7/11 Market	1:40p	1:55p	7:50p	8:35p
Wenatchee – Bill’s Hotel, 4 th and Main	2:00p	2:10p	8:10p	8:50p
<p>@NOTE: All trips noted above are run during the months of April through November. During the months of December through March, none of the "Sunday Only" trips will be run.</p> <p>Issued by: Walter A. Keys, Owner and Manager, 123 So. Wenatchee Ave., Wenatchee, Washington</p> <p>Issued: June 8, 2005 Effective: July 6, 2005</p>				
"For Official Use Only"				

Time Schedule No. 2 Cancels Time Schedule No. 1					
<p>TIME SCHEDULE NO. 2 Canceling Time Schedule No. 1 of Walter A. Keys, d/b/a Wenatchee-Cashmere Stage Line PASSENGER SERVICE Wenatchee, Washington and Spokane International Airport With stops at: Rock Island, George, and Moses Lake</p>					
Routes from Wenatchee to Spokane:					
	<table border="1"> <tr> <td style="width: 50%;">During the months of March through October:</td> <td>Vehicles leave Wenatchee every two hours between the hours of 5:00 a.m. and 9:00 p.m.</td> </tr> <tr> <td>During the months of November through February:</td> <td>Vehicles leave Wenatchee every two hours between the hours of 8:00 a.m. and 6:00 p.m.</td> </tr> </table>	During the months of March through October:	Vehicles leave Wenatchee every two hours between the hours of 5:00 a.m. and 9:00 p.m.	During the months of November through February:	Vehicles leave Wenatchee every two hours between the hours of 8:00 a.m. and 6:00 p.m.
During the months of March through October:	Vehicles leave Wenatchee every two hours between the hours of 5:00 a.m. and 9:00 p.m.				
During the months of November through February:	Vehicles leave Wenatchee every two hours between the hours of 8:00 a.m. and 6:00 p.m.				
Routes from Spokane and Wenatchee:					
	<table border="1"> <tr> <td style="width: 50%;">During the months of March through October:</td> <td>Vehicles leave Spokane every two hours between the hours of 9:00 a.m. and 9:00 p.m.</td> </tr> <tr> <td>During the months of November through February:</td> <td>Vehicles leave Spokane every two hours between the hours of 10:00 a.m. and 6:00 p.m.</td> </tr> </table>	During the months of March through October:	Vehicles leave Spokane every two hours between the hours of 9:00 a.m. and 9:00 p.m.	During the months of November through February:	Vehicles leave Spokane every two hours between the hours of 10:00 a.m. and 6:00 p.m.
During the months of March through October:	Vehicles leave Spokane every two hours between the hours of 9:00 a.m. and 9:00 p.m.				
During the months of November through February:	Vehicles leave Spokane every two hours between the hours of 10:00 a.m. and 6:00 p.m.				
Issued by: Walter A. Keys, Owner and Manager, 123 So. Wenatchee Ave., Wenatchee, Washington Issued: June 8, 2005 Effective: July 6, 2005					
"For Official Use Only"					

Bill's Airporter Service, C-9999 Tariff No. 8		4 th Revised Page 16 Cancels 3 rd Revised Page 16	
Bill's Airporter Service Providing Passenger Service Between Points in Kittitas County and SeaTac Airport Door-to-Door Service By Reservation Only			
Door-to-door service is unscheduled. The actual time the vehicle will arrive to pick up passengers depends on the number of passengers making reservations, and the locations that those passengers request pickup. Bill's will develop actual routes to balance passenger convenience and company efficiency. Reservations must be made on at least 24 hours advance notice.		Service is available: June 1 through September 30 Monday through Saturday Between 6 am and 12 midnight Sunday service available Between 8 am and 9 pm October 1 through May 31 Monday through Sunday Between 8 am and 9 pm	
Note: The company is not responsible for delays caused by weather, accidents, or other circumstances beyond its control.			
Issued by: Bill Jones, President, Bills Airporter			
Issue Date: July 16, 2000		Effective Date: August 20, 2000	
(For Official Use Only)			

NEW SECTION

WAC 480-30-351 Tariffs and time schedules, maps with tariffs. An auto transportation company must file a map with its tariff that clearly identifies the company's entire certificated authority area. If an auto transportation company divides its authorized certificate area into service territories, areas, or zones the company must also file a map showing each of the tariff service territory divisions. The maps must meet the specifications in WAC 480-30-051.

NEW SECTION

WAC 480-30-356 Tariffs and time schedules, tariff rules. (1) Tariff rules must be stated in clear language and explicit terms, setting forth all standards and policies that will govern how the auto transportation company assesses rates to its customers.

(2) All provisions contained in an auto transportation company's tariff must be clearly labeled as to the type of service to which they apply. Example: Scheduled, door-to-door, by reservation only.

(3) Auto transportation company tariffs must contain rules addressing at least the following subjects:

(a) Children's fares. Rules must clearly indicate the ages for which children's fares apply.

(b) Baggage. Rules must state the amount of baggage that may be transported free of additional charge, baggage liability (see WAC 480-30-476), and overweight or excess baggage charges. Baggage rules must also state company policies regarding carry-on items such as skis and bicycles.

(c) Transportation of animals. Rules must state that service animals, such as dogs traveling with sight or hearing impaired passengers, will be transported free of charge if they lie at the feet of their master and do not occupy passenger seats.

(d) Refunds for unused and partially used tickets.

(i) Rules must state, "Unused tickets will be redeemed at the purchase price. Unused portions of round-trip or commutation tickets will be redeemed by charging the regular fare or fares for the portion or portions used, and refunding the balance of the purchase price."

(ii) A company offering "door-to-door" service or "by reservation only" service may assess an administrative fee in those instances where a cost is incurred because the customer requested a change. If a company assesses an administrative fee, the tariff must include rules that clearly identify the fee and under what circumstances the fee will be assessed. Example of an administrative fee rule: A ten-dollar administrative fee will be assessed for customer requested changes made less than twenty-four hours in advance of the scheduled departure time. Administrative fees are deducted from ticket refunds.

(iii) A customer who has made a door-to-door reservation but fails to appear at the designated pick-up point by the scheduled departure time is not eligible for a refund unless the failure was caused by an airline delay or cancellation.

(e) Long haul/short haul provisions. Rules must state that no customer will be required to pay more for transportation to an intermediate point along a route than is charged for a longer trip over that same route.

(f) Areas or zones to which rates apply. When fares to or from a named point include stops beyond the regular terminal, or where no regular terminal is maintained, the tariff must define the zone within which fares to and from a named point apply. For example: "Rates apply within five road miles of points named."

(g) Commuter fares, if offered by the company.

(h) Alternate means of transport that will be provided by the company if it is unable to provide transportation to a customer for whom a reservation has been accepted.

(i) Holidays observed by the company.

NEW SECTION

WAC 480-30-361 Tariffs and time schedules, changes. Companies may change filed tariffs or time schedules by one of two methods:

(1) Issuing revised pages to the tariff or time schedule. A revised page must have the same page number as the page it cancels. For example: "1st revised page 1" cancels "Original page 1."

(2) Issuing a complete new tariff or time schedule. Each of the pages in a new tariff or time schedule must be identified as an original page. For example: "Original Title Page," "Original Page 1," "Original Page 2," and so on.

(3) Tariff and time schedule changes must be filed with the commission under the provisions of WAC 480-30-381.

NEW SECTION

WAC 480-30-366 Tariffs and time schedules, supplements. (1) Auto transportation companies may issue supplements to filed tariffs or time schedules to reflect short-term situations.

(2) Auto transportation companies may not issue tariff supplements to make general rate increases.

(3) Supplements are subject to all applicable rules and procedures including transmittal letters, notice to customers and the commission, and proper format.

(4) Supplements to a tariff or time schedule must be numbered consecutively. If a newly filed supplement cancels a previous supplement(s), that information must be clearly shown on the new supplement. For example: "Supplement 6 cancels Supplements 4 and 5."

NEW SECTION

WAC 480-30-371 Tariffs and time schedules, supplements or new filings required. (1) **Discontinuance of service.** When the commission grants permission for an auto transportation company to discontinue service, the company must file supplements to cancel tariffs and time schedules on file with the commission. If permission is granted to discontinue service to only a portion of routes operated, the company must file supplements reflecting the discontinued routes or new tariffs and time schedules reflecting the routes that are not discontinued.

(2) **Lease or sale of authority.** An auto transportation company leasing or selling a portion of its certificated authority to another company must file supplements reflecting the transferred routes or new tariffs and time schedules reflecting the routes retained.

NEW SECTION

WAC 480-30-376 Tariffs and time schedules, filings after name change or change in ownership. (1) When an auto transportation company changes the name on its certificate, the company must file a tariff and time schedule in its new name or must adopt the existing filed tariff and time schedule.

(2) When an auto transportation company leases, transfers, or acquires a portion of the certificated authority of another company, it must file a new tariff and time schedule reflecting the same rates and routes as the prior company.

(3) When an auto transportation company obtains operating control of another company, it must file a new tariff and time schedule at the same rate levels and on the same time schedule as the prior company or adopt the existing filed tariff and time schedule of the prior company.

(4) An auto transportation company filing a tariff to comply with subsections (1), (2), and (3) of this section cannot raise rates in that filing. A separate rate increase filing must be made.

(5) To adopt existing filed tariffs or time schedules, the auto transportation company must file with the commission an adoption form.

(a) Adoption forms are available from the commission on request.

(b) Companies may use alternate forms as long as those forms are substantively equal to that shown in the example below.

Tariff No. _____
and/or
Time Schedule No. _____

(Name and registered trade name of new company)

Adopts all tariffs, Supplements to the tariff, and Time Schedules
filed with the Washington Utilities and Transportation Commission by:

(Insert here name of prior company)

before the date of its (new company) acquired possession of that (prior) company
or a portion of that (prior) company's authority.

Notice issued by:

Name _____

Title _____

Telephone _____

E-mail _____

Fax # _____

Date filed _____

NEW SECTION

WAC 480-30-381 Tariffs and time schedules, filing procedures. (1) **Method of filing.** An auto transportation company may submit tariff and time schedule filings to the commission in person, electronically, by mail, or by fax. If an auto transportation company files by fax, the company must mail a hard copy on the same day as the fax transmis-

sion. Companies are encouraged to file their tariffs and time schedules electronically, according to the commission's policies and procedures.

(2) **Transmittal letter.** An auto transportation company must file a transmittal letter with each tariff or time schedule filing submitted to the commission.

(a) The transmittal letter must include at least the following:

(i) The name, certificate number, and trade names of the company;

(ii) A description of each proposed change in the tariff or time schedule and a brief statement of the reason for each change;

(iii) If the filing requires customer notice under the provisions of WAC 480-30-316, the transmittal may also include the information required by WAC 480-30-321; and

(iv) A contact person's name, mailing address, telephone number, fax number (if any), and e-mail address (if any).

(b) Transmittal letters accompanying rate filings must also include the following:

(i) The percentage amount that rates will change if they become effective;

(ii) The amount revenue is expected to change if the proposed rates become effective.

(c) A company wanting confirmation that a hard copy tariff or time schedule filing was received must include two copies of the transmittal letter and a self-addressed, stamped envelope. The commission will stamp one copy of the letter and return it to the company as acknowledgement that the filing was received.

(3) **Revised pages.** Pages of the company's tariff affected by the tariff filing must include the appropriate reference marks indicating changes as provided in WAC 480-30-336.

(4) **Additional documents required.**

(a) **Filing due to governmental, or other entity, action.** If the filing results from action of another entity or governmental body, the company must file documentation of that action. For example: Notices of increased fees to use depots or stations.

(b) **Tariff or time schedule filed by an agent.** If the tariff or time schedule filing is made by a person other than an owner, partner, or corporate officer, the company must include with its filing a statement granting authority for that person to file on behalf of the company. The statement must be signed by an owner, partner, or corporate officer, and may be incorporated into the transmittal letter accompanying the filing.

(c) **Rate increase filings.** Rate increase filings must include work papers that support the requested increase. Work papers supporting a general rate increase as defined in WAC 480-30-421 must include the additional documentation described in WAC 480-30-426.

NEW SECTION

WAC 480-30-386 Tariffs and time schedules, approval. Receipt by the commission of a tariff or time schedule filing does not mean that the provisions of the filing are approved. Companies may not implement provisions contained in filings until the commission approves the filing or until the commission allows the filed provisions to become effective by operation of law.

NEW SECTION

WAC 480-30-391 Tariffs and time schedules, ticket agent agreements must be filed and approved. (1) An auto transportation company may enter into contracts or agreements with a second party for the sale of tickets or fares on behalf of the company, provided the form of such contracts or agreements has been previously approved by the commission.

(2) The contract or agreement form submitted to the commission for approval must contain, but is not limited to, the following:

(a) The name and certificate number of the auto transportation company;

(b) Spaces in which to record identifying information about the person entering into the contract or agreement with the company. This information must include at least the person's:

(i) Name;

(ii) Business address;

(iii) Business telephone number;

(iv) Business fax number;

(v) Business e-mail address;

(c) Spaces in which will be recorded the date on which the contract or agreement becomes valid and the date on which the contract or agreement will expire;

(d) A clear description of the services that will be provided by the second party on behalf of the company;

(e) A statement of the percentage of revenue or the set dollar amount that the company will pay the second party for performing those services; and

(f) A statement as to how and when payment will be made to the company for tickets, less commission.

NEW SECTION

WAC 480-30-396 Tariffs and time schedules, free and reduced rates. (1) No auto transportation company will charge, demand, collect, or receive a greater, lesser, or different compensation for transportation of persons, than the rates that are contained in that company's effective tariff filed with the commission. Further, no auto transportation may extend to any person any privilege that is not uniformly extended to all persons under the same circumstances.

(2) An auto transportation company wishing to provide service at free or reduced rates must first publish those free or reduced rates in its filed tariff.

(3) If an auto transportation company chooses to provide service at free or reduced rates, the company must publish in its tariff:

(a) A detailed description of the customer class and criteria to qualify;

(b) The service provided;

(c) The expiration date, if any; and

(d) The applicable rate(s), amount of reduction (such as, twenty percent), or if free, "\$0.00" or "no charge."

(4) The auto transportation company must record the number of passengers transported under each free or reduced rate published in its tariff.

NEW SECTION

WAC 480-30-401 Tariffs and time schedules, substitute page filings. (1) An auto transportation company may file substitute tariff or time schedule pages within a pending tariff filing if:

(a) There is no material change to the terms and conditions of service contained in the pending tariff page. This restriction does not apply to changes made to address commission concerns with the filing;

(b) The change does not increase the rates or fares contained in the pending tariff page; or

(c) The change makes typographical corrections to the pending tariff page.

(2) The filing of substitute tariff pages must include a transmittal letter as set forth in WAC 480-30-381. The substitute filing must include the notation "Do Not Redocket."

(3) The commission may reject any substitute tariff or time schedule pages when rejection is in the public interest.

NEW SECTION

WAC 480-30-406 Tariffs and time schedules, withdrawing a filing. (1) When withdrawing a tariff or time schedule filing, an auto transportation company must submit a letter that includes the following:

(a) The name and address of the auto transportation company;

(b) Docket number of the filing being withdrawn;

(c) The name of the company's contact person;

(d) An explanation of why the company is requesting the withdrawal; and

(e) A statement certifying that the submitting person has authority to withdraw the filing on behalf of the auto transportation company.

(2) The commission may deny withdrawal of a filing when denial is in the public interest.

NEW SECTION

WAC 480-30-411 Tariffs and time schedules, suspension by the commission. (1) The commission may, on receiving a complaint or protest, or on its own motion, suspend tariff rates, tariff charges, tariff rules, or tariff time schedules as provided in RCW 81.04.130.

(2) The commission will not take action to suspend a tariff or time schedule, or any part of a tariff or time schedule, based on a complaint or protest unless the complaint or protest complies with the commission's rules of practice and procedure as set out in chapter 480-07 WAC.

NEW SECTION

WAC 480-30-416 Tariffs, joint tariffs and through-ticketing arrangements. (1) Auto transportation companies may file joint tariffs providing through-ticket arrangements. Such tariffs must list all companies participating in the tariff, must show all fares, rates and charges applicable between points on its line and all affected points on the line of the connecting carrier or carriers, and all rules that govern how those rates will be assessed to customers.

(2) Joint tariffs and amendments or supplements to joint tariffs must be issued and filed under the rules in Part 5 of this chapter.

(3) Companies must provide information to customers, at the time a ticket is purchased, or a reservation is made, as to the identities of all companies that will be providing transportation, the locations of any transfer points, and any policies that differ between the companies.

NEW SECTION

WAC 480-30-421 Tariffs, general rate increase filings. (1) A general rate increase filing is a tariff change that would:

(a) Increase the company's gross annual revenue from activities regulated by the commission by three percent or more.

(b) Restructure tariffs so that the gross revenue generated by any customer class would increase by three percent or more.

(2) The following tariff changes are not considered general rate increase filings even though the request may meet one or more criteria identified above:

(a) Filings for collection of per-customer pass-through surcharges and taxes imposed by the jurisdictional local government based on the current year customer count either as a specified dollar amount or percentage fee amount.

(b) Filings by existing auto transportation companies for the implementation of new transportation services.

(3) The commission may require that any filing to increase rates for any customer class, or to restructure rates, is subject to the additional requirements of WAC 480-30-426.

NEW SECTION

WAC 480-30-426 Tariffs, general rate increase filings, work papers. (1) General rate increase filings must include work papers supporting the proposed tariff changes based on a test year which is the most recent or appropriate consecutive twelve-month period for which financial data are available. Work papers must include, but are not limited to, the following:

(a) A detailed pro forma income statement by account including restating and pro forma adjustments, and all supporting calculations and documentation for each adjustment. See sample pro forma income statement below.

(i) Restating adjustments modify historic operating results to more properly reflect a "normal, representative" twelve-month test period and give recognition to those areas where the company's accounting methodology may differ from accepted regulatory practice. Restating adjustments fall into three categories:

(A) Reclassification - reclassification moves dollars from one account to another with no effect on the final net income.

(B) Accounting adjustments - accounting adjustments are necessary if the income statement does not properly apply basic accounting principles, such as an out-of-period expense posted in the test year, or to correct an error or oversight.

(C) Ratemaking - ratemaking adjustments modify the records of the company to reflect proper ratemaking theory, such as removing expenses that were incurred by the company but are not generally allowed to be passed on to ratepayers, or converting from accelerated depreciation to straight line depreciation.

(ii) Pro forma adjustments give effect to all known and measurable changes in revenues and expenses not offset by other factors that have or will soon occur as if they had been in effect for the full twelve months of the test year. Examples include changes in tax rates, revenue impact of the tariff changes sought to be changed in the filing. Pro forma adjustments give effect to changes in expense or revenue levels, not the gallons of fuel used, passengers transported, or labor hours worked, etc.

(b) A total passenger count or representative sample of all tickets sold and fares charged during the test year, including all routes, zones, and types of service, and breakdowns between one-way and round trip fares, adults, children, commuters, etc. Revenues of the passenger count/tickets sold analysis must be reconciled to the revenues of the chosen test period. The passenger count/tickets sold analysis forms the basis of the revenue impact of the filing called for in WAC 480-30-381 (2)(b)(ii). See sample passenger count below.

(c) A current depreciation schedule separately listing all assets used by the company during the test period including the date the asset was placed into service, cost, salvage value, service life, and straight-line depreciation expense and accumulated depreciation at the beginning and at the end of the test period.

(d) A balance sheet as of the last day of the test period chosen.

(e) If nonregulated operations represent more than ten percent of total company test period revenue, then the starting point of the pro forma income statement must be total company operations, supplemented with a detailed separation of all total company revenues and expenses between regulated and nonregulated operations.

(f) Backup information concerning every transaction between the regulated company and any affiliated or subsidiary entity describing the services or transactions that occurred, the costs assessed and the basis of the charge, and the relationship to the regulated company.

Sample - pro forma income statement

XYZ Bus Company							
ProForma Income Statement							
12 months ended December 31, 2004							
	Per	Restating	Per	ProForma	ProForma	May 1	
	Books	Adjustments	Books	Present	Present	ProForma	
	(a)	(b)	Restated	Adjustments	Level	Proposed	
			(c)	(d)	(e)	Adjustments	
						(f)	
						Proposed	
						Level	
						(f)	
Revenues							
Passenger	530,000		530,000	A	22,159	552,159	G
Charter	51,410		51,410	A	2,149	53,559	G
Fuel Surcharge	6,292		6,292	C	(6,292)	-	
Baggage, etc.	3,400		3,400	A	341	3,741	
Total Revenues	591,102		591,102		18,357	609,459	
Expenses							
Maintenance	56,377	1	(10,000)			46,377	
Driver Payroll	153,687	2	5,000	B	7,300	165,986	
Fuel	44,924	4	(4,351)	C	1,623	42,196	
Insurance	36,944		36,944	F	1,105	38,049	
Payroll Taxes	33,811	2	383	B	823	35,017	
Employee Benefits	13,004		13,004	E	1,951	14,955	
Taxes & Fees	44,877		44,877	A	349	45,226	G
Licenses	591		591			591	
Depreciation	53,199	3	(5,000)			48,199	
Advertising	12,000		12,000			12,000	
Office & Admin Expense	9,000		9,000	B	270	9,270	
Office & Admin Wages	106,398		106,398	B	3,192	109,590	
Selling Expenses	9,112		9,112			9,112	
Utilities	6,500		6,500			6,500	
Rents	20,000		20,000	D	5,000	25,000	
Total Expenses	600,424	(13,968)	586,456		21,612	608,068	603
Net Operating Income	(9,322)		4,646			1,391	35,620
Operating Ratio %	101.58%		99.21%			99.77%	94.47%
1. To capitalize extraordinary repair				A. To proforma revenue for June 1, 2004 rate increase			
2. To adjust payroll to accrual				B. To proforma payroll to February 1, 2005 pay increase			
3. To adjust to straight line depreciation				C. To proforma fuel to most recent 12 month average; remove fuel surcharge revenue			
4. To remove \$.184 fuel tax				D. To adjust to current rent levels			
				E. To increase health insurance to current premium per employee			
				F. To adjust insurance to March 1, 2005 premium			
				G. To proforma the May 1, 2005, proposed rate increase			

Sample - passenger count

XYZ Bus Company Sample Passenger Count -Tickets Sold 12 months ended December 31, 2004							
	Passengers	Fares Before June 2004	Extension	Fares Effective June 2004 Increase %	Extension	Proposed New Fares \$2.00 one way	Extension
Route A - One Way							
Adults	2,000	25.00	50,000	27.50	55,000	29.50	59,000
Children	800	12.50	10,000	13.75	11,000	14.75	11,800
Commute	700	20.00	14,000	22.00	15,400	23.50	16,450
Subtotal			74,000	10%	81,400		87,250
Route A - Round Trip							
Adults	4,900	40.00	196,000	44.00	215,600	46.00	225,400
Children	1,000	20.00	20,000	22.00	22,000	23.00	23,000
Commute	2,000	32.00	64,000	35.25	70,500	36.90	73,800
Subtotal			280,000		308,100		322,200
Route B - One Way							
Adults	1,600	18.00	28,800	19.80	31,680	21.80	34,880
Children	439	9.00	3,951	9.90	4,346	10.90	4,785
Commute	100	14.50	1,450	15.95	1,595	17.50	1,750
Group	200	9.00	1,800	9.90	1,980	10.90	2,180
Subtotal			36,001		39,601		43,595
Route B - Round Trip							
Adults	3,200	28.80	92,160	31.70	101,440	33.70	107,840
Children	200	14.40	2,880	15.85	3,170	16.85	3,370
Commute	400	23.00	9,200	25.30	10,120	27.00	10,800
Group	560	14.40	8,064	15.85	8,876	16.85	9,436
Subtotal			112,304		123,606		131,446
Grand Total			502,305		552,707		584,491
Pro forma - Revenue Increase Percent					10.03%		5.75%

NEW SECTION

WAC 480-30-431 Tariffs, general rate increase filings and fuel cost update. An auto transportation company filing a rate change based on changes in general operating expenses must update the test period fuel costs using actual fuel costs for the most recent twelve-month period.

NEW SECTION

WAC 480-30-436 Tariffs, special or promotional fare tariff filings. (1) The commission encourages auto transportation companies to explore innovative rates and rate structures including special or promotional fares intended to:

- (a) Retain or increase the number of passengers using the company's services;
- (b) Provide the public with flexible transportation options; and
- (c) Make more efficient and effective use of the company's equipment and other resources.

(2) When an auto transportation company files a special or promotional fare, the filing must at a minimum include the following:

- (a) A statement supporting the use of the proposed special or promotional fare; and

- (b) Information detailing the potential effect on revenue of the proposed special or promotional fare, as well as the effect on revenue of the current fare.

PART 8—CONSUMER RULES

NEW SECTION

WAC 480-30-441 Charter and excursion carriers not subject to provisions of Part 8. The consumer rules apply only to auto transportation companies. Charter and excursion carriers are not subject to the provisions of Part 8 of this chapter.

NEW SECTION

WAC 480-30-446 Availability of information. (1) Company information. A company that provides auto transportation company service must have a:

- (a) Toll-free or local business telephone number for customers located within the company's authorized service area; and
- (b) Mailing address.

(2) **Messaging.** A company must have voice mail, an answering machine, or answering service to receive calls when company personnel are unavailable.

(3) **Responding to customer inquiries.**

(a) A company must respond to all nonwritten messages within twenty-four hours excluding weekends and holidays, as defined in the company's tariff.

(b) A company must acknowledge and respond to a customer's written inquiry within two weeks of receipt.

(4) **Information that must be available.** A company must make the following items available to customers for inspection upon request at no charge during the company's regular business hours:

(a) The commission's passenger transportation company rules in chapter 480-30 WAC;

(b) The company's current tariff and time schedule;

(c) The company's current certificate; and

(d) Any current, proposed, or most recently canceled tariff page that relates to the customer's service.

NEW SECTION

WAC 480-30-451 Refusal of service. (1) A company may refuse service to a person when:

(a) In the company's judgment, providing the service would be hazardous, unsafe, or dangerous to persons or property;

(b) In the company's judgment, driveways or roads are improperly constructed or maintained, do not have adequate turn arounds, or have other unsafe conditions;

(c) The customer has an outstanding amount due to the company;

(d) The customer refuses to allow company personnel, drivers, agents, or representatives access to baggage or other materials prior to it being loaded in or on the vehicle;

(e) The customer appears to be under the influence of drugs or alcohol; or

(f) The customer attempts to bring onboard the vehicle materials that would be detrimental to the safety or comfort of other passengers.

(2) A company may refuse service to a person under other conditions that would be detrimental to the safety and comfort of passengers when those conditions are contained in the company's filed tariff and time schedule.

NEW SECTION

WAC 480-30-456 Fair use of customer information.

(1) Customer information includes the customer's name, address, and telephone number.

(2) Companies must use customer information only for:

(a) Providing and billing for services the customer requests;

(b) Marketing new services or options to its customers; or

(c) Providing information to its customers.

(3) Any sale or release of customer information without the written permission of the customer is prohibited. The only exceptions to this rule are:

(a) Release of information to the commission to investigate or resolve complaints filed with the commission by a customer;

(b) Sharing nonpayment information with agencies the company engages to act as the company's agent in pursuing collection of past due accounts.

(4) Companies are allowed to collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

NEW SECTION

WAC 480-30-461 Service or rate complaints. (1) Company responsibility.

(a) **Complaints from customer.** When a company receives a service or rate complaint from a customer it must:

(i) Acknowledge the complaint within twenty-four hours;

(ii) Investigate promptly;

(iii) Report the results of the investigation to the complainant;

(iv) Take corrective action, if warranted, as soon as appropriate under the circumstances;

(v) Inform the complainant that the decision may be appealed to a higher level representative of the company, if any;

(vi) Advise that if the complainant is still dissatisfied after speaking with the higher level representative, the commission is available to review the complaint; and

(vii) Provide the complainant with the commission's address and toll-free telephone number.

(b) **Complaint referred by commission.** When commission staff refers an informal complaint to the company, the company must:

(i) Investigate and report the results to commission staff within two business days (commission staff may grant an extension of time for responding to the complaint if requested and warranted);

(ii) Keep commission staff informed of progress toward the resolution on a weekly basis; and

(iii) Inform the commission staff of the final result.

(c) **Complaint record.** A company must keep a record of all complaints for at least three years. The record of complaints must be readily available for commission review. The record must contain:

(i) The complainant's name and address;

(ii) Date and nature of the complaint;

(iii) Action taken;

(iv) The final result; and

(v) All official documents regarding the complaint.

(2) **Complaints to commission.** Customers may file with the commission either:

(a) An informal complaint against the company under the provisions of WAC 480-07-910; or

(b) A formal complaint against the company under the provisions of WAC 480-07-370.

NEW SECTION

WAC 480-30-466 Credits or refunds as compensation in consumer complaints or problems. Companies may

offer customers a credit or refund as compensation for service quality problems, billing problems, or other problems experienced by the customer.

NEW SECTION

WAC 480-30-471 Ticketing requirements. (1) An auto transportation company must provide its customers with tickets, receipts, or other alternate informational documents that include, but are not limited to, the following information:

- (a) The name of the company;
- (b) The service, trip, or route on which the ticket applies;
- (c) The date or dates on which ticket is valid;
- (d) Information about the company's policy for refunds;
- (e) A list of items that are prohibited from being brought onboard the vehicle or being packed in checked baggage;
- (f) Notice that baggage may be inspected and the consequences of failing to allow access to baggage for such inspection;
- (g) Information related to baggage liability, the ability to declare higher value, and the charges for such declaration;
- (h) The company's toll-free or local business telephone number.

(2) An auto transportation company that maintains an internet web site accessible to the public using generally available browser software may offer tickets or receipts to its customers on request and satisfy the additional information requirements of this rule by:

- (a) Posting the required information to its internet web site;
- (b) Directing customers to its web site; and
- (c) Providing customers with a description of how to contact the company if they have specific questions or need additional information.

NEW SECTION

WAC 480-30-476 Baggage liability and claims for loss or damage. (1) **Baggage liability.** An auto transportation company must include provisions in its filed tariff relating to its liability for loss or damage to baggage checked by the passenger.

- (a) The minimum amount of liability must be:
 - (i) At least two hundred fifty dollars per adult fare; and
 - (ii) At least one hundred dollars per child's fare.
- (b) The company's tariff must also contain provisions allowing passengers to declare a value in excess of two hundred fifty dollars, by paying an additional charge, and must allow the passenger to recover the increased amount. The passenger's declared amount may not exceed the actual value of the baggage and its contents.
- (c) Company tariff provisions may limit the maximum value for which the company will be liable. This maximum value may not be less than one thousand dollars per bag or item checked.
- (d) Companies do not have to offer excess value coverage on articles of extraordinary value including, but not limited to:
 - (i) Negotiable instruments;
 - (ii) Papers;
 - (iii) Money;

- (iv) Manuscripts;
- (v) Irreplaceable publications;
- (vi) Documents;
- (vii) Jewelry and watches.

(2) **Delivery of checked baggage.** The company must make all checked baggage available to the passenger within a reasonable time of arrival at destination. If not, the company will deliver the baggage to the passenger's local address at the company's expense.

(3) **Claims.** Auto transportation companies must make claim forms available to their passengers upon request at each of the company's offices, passenger facilities, and from the driver of each vehicle operated. The forms must be prepared in duplicate. The company will retain one copy. The second copy will be given to the passenger filing the claim.

(a) Checked baggage that the company cannot locate within one hour of arrival at destination will be designated as lost. The company must notify the passenger at that time and furnish the passenger with a claim form.

(b) The company must give a claim form to any passenger declaring lost or damaged baggage.

(c) The company must resolve claims for baggage loss or damage within sixty days of receipt with a firm offer of settlement or with a written explanation of denial of the claim.

(4) **Loss or damage to carry-on items.** The company shall not be held responsible for loss or damage to baggage carried onboard the vehicle unless it can be shown that the company was in some way negligent. Each company shall have a written policy detailing the manner in which items, articles, or baggage left onboard a company's vehicles will be handled and the way in which the company will make efforts to return the articles to their rightful owners.

PART 9—INTERSTATE OPERATIONS

NEW SECTION

WAC 480-30-900 General requirements for interstate operations. (1) **General requirements:** No passenger transportation company may operate any motor vehicle or combination of motor vehicles over the public highways of this state in interstate commerce unless the company has:

- (a) Obtained the appropriate operating authority from the Federal Motor Carrier Safety Administration (FMCSA) if operating as a registered carrier;
- (b) Obtained valid insurance as required by FMCSA;
- (c) Registered:
 - (i) With a base state as required by 49 CFR Part 1023, if operating as a registered carrier; or
 - (ii) With the commission if operating as a registered exempt carrier; and
- (d) Paid the annual Washington state registration fee for each vehicle.

(2) **Applicable laws and rules:**

(a) When conducting interstate operations, registered and registered exempt carriers and the motor vehicles they operate must comply with the laws and rules that apply to interstate operations.

(b) When conducting Washington intrastate operations, registered and registered exempt carriers and the motor vehi-

cles they operate must comply with the laws and rules that apply to intrastate operations.

NEW SECTION

WAC 480-30-910 Registered carriers. (1) **Single state registration system.** Washington participates in the base state insurance registration program established in 49 U.S.C. § 11506 and 49 CFR Part 1023. To register as a registered carrier in interstate commerce within the state of Washington, you must register with a base state, pay the appropriate fee for any motor vehicles operated within Washington state, and show proof of insurance.

(2) **Passenger carriers based outside of Washington state.** Any passenger carrier whose base state, as defined in federal regulation, is a state other than the state of Washington, must register with that state and carry a legible receipt in each motor vehicle operated within the state of Washington showing base state registration, payment of the appropriate per vehicle fee, and proof of insurance.

(3) **Washington-based passenger carriers.** Any passenger carrier whose base state, as defined in federal regulation, is Washington state, must register for interstate operations as follows:

(a) Between August 1 and November 30 of each year, each Washington-based interstate passenger carrier must apply to the commission to register for the following year, on forms provided by the commission.

(b) The registering passenger carrier must state the number of motor vehicles to be operated in each participating state, provide other required information, such as proof of insurance, and submit the registration fee established by that state for each motor vehicle.

(c) Within thirty days after receiving the registration fee and application, the commission will provide to the carrier a receipt or receipts showing, at a minimum, the carrier's name and address, its USDOT permit number, and the names of the states for which it is registered.

(d) The passenger carrier must place a receipt or an authorized copy in each motor vehicle for which it has paid the required fee.

(e) Any Washington-based passenger carrier that begins interstate operations in a state for which it has not registered may register for that state at any time, stating the number of motor vehicles to be operated in each state and submitting the required information and registration fee for each motor vehicle. The commission will provide a new receipt, if the passenger carrier has not previously registered, or supplemental receipt, if it has registered, showing the states for which the motor carrier has registered.

NEW SECTION

WAC 480-30-920 Registered exempt carriers. (1) Any passenger carrier operating under the exemptions of the Federal Motor Carrier Act, with no authority issued by the USDOT or its successor agency, may not operate over the public highways of the state of Washington unless it registers with the commission between August 1 and November 30 of each year, or at any time after November 30 when it begins

interstate exempt operations, or when it will operate additional motor vehicles within the state.

(2) To register with the commission as a registered exempt carrier, a passenger transportation company must:

(a) Complete a registration application on a form provided by the commission;

(b) Identify the number of motor vehicles that the company will operate within the state;

(c) Pay the registration fee for each motor vehicle; and

(d) Provide proof of insurance.

NEW SECTION

WAC 480-30-930 Registration fee and receipts. (1) **Registration fee.** The annual registration fee for registered and registered exempt interstate passenger transportation companies operating vehicles over the public highways of Washington state is:

(a) \$10 For each motor vehicle operated by a passenger transportation company providing interstate charter or excursion service.

(b) \$0 For each motor vehicle operated by a passenger transportation company providing interstate regular route service.

(2) **Registration receipts.**

(a) A legible receipt showing registration with a base state or the commission as a registered or registered exempt carrier must be present in each motor vehicle and the receipt is subject to inspection at all times by law enforcement agents and commission representatives. No person or firm may use a registration receipt issued by the commission other than the registered or registered exempt carrier to whom it was issued.

(b) All receipts issued for a calendar year expire on December 31 of that year.

NEW SECTION

WAC 480-30-940 Insurance requirements for interstate operations. Registered and registered exempt carriers conducting interstate operations must provide evidence of insurance in the amount required by the USDOT or its successor agency written by a company authorized to write insurance in any state.

PART 10—ADOPTION BY REFERENCE

AMENDATORY SECTION (Amending WSR 05-21-022, filed 10/10/05, effective 11/10/05)

WAC 480-30-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2005.

(b) This publication is referenced in WAC ((~~480-30-097 (Equipment—Inspection—Ordered for repairs)~~ and WAC ~~480-30-100 (Operation of motor vehicles)~~)) 480-30-121 (Certificates, applications, charter and excursion) and WAC 480-30-221 (Vehicle and driver safety requirements).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC ((~~480-30-095 (Equipment—Safety) and WAC 480-30-100 (Operation of motor vehicles)~~)) 480-30-221 (Vehicle and driver safety requirements) and WAC 480-30-226 (Intrastate medical waivers).

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 480-30-010 Definitions.
- WAC 480-30-020 Licenses, and rules and regulations.
- WAC 480-30-030 Certificates—Auto transportation companies.
- WAC 480-30-032 Notice of application; protests; contemporaneous applications.
- WAC 480-30-040 Express.
- WAC 480-30-045 Auto transportation company C.O.D. shipments tariff requirements—Bond required—Handling of shipments.
- WAC 480-30-050 Tariff, naming rates and fares.
- WAC 480-30-060 Schedule of time and route.
- WAC 480-30-070 Liability and property damage insurance or surety bond.
- WAC 480-30-080 Self insurance.
- WAC 480-30-090 Equipment of motor vehicles.
- WAC 480-30-095 Equipment—Safety.
- WAC 480-30-097 Equipment—Inspection—Ordered for repairs.
- WAC 480-30-100 Operation of motor vehicles.

- WAC 480-30-105 Depot and terminal facilities.
- WAC 480-30-110 Regulatory fees.
- WAC 480-30-120 Uniform system of accounts and annual reports.
- WAC 480-30-130 Rules and regulations—General application.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 480-40-010 Definitions.
- WAC 480-40-020 Licenses.
- WAC 480-40-030 Certificates.
- WAC 480-40-040 Liability and property damage insurance.
- WAC 480-40-050 Self insurance.
- WAC 480-40-060 Equipment of motor vehicles.
- WAC 480-40-065 Equipment—Inspection—Ordered for repairs.
- WAC 480-40-070 Operation of motor vehicles.
- WAC 480-40-075 Equipment—Safety.
- WAC 480-40-100 Out-of-service criteria.
- WAC 480-40-110 Registered carriers.
- WAC 480-40-120 Registration of interstate authority.
- WAC 480-40-130 Regulatory fees—Receipt—Intrastate passenger charter carriers and excursion service carriers.
- WAC 480-40-999 Adoption by reference.

WSR 06-05-115

PROPOSED RULES

HORSE RACING COMMISSION

[Filed February 15, 2006, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-022.

Title of Rule and Other Identifying Information: Chapter 260-40 WAC, Entries, starts, declarations and scratches.

Hearing Location(s): Red Lion Inn, Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, WA 99336, on April 7, 2006, at 9:30 a.m.

Date of Intended Adoption: April 7, 2006.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail

ropez@whrc.state.wa.us, fax (360) 459-6461, by April 3, 2006.

Assistance for Persons with Disabilities: Contact Patty Sorby by April 3, 2006, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: By amending chapter 260-40 WAC the agency intends to modernize our rules as part of or [our] regulatory reform effort and to also write and organize our rules in a more clear and concise manner so they are more easily understood by those to whom they apply. In addition, the amendments to this chapter, wherever possible, attempt to conform to the national model rules.

Reasons Supporting Proposal: The current effort will modernize our rules and repeal a number of rules that were established in 1961.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

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

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

February 15, 2006

R. M. Leichner
Executive Secretary

Chapter 260-40 WAC

ENTRIES, STARTS, ~~((DECLARATIONS))~~ NOMINATIONS AND SCRATCHES

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-010 ~~((Declarations))~~ Nominations and scratches. (1) No horse shall be considered nominated or scratched ~~((or declared))~~ out of an engagement until the owner ~~((or his authorized agent, or some person deputized by him shall have given due)),~~ trainer or designee provides written notice ~~((in writing))~~ to the racing secretary before the time stipulated by the ~~((regulations of the))~~ association.

(2) For stake races, if a horse is not named through the entry box ~~((the day before the race at the usual time of closing))~~ before the close of entries for that race day, the horse is automatically out.

(3) The ~~((declaration))~~ scratch of a horse out of an engagement is irrevocable.

(4) All horses must be scratched ~~((at))~~ by the designated scratch time set by the racing secretary.

(5) If the miscarriage of any ~~((declaration by mail or otherwise))~~ nomination is alleged, satisfactory proof of such miscarriage shall be required of the complainant, otherwise,

the ~~((declaration))~~ nomination shall not be accepted as of the time alleged.

(6) Any owner or trainer who has entered a horse~~((s))~~ will be allowed the right ~~((and privilege of scratching))~~ to scratch the horse from ~~((said))~~ the race entered prior to scratch time, until there remain in the race ~~((only))~~ no fewer than eight interests. If there are more requests to ~~((withdraw))~~ scratch than are available, permission to ~~((withdraw))~~ scratch shall be decided by lot. However, in all races involving the daily double, no entry may be ~~((withdrawn))~~ scratched that would reduce the starting field to less than the number designated by the racing secretary, without permission of the board of stewards. No other entries will be excused as provided above except upon receipt of a veterinarian's certificate of unfitness, change of track conditions since time of entry or other causes acceptable to the board of stewards.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-020 Entry prerequisite to start. A horse shall not be qualified to start in any race unless ~~((he))~~ the horse has been ~~((and continues))~~ properly entered therein.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-030 Racing secretary to receive entries and declarations. ~~((For all races,))~~ (1) The racing secretary is the person authorized to receive entries and declarations for all races.

(2) The racing secretary may refuse the entry of any person, or the transfer of any entry for reasons deemed, by the racing secretary, to be in the best interest of racing.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-040 ~~((Entries and declarations, how made—Blank forms.))~~ Making entries and nominations. (1) Entries and ~~((declarations))~~ nominations shall be made in writing and signed by the owner ~~((of the horse, or his authorized agent or some person deputized by him, and each)),~~ trainer or designee. Each association shall provide blank forms on which entries and declarations are ~~((to be))~~ made.

(2) Entries may be made by telephone ~~((or telegraph,))~~ but must be confirmed ~~((promptly))~~ in writing.

NEW SECTION

WAC 260-40-045 Authority to represent owner. A trainer may represent the owner in the matter of entries, nominations, scratches, and the employment of jockeys.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-050 Ownership interest required—
Entries and nominations. ~~((No person not having an interest in a horse, equal at least to the interest or property of any other one person is entitled to enter the horse in a race as the~~

~~owner.))~~ No owner who does not retain a majority ownership interest in a horse may enter that horse in a race.

(1) The majority ownership interest must approve the nomination or entry of any horse into a race.

(2) Each owner is individually and collectively responsible for any fees resulting from nominations, entries, or starting fees.

NEW SECTION

WAC 260-40-055 Duty to name jockey upon making entry. Every owner or trainer shall upon making an entry, be required to furnish the name of the jockey who rides his/her horse prior to the close of entries. If no jockey has been named by close of entries, the stewards shall name the best available rider and he/she shall ride the horse.

NEW SECTION

WAC 260-40-065 Coupled and multiple entries. (1) Two or more horses owned or leased in whole or part by the same owner shall be joined as a coupled entry and single betting interest if they are entered in the same race. Coupled entries may be uncoupled in stakes races. At the time of making a coupled entry of horses of the same ownership, the trainer shall be required to express a preference as to which horse shall run in the event the coupled entry is not allowed because it would result in the exclusion of a single entry.

(2) A trainer may enter and start no more than two horses of the same or separate ownership in a purse race or overnight event, except under the following conditions:

(a) Stake races.

(b) Allowance/optional claiming or maiden special weight races a maximum of three entries. The third entry may not exclude a single entry and would not be allowed if there were fewer than seven entries received by the racing secretary prior to the entry of the third horse.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-070 Description and identification of horse. (1) If entered for the first time, a horse shall be identified by stating his name, color, sex and age, and the name of his sire and dam, as registered. This description must be repeated in every entry until a description of the horse with his name has been published in the official program or the list of entries of the association, or in such other publication as the commission may designate. In every entry after such publication, ~~((his))~~ the horse's name and age will be sufficient.

(2) ~~((That))~~ All horses shall be classified on a racing program by clear definitions.

(3) For racing ~~((purposes))~~ and programming purposes, horses shall be designated as follows:

(a) Male - horse, colt, gelding or ridgling.

(b) Female - filly or mare.

NEW SECTION

WAC 260-40-075 Equipment changes—Declaration. Trainers are responsible to note all required equipment changes at time of entry.

AMENDATORY SECTION (Amending Order 3, filed 5/12/69)

WAC 260-40-090 Jockey club registration certificate. No horse shall be allowed to enter or start unless a jockey club registration certificate ~~((or a))~~, American Quarter Horse Association certificate of registration, or other applicable breed certificate of registration is on file in the office of the racing secretary, ~~((with the exception))~~ except that the stewards may ~~((, in their discretion, for good cause,))~~ waive this requirement, if the horse is otherwise properly identified and the horse is not entered in a claiming race.

AMENDATORY SECTION (Amending WSR 04-09-026, filed 4/13/04, effective 5/14/04)

WAC 260-40-100 Performance records. It is the intent of the commission that the public be provided with all relevant information regarding a horse's recent racing and workout record; Therefore:

(1) The owner/and or trainer of any horse which has started at a track not reported in the daily racing form or equibase since its last start at a recognized track, must furnish the racing secretary prior to the entry of such horse to any race in this state, performance records of said horse's races during the past year, or their last two starts, including published races, showing date, distance, finishing position and time. If such records are not provided, the horse will be ineligible to start.

(2) For thoroughbreds, a horse which wins a race at a Class C track within the state, with the exception of its maiden win, shall not be penalized for such winnings in races run at any other meeting other than a Class C track. ~~((The maiden classification will be lost by winning a race at any track whose results are published in the daily racing form or equibase. A horse which wins a race at a track with results not reported in the daily racing form or equibase, outside this state, shall not be penalized for such winnings except at Class C tracks.))~~ All winnings in races conducted outside the state of Washington and under the authority of a recognized racing jurisdiction shall count with regards to a horse's eligibility. For other breeds, all wins, including the maiden wins, shall be counted in considering eligibility at all racing association meets in the state of Washington if the win is recognized by the Arabian jockey club, the American quarter horse association, the appaloosa horse club, or other breed registry ~~((as authorized))~~ recognized by the commission.

(3) Performance records for races which are not reported in the daily racing form and/or equibase shall be published in the official program of the racing association or posted and announced no later than the time that wagering opens for that day's racing. No horse may be permitted to enter in a race whose recent workouts have not been properly recorded with the commission.

(4) All wins shall be considered in eligibility requirements of horses running at Class C racing association meets.

(5) A horse shall not start unless it has participated in an official or recognized race or has ~~((a))~~ published or steward~~((s))~~ approved workouts, which meet the following criteria:

(a) A horse that has not run in an official or recognized race must have two official workouts, one of which must be recorded from the starting gate, and at least one ~~((such))~~ workout must be held thirty days prior to race day.

(b) A horse that has not started in an official or recognized race for a period of sixty days or more must have a published or steward approved workout held thirty days prior to race day.

~~((c))~~ (c) The workout must have occurred at a parimutuel or commission recognized facility.

(6) The association may impose more stringent workout requirements.

(7) The trainer or trainer's designee shall be required to identify the horse's registered name, the distance the horse is to be worked and the point on the track where the workout will start.

(8) A horse shall not be taken onto the track for training or a workout except during the hours designated by the association.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-110 Horse must be in care of ~~((s))~~ and saddled by ~~((s))~~ a licensed trainer. No horse shall be permitted to enter or to start in a race unless ~~((he))~~ the horse is in the care of ~~((and is saddled by))~~ a licensed trainer. A licensed trainer must saddle a horse entered to run in a race.

AMENDATORY SECTION (Amending Order 81-06, filed 7/10/81)

WAC 260-40-120 Identification prerequisite to start.

(1) No horse shall be permitted to start that has not been fully identified.

(2) All horses shall be properly tattooed by the thoroughbred racing protective bureau or an approved breeding association, or freeze marked in a manner which meets the standards of the National Crime Information Center. ~~((Responsibility in the matter of establishing either the identity of a horse or its complete and actual ownership shall be as binding on the persons so identifying or undertaking to establish the identity of a horse as it is on the person having the horse requiring identification. The same penalty shall apply to any party engaging in fraud or attempt at fraud.))~~

(3) No horse shall be permitted to start unless ownership is established.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-130 Stabling. No horse shall be permitted to enter or to start unless the horse is stabled on the grounds of the association, or ~~((in stabling approved by said~~

~~commission))~~ arrives on the grounds five hours prior to the post time of the race the horse is entered in.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-140 Horse must be eligible to start at time of entry. (1) All horses must be eligible to start at time of entry, as determined by conditions established by the racing secretary's published condition book or conditions for late extra races offered.

(2) The owner, trainer or designee is responsible to declare any weight allowances, including apprentice allowances, at time of entry. No additional weight may be declared after the posting of entries.

AMENDATORY SECTION (Amending Order 73.7, filed 12/3/73)

WAC 260-40-145 Prohibiting entry of certain horses.

~~((a))~~ (1) No horse shall be allowed to enter or start if ~~((the highest official regulatory))~~:

(a) An investigation is ongoing by a recognized racing ~~((body having))~~ jurisdiction ~~((of the offense previously has determined that))~~ to determine if the horse was knowingly entered or raced under a name other than its own by a person having lawful custody or control of the animal at the time it was so entered or raced~~((:))~~; or if

(b) ~~((No horse shall be allowed to enter or start if it has been previously determined by the highest official regulatory))~~ The recognized racing ~~((body having))~~ jurisdiction ~~((of the offense))~~ has previously determined that a person having lawful custody or control of the animal participated in or assisted in the entry of racing some other horse under the name of the horse in question.

~~((c))~~ (2) For the purposes of ~~((paragraphs (a) and (b) above))~~ this section, the "name" of the horse means the name reflected in the registration certificate or racing permit issued with respect to the horse in question by the Jockey Club or other applicable breed registration certificate.

AMENDATORY SECTION (Amending WSR 04-07-076, filed 3/15/04, effective 4/15/04)

WAC 260-40-160 Horse owned or managed by disqualified person. (1) A horse shall not be qualified to be entered or to start in any race, if owned in whole or in part, or if under the management, directly or indirectly, of a disqualified person.

(2) If any entry from any disqualified person or a disqualified horse is received, such entry shall be void and any money paid for such entry shall be returned if the disqualification is ~~((disclosed))~~ discovered forty-five minutes before post time for the race. Otherwise, any such money shall be paid to the winner.

(3) A horse is ineligible to start in a race when it is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person~~((:))~~. In such cases, ~~((# being))~~ is presumed that the disqualified person and spouse

constitute a single financial entity with respect to the horse, (~~which~~) but this presumption may be rebutted.

(4) If a horse is sold to a disqualified person, the horse's racing engagements shall be void effective the date of the sale.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-180 Horse on veterinarian's list. No horse on the veterinarian's list shall be qualified to be entered, or to start in a race.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-240 Entrance money. (1) A horse shall not become a starter for a race unless there has been ~~((duly))~~ paid any stakes or entrance money ~~((payable in respect to))~~ required for that race.

(2) Entrance money ~~((is))~~ shall not be refunded ~~((on))~~ due to the death of a horse, or ~~((his))~~ a horse's failure to start.

(3) The ~~((nominator))~~ owner is liable for the nomination or entrance money ~~((or stake)),~~ and the death of a horse or mistake in its entry ~~((when eligible,))~~ does not release the ~~((subscriber or transferee))~~ owner from liability for ~~((stakes))~~ these fees, and the nomination or entrance money ~~((to a purse that is run off)).~~ Nomination and entrance fees shall not be returned on the death of a horse or its failure to start for any cause whatever.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-250 Closing. (1) Entries shall be closed at an advertised time, and no entry accepted thereafter. The racing secretary, however, with the consent of the stewards, may postpone closing of overnight races.

(2) In the absence of notice to the contrary entrance and ~~((declarations))~~ nominations for sweepstakes, which close during or on the eve of a race meeting~~((;))~~ shall close at the office of the racing secretary~~((, who shall make provision therefor)).~~ Closing at all other times for sweepstakes shall be at the office of the association sponsoring the sweepstakes.

(3) When ~~((an hour))~~ a time for closing is designated, entries and ~~((declaration))~~ nominations for sweepstakes cannot be received afterwards~~((, but if an hour)).~~ In the event that a time is not designated, they may be mailed or ~~((telegraphed))~~ faxed up to midnight of the day of closing, provided they are received in time for compliance with every other condition of the race.

(4) If a miscarriage of any entry ~~((of declaration))~~ or nomination in a stake is alleged, satisfactory proof that it was mailed or ~~((telegraphed))~~ faxed must be presented within a reasonable time or it shall not be ~~((received))~~ allowed.

(5) Entries which have closed shall be compiled without delay by the racing secretary and conspicuously posted.

AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

WAC 260-40-260 Number of entries and starters. (1) In a stake race the number of horses to compete will be limited only by the number of horses duly nominated.

(2) If the number of entries to any purse race is in excess of the number of horses that may, because of track limitations, be permitted to start, the "starters" for the race and their post positions shall be determined by lot in the presence of those making the entries. The same methods shall be employed in determining the starters and post positions in split races.

(3) A list of names not to exceed six may be drawn from the overflow entries in any purse race and listed as eligible to start as originally carded horses are withdrawn, but the order in which such horses so drawn shall become eligible to start and their post position shall be determined by the provisions of WAC 260-52-020. Any owner, trainer~~((;))~~ or ~~((his authorized agent))~~ designee having a horse so eligible and who does not wish to start, shall file a scratch card not later than the scratch time designated for that day.

AMENDATORY SECTION (Amending WSR 90-19-001, filed 9/6/90, effective 10/7/90)

WAC 260-40-280 Impaired horses. An owner or trainer shall not enter or start a horse that:

(1) Is not in ~~((serviceably))~~ physically sound and competitive racing condition.

(2) Has been trachea-tubed.

(3) Has been nerved except as provided in (a) and (b) of this subsection.

(a) Horses that have had a digital neurectomy (heel nerves) may be permitted to race subject to the prerace veterinary examination.

(b) Horses that have been nerved, blocked with alcohol or any other medical drug that desensitizes the nerves above the ankle will not be permitted to race.

(4) Has impaired eyesight in both eyes.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-40-060	Joint subscriptions and entries.
WAC 260-40-080	Refusal of entries and transfers.
WAC 260-40-150	Compliance with partnership registration.
WAC 260-40-190	Sale to disqualified person voids engagements.
WAC 260-40-200	Double entries.