

WSR 08-07-068
PROPOSED RULES
CONVENTION AND TRADE
CENTER

[Filed March 17, 2008, 3:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-23-124.

Title of Rule and Other Identifying Information: Chapter 140-09 WAC, Washington state convention and trade center (WSCTC)—SEPA guidelines.

Hearing Location(s): Washington State Convention and Trade Center, 800 Convention Place, Seattle, WA 98101-2350, on May 20, 2008, at 2:00 p.m.

Date of Intended Adoption: May 20, 2008.

Submit Written Comments to: Dan Johnson, Administrative Services Manager, WSCTC, 800 Convention Place, Seattle, WA 98101-2350, e-mail djohnson@wsctc.com, fax (206) 694-5399, by 5:00 p.m., May 13, 2008.

Assistance for Persons with Disabilities: Contact Dan Johnson by 5:00 p.m., May 6, 2008, (206) 694-5013 or fax (206) 694-5399.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments update WSCTC's SEPA rules. They would also clarify when WSCTC will serve as lead agency, specify certain emergency actions that would be categorically exempt from SEPA, and adopt the city of Seattle's flexible thresholds for categorical exemptions.

Reasons Supporting Proposal: The proposed amendments update WSCTC's SEPA rules in order to be consistent with state department of ecology SEPA rules, which have changed since initial adoption of the WSCTC rules.

Statutory Authority for Adoption: RCW 43.21C.120.

Statute Being Implemented: Chapter 43.21C RCW.

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

Name of Proponent: WSCTC, governmental.

Name of Agency Personnel Responsible for Drafting: Dan Johnson, 800 Convention Place, Seattle, WA 98101-2350, (206) 694-5013; Implementation and Enforcement: John Christison, 800 Convention Place, Seattle, WA 98101-2350, (206) 694-5010.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impact small businesses as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. WSCTC is not named in RCW 34.05.328 (5)(a)(i).

March 17, 2008

Suzanne Shaw

for Dan Johnson

Administrative Services Manager

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-010 Authority. These rules are promulgated pursuant to the State Environmental Policy Act

(SEPA), RCW 43.21C.120, and ~~((is))~~ are intended to administratively implement that statute, as further authorized by WAC 197-11-904. This chapter contains this corporation's SEPA procedures and policies. The SEPA rules, chapter 197-11 WAC, must be used in conjunction with this chapter.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-020 Purpose of this part and adoption by reference. This part contains the basic requirements that apply to the SEPA process. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC

| | |
|-------------------|---|
| 197-11-040 | Definitions. |
| 197-11-050 | Lead agency. |
| 197-11-055 | Timing of the SEPA process. |
| 197-11-060 | Content of environmental review. |
| 197-11-070 | Limitations on actions during SEPA process. |
| 197-11-080 | Incomplete or unavailable information. |
| 197-11-090 | Supporting documents. |
| 197-11-100 | Information required of applicants. |
| <u>197-11-250</u> | <u>SEPA/Model Toxics Control Act integration</u> |
| <u>197-11-253</u> | <u>SEPA lead agency for MTCA actions.</u> |
| <u>197-11-256</u> | <u>Preliminary evaluation.</u> |
| <u>197-11-259</u> | <u>Determination of nonsignificance for MTCA remedial action.</u> |
| <u>197-11-262</u> | <u>Determination of significance EIS for MTCA remedial actions.</u> |
| <u>197-11-265</u> | <u>Early scoping for MTCA remedial actions.</u> |
| <u>197-11-268</u> | <u>MTCA interim actions.</u> |

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-040 Designation of responsible official. (1) For those proposals for which the corporation is the lead agency, the responsible official shall be the ~~((administrator))~~ president of the Washington state convention and trade center.

(2) For all proposals for which the corporation is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules that were adopted by reference in WAC 140-09-020.

~~((3) The corporation shall retain all documents required by the SEPA rules (chapter 197-11 WAC) and make them available in accordance with chapter 42.17 RCW.))~~

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-050 Lead agency determination and responsibilities. (1) The corporation receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940.

(2) ~~((When the corporation is the lead agency for a proposal, it shall determine the responsible official who shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.))~~ The corporation shall serve as the lead agency for all proposals by the corporation. When the total proposal will involve both private and corporation construction activity, it shall be characterized as either a private or a corporation project for the purposes of lead agency designation, depending upon whether the primary sponsor or initiator of the project is the corporation or a private party. Any project in which corporation and private interests are too intertwined to make this characterization shall be considered a corporation project.

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

(4) If the corporation receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or WAC 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within fifteen days of receipt of the determination, or the corporation must petition the department of ecology for a lead agency determination under WAC 197-11-946 within the fifteen-day time period. Any such petition on behalf of the corporation may be initiated by the ~~((administrator))~~ president of the Washington state convention and trade center.

(5) The corporation is authorized to make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided that the responsible official approves the agreement.

(6) The corporation, making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal (That is: Which agencies require non-exempt licenses?).

(7) When the corporation is the lead agency for a MTCA remedial action, the department of ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the corporation shall decide jointly with ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency.

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

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-065 Purpose of this part and adoption by reference. This part contains the rules for deciding whether a proposal has a "probable significant, adverse environmental impact" requiring an environmental impact statement (EIS) to be prepared. This part also contains rules for evaluating the impacts of proposals not requiring an EIS. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference ~~((as supplemented in this part))~~:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-110 Purpose of this part and adoption by reference. This part contains the rules for preparing environmental impact statements. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference ~~((as supplemented by this part))~~:

WAC

- 197-11-400 Purpose of EIS.
- 197-11-402 General requirements.
- 197-11-405 EIS types.
- 197-11-406 EIS timing.
- 197-11-408 Scoping.
- 197-11-410 Expanded scoping. (Optional)
- 197-11-420 EIS preparation.
- 197-11-425 Style and size.
- 197-11-430 Format.
- 197-11-435 Cover letter or memo.
- 197-11-440 EIS contents.
- 197-11-442 Contents of EIS on nonproject proposals.
- 197-11-443 EIS contents when prior nonproject EIS.
- 197-11-444 Elements of the environment.

- 197-11-448 Relationship of EIS to other considerations.
 197-11-450 Cost-benefit analysis.
 197-11-455 Issuance of DEIS.
 197-11-460 Issuance of FEIS.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-128 Adoption by reference. This part contains rules for consulting, commenting, and responding on all environmental documents under SEPA, including rules for public notice and hearings. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference(~~(, as supplemented in this part)~~):

WAC

- 197-11-500 Purpose of this part.
 197-11-502 Inviting comment.
 ((197-11-504 ~~Availability and cost of environmental documents~~))
 197-11-508 SEPA register.
197-11-510 Public notice.
 197-11-535 Public hearings and meetings.
 197-11-545 Effect of no comment.
 197-11-550 Specificity of comments.
 197-11-560 FEIS response to comments.
 197-11-570 Consulted agency costs to assist lead agency.

NEW SECTION

WAC 140-09-129 Availability and cost of environmental documents. (1) SEPA documents required by the SEPA rules shall be retained by the corporation and made available in accordance with chapter 42.56 RCW.

(2) The corporation shall make copies of any environmental document available in accordance with chapter 42.56 RCW, charging only those costs allowed plus mailing costs. However, no charge shall be levied for circulation of documents to other agencies as required by these rules.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-130 Public notice. (1) Whenever the ~~((corporation issues a DNS))~~ SEPA rules require notice to be given under WAC ((197-11-340(2) or a DS under WAC 197-11-360(3))) the corporation shall give public notice as follows:

~~((a) If public notice is required for a nonexempt license under a statute other than SEPA, the notice shall state whether a DS or DNS has been issued and when comments are due.~~

~~(b) If no public notice is required for the nonexempt license under a statute other than SEPA, the corporation shall give notice of the DNS or DS by at least one of the following:~~

- ~~(i) Posting the property, for site-specific proposals;~~

~~(ii) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;~~

~~(iii) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;~~

~~(iv) Notifying the news media;~~

~~(v) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or~~

~~(vi) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas).~~

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

~~(2) Whenever the corporation issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license; and at least one of the following))~~

~~(a) Posting the property, for site-specific proposals; and~~

~~(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located((;)) (e.g., The Seattle Times or the Seattle Post-Intelligencer.)~~

~~((e) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;~~

~~(d) Notifying the news media;~~

~~(e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or~~

~~(f) Publishing notices in agency newsletters and/or sending notice to agency mailing lists (general lists or specific lists for proposals or subject areas).~~

~~(3)) (2) Whenever possible, the corporation shall integrate the public notice required under this section with existing notice procedures for the corporation's nonexempt licenses required for the proposal.~~

~~((4)) (3) The corporation may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.~~

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

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.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-140 Designation of official to perform consulted agency responsibilities for the corporation. ~~((1))~~ The administrator of the Washington state convention and trade center shall be responsible for preparation of written comments for the corporation in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

~~(2) The responsible official shall be responsible for the corporation's compliance with WAC 197-11-550 whenever the corporation is a consulted agency and is authorized, but not required, to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the corporation.)~~

The president of the corporation, or his or her designee, shall be responsible for coordinating, receiving, and reviewing comments and requests for information from agencies regarding threshold determinations, scoping, EIS's, and supplemental EIS's.

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

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-150 Purpose of this part and adoption by reference. This part contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the corporation's own environmental compliance. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC

- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement—Procedures.
- 197-11-625 Addenda—Procedures.
- 197-11-630 Adoption—Procedures.
- 197-11-635 Incorporation by reference—Procedures.
- 197-11-640 Combining documents.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-155 Purpose of this part and adoption by reference. This part contains rules (and policies) for SEPA's substantive authority, such as decisions to mitigate or reject proposals as a result of SEPA. This part also contains procedures for appealing SEPA determinations to agencies or the courts. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference:

WAC

- 197-11-650 Purpose of this part.
- 197-11-655 Implementation.
- 197-11-660 Substantive authority and mitigation.
- 197-11-680 Appeals.

NEW SECTION

WAC 140-09-170 No administrative appeal. There is no administrative appeal of any corporation determination relating to SEPA. Any appeal must be a judicial appeal under WAC 197-11-680(4).

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-175 Purpose of this part and adoption by reference. This part contains uniform usage and definitions of terms under SEPA. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference, as supplemented by WAC ~~((140-09-040))~~ 140-09-030:

WAC

- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.
- 197-11-710 Affected tribe.
- 197-11-712 Affecting.
- 197-11-714 Agency.
- 197-11-716 Applicant.
- 197-11-718 Built environment.
- 197-11-720 Categorical exemption.
- 197-11-721 Closed record appeal.
- 197-11-722 Consolidated appeal.
- 197-11-724 Consulted agency.
- 197-11-726 Cost-benefit analysis.
- 197-11-728 County/city.
- 197-11-730 Decision maker.
- 197-11-732 Department.
- 197-11-734 Determination of nonsignificance (DNS).
- 197-11-736 Determination of significance (DS).
- 197-11-738 EIS.
- 197-11-740 Environment.
- 197-11-742 Environmental checklist.
- 197-11-744 Environmental document.
- 197-11-746 Environmental review.
- ~~((197-11-748 Environmentally sensitive area.))~~
- 197-11-750 Expanded scoping.
- 197-11-752 Impacts.
- 197-11-754 Incorporation by reference.
- 197-11-756 Lands covered by water.
- 197-11-758 Lead agency.
- 197-11-760 License.
- 197-11-762 Local agency.
- 197-11-764 Major action.

| | |
|-------------------|---------------------------------|
| 197-11-766 | Mitigated DNS. |
| 197-11-768 | Mitigation. |
| 197-11-770 | Natural environment. |
| 197-11-772 | NEPA. |
| 197-11-774 | Nonproject. |
| <u>197-11-775</u> | <u>Open record hearing.</u> |
| 197-11-776 | Phased review. |
| 197-11-778 | Preparation. |
| 197-11-780 | Private project. |
| 197-11-782 | Probable. |
| 197-11-784 | Proposal. |
| 197-11-786 | Reasonable alternative. |
| 197-11-788 | Responsible official. |
| 197-11-790 | SEPA. |
| 197-11-792 | Scope. |
| 197-11-793 | Scoping. |
| 197-11-794 | Significant. |
| 197-11-796 | State agency. |
| 197-11-797 | Threshold determination. |
| 197-11-799 | Underlying governmental action. |

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.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-180 Adoption by reference. The corporation adopts by reference the following rules for categorical exemptions(~~(, as supplemented in this))~~ from chapter 197-11 of the Washington Administrative Code:

WAC

| | |
|-------------------|--|
| 197-11-800 | Categorical exemptions. |
| <u>197-11-810</u> | <u>Exemptions and nonexemptions applicable to specific state agencies.</u> |
| <u>197-11-820</u> | <u>Department of licensing.</u> |
| <u>197-11-825</u> | <u>Department of labor and industries.</u> |
| <u>197-11-830</u> | <u>Department of natural resources.</u> |
| <u>197-11-835</u> | <u>Department of fisheries.</u> |
| <u>197-11-840</u> | <u>Department of game.</u> |
| <u>197-11-845</u> | <u>Department of social and health services.</u> |
| <u>197-11-850</u> | <u>Department of agriculture.</u> |
| <u>197-11-855</u> | <u>Department of ecology.</u> |
| <u>197-11-860</u> | <u>Department of transportation.</u> |
| <u>197-11-865</u> | <u>Utilities and transportation commission.</u> |
| <u>197-11-870</u> | <u>Department of commerce and economic development.</u> |
| <u>197-11-875</u> | <u>Other agencies.</u> |
| 197-11-880 | Emergencies. |
| 197-11-890 | Petitioning DOE to change exemptions. |

NEW SECTION

WAC 140-09-182 Corporation compliance with flexible thresholds. The corporation will use the flexible thresholds established by the City of Seattle.

NEW SECTION

WAC 140-09-183 Emergencies. Actions that must be undertaken immediately or within a time too short to allow full compliance with these rules, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of this chapter. Such actions include, but are not limited to, the following:

(1) Emergency pollution control actions responding to accidental discharges, leaks or spills into the air, water, or land.

(2) Implementation of a change in waste disposal procedures caused by unanticipated changes in waste sources which are in compliance with federal and state regulations and standards.

(3) Cleanup or decontamination of the corporation's facilities or equipment accidentally exposed or contaminated, to permit maintenance, repair or relocation, when procedures followed are in accordance with federal or state guidelines, recommendations, or standards.

(4) Emergency actions implemented to reduce an imminent hazard to the public health or safety resulting from structural failure, accidental or intentional acts or omissions, equipment malfunction, human error or natural event.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-185 Purpose of this part and adoption by reference. This part contains rules for agency compliance with SEPA, including rules for charging fees under the SEPA process, listing agencies with environmental expertise, selecting the lead agencies with environmental expertise, selecting the lead agency, and applying these rules to current agency activities. The corporation adopts the following sections of chapter 197-11 of the Washington Administrative Code by reference, (~~as supplemented by WAC 140-09-050 and 140-09-053 and this part~~):

WAC

| | |
|-------------------|--|
| 197-11-900 | Purpose of this part. |
| 197-11-902 | Agency SEPA policies. |
| <u>197-11-904</u> | <u>Agency SEPA procedures.</u> |
| <u>197-11-906</u> | <u>Content and consistency of agency procedures.</u> |
| <u>197-11-910</u> | <u>Designation of responsible official.</u> |
| <u>197-11-912</u> | <u>Procedures of consulted agencies.</u> |
| <u>197-11-914</u> | <u>SEPA fees and costs.</u> |
| 197-11-916 | Application to ongoing actions. |
| 197-11-920 | Agencies with environmental expertise. |
| 197-11-922 | Lead agency rules. |
| 197-11-924 | Determining the lead agency. |

- 197-11-926 Lead agency for governmental proposals.
- 197-11-928 Lead agency for public and private proposals.
- 197-11-930 Lead agency for private projects with one agency with jurisdiction.
- 197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
- 197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
- 197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
- 197-11-938 Lead agencies for specific proposals.
- 197-11-940 Transfer of lead agency status to a state agency.
- 197-11-942 Agreements on lead agency status.
- 197-11-944 Agreements on division of lead agency duties.
- 197-11-946 DOE resolution of lead agency disputes.
- 197-11-948 Assumption of lead agency status.
- 197-11-950 Severability.
- 197-11-955 Effective date.

- 197-11-980 Determination of significance and scoping notice (DS).
- 197-11-985 Notice of assumption of lead agency status.
- 197-11-990 Notice of action.

REPEALER

The following sections of chapter 140-09 of the Washington Administrative Code are repealed:

- 140-09-058 Additional timing considerations.
- 140-09-080 Use of exemptions.
- 140-09-090 Environmental checklist.
- 140-09-100 Mitigated DNS.
- 140-09-120 Preparation of EIS—Additional considerations.
- 140-09-200 Fees.

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.

AMENDATORY SECTION (Amending WSR 85-03-004, filed 1/3/85)

WAC 140-09-230 Adoption by reference. The corporation adopts the following forms and sections of chapter 197-11 of the Washington Administrative Code by reference:

- WAC
- 197-11-960 Environmental checklist.
 - 197-11-965 Adoption notice.
 - 197-11-970 Determination of nonsignificance (DNS).

WSR 08-07-103
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Disability Services Administration)
 [Filed March 19, 2008, 10:49 a.m.]

Original Notice.
 Preproposal statement of inquiry was filed as WSR 07-09-046.
 Title of Rule and Other Identifying Information: The department is amending and creating new sections in chapter 388-825 WAC, Division of developmental disabilities service rules.

| Washington Administrative Code | Effect of Rule | Impact Small Business? |
|--|--|------------------------|
| 388-825-020 Definitions | | |
| "Abandonment" - repealed | Definition is no longer used in this chapter. | No |
| "Adolescent" - repealed | Definition is no longer used in this chapter. | No |
| "Attendant care" - repealed | Definition is now contained in WAC 388-825-074. | No |
| "Best interest" - repealed | Definition is no longer used in this chapter. | No |
| "Client or person" - amended | Revises definition to correspond with other chapters. | No |
| "Community support services" - repealed | Definition is no longer used in this chapter. | No |
| "Companion Home" - repealed | Definition is now contained in chapter 388-829C WAC. | No |
| "Division or DDD" - amended | Adds the aging and disability services administration to the definition. | No |
| "Emergency" - repealed | Definition is no longer used in this chapter. | No |
| "Exemption" - repealed | Definition is no longer used in this chapter. | No |
| "Family" - amended | Revises definition of "family" to correspond with other chapters. | No |
| "Family resource coordinator" - repealed | Definition is no longer used in this chapter. | No |
| "ICF/MR" - amended | Clarifies the definition of ICF/MR. | No |
| "Individual Support Plan (ISP)" - new | Adds the definition of ISP. | No |
| "Individual" - repealed | Definition is no longer used in this chapter. | No |

| Washington Administrative Code | Effect of Rule | Impact Small Business? |
|--|--|------------------------|
| "Individual alternative living" - repealed | Definition is no longer used in this chapter. | No |
| "Intelligence quotient score" - repealed | Definition is no longer used in this chapter. | No |
| "Intensive individual supported living support" - repealed | Definition is no longer used in this chapter. | No |
| "Medicaid personal care" - amended | Corrects the cross-reference to chapter 388-106 WAC. | No |
| "Nonresidential programs" - repealed | Definition is no longer used in this chapter. | No |
| "Nursing facility eligible" - repealed | Definition is no longer used in this chapter. | No |
| "Other resources" - repealed | Definition is no longer used in this chapter. | No |
| "Part C" - repealed | Definition is no longer used in this chapter. | No |
| "RHC capacity" - repealed | Definition is no longer used in this chapter. | No |
| "Residential programs - amended | Corrects the types of programs considered to be residential and adds cross references. | No |
| "Respite care" - amended | Amends definition for consistency with other programs. | No |
| "Vacancy" - repealed | Definition is no longer used in this chapter. | No |
| "Vulnerable adult" - repealed | Definition is no longer used in this chapter. | No |
| 388-825-025 - repealed | Exemptions are no longer valid. | No |
| 388-825-045 - repealed | Section is broken down into more manageable sections later in this chapter. | No |
| 388-825-050 - repealed | Individual service plans are no longer in use. | No |
| 388-825-055 - repealed | Section is broken down into more manageable sections later in this chapter. | No |
| 388-825-056 - new | Describes how DDD services benefit persons with developmental disabilities. | No |
| 388-825-057 - new | Describes how eligibility for paid services is determined. | No |
| 388-825-0571 - new | Describes the services available to persons under eighteen who are in a dependency guardianship or foster care with children's administration. | No |
| 388-825-058 - new | Lists services that DDD may authorize. | No |
| 388-825-059 - new | Clarifies that the individual support plan identifies the services and the amount to be received. | No |
| 388-825-061 - new | Describes services for persons under the age of three. | No |
| 388-825-062 - new | Defines the infant toddler early intervention program (ITEIP). | No |
| 388-825-063 - new | Defines services available under ITEIP. | No |
| 388-825-065 - repealed | Section is no longer applicable. | No |
| 388-825-066 - new | Describes where program eligibility rules and service definitions for ITEIP can be found. | No |
| 388-825-067 - new | Defines medicaid state plan services. | No |
| 388-825-068 - new | Describes what medicaid state plan service that DDD can authorize. | No |
| 388-825-069 - new | Describes service available under the DDD home and community based services (HCBS) waiver. | No |
| 388-825-071 - new | Describes eligibility criteria for services for persons enrolled in a DDD HCBS waiver. | No |
| 388-825-072 - new | Describes where information on DDD's HCBS waivers can be found. | No |
| 388-825-073 - new | Defines "state-only funded" services. | No |
| 388-825-074 - new | Describes eligibility for state-only funded services. | No |
| 388-825-079 - new | Defines which HCBS waiver services that DDD can authorize with state-only funding for persons not on an HCBS waiver. | No |
| 388-825-080 - repealed | Section is moved to WAC 388-825-098 and reworded. | No |
| 388-825-081 - new | Defines which state-only funded services not available in a HCBS waiver that DDD can authorize. | No |
| 388-825-082 - new | Lists and defines other state-only funded services that are not contained in other DDD rules. | No |
| 388-825-083 - new | Lists all of the services available through DDD. | No |
| 388-825-084 - new | Lists limitations of state-only services and programs. | No |
| 388-825-087 - new | Lists out-of-home residential services that address the special needs of persons with developmental disabilities. | No |
| 388-825-088 - new | Lists where additional information can be found about DDD contracted residential services. | No |
| 388-825-089 - new | Defines residential habilitation centers (RHCs) and lists the RHCs' locations in the state. | No |
| 388-825-091 - new | Defines the eligibility for RHC services. | No |

| Washington Administrative Code | Effect of Rule | Impact Small Business? |
|--------------------------------|---|------------------------|
| 388-825-093 - new | Defines when a person can receive a short-term stay at an RHC. | No |
| 388-825-094 - new | Describes when a person can request to live in an RHC and how the request is processed. | No |
| 388-825-096 - new | Describes what a person must pay toward the cost of DDD services. | No |
| 388-825-097 - new | Describes what expenses can be deducted from income in determining participation. | No |
| 388-825-098 - new | Moved from WAC 388-825-080 and reworded for clarity. | No |

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 6, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 7, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 6, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 29, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments and new sections define and reorganize the rules governing the delivery of services to individuals with developmental disabilities.

Reasons Supporting Proposal: The definitions reorganization of the rules allow stakeholders to easily find the rules pertaining to specific programs and services.

Statutory Authority for Adoption: RCW 71A.12.030.

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: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail brinksc@dshs.wa.gov, (360) 725-3416, fax (360) 404-0955; Implementation: Shannon Manion, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail maniosk@dshs.wa.gov, (360) 725-3454, fax (360) 404-0955; and Enforcement: Don Clintzman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has determined that these rules do not impact small businesses. See Title of Rule above.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olym-

pia, WA 98507-5310, phone (360) 725-3416, fax (360) 404-0955, e-mail brinksc@dshs.wa.gov.

March 12, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-02-014, filed 12/29/03, effective 1/29/04)

WAC 388-825-020 Definitions. (~~"Abandonment" means action or inaction by a person or entity with a duty to care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.~~

~~"Adolescent" means a DDD-eligible child age thirteen through seventeen years.~~

~~"Attendant care" means provision of physical and/or behavioral support to protect the safety and well-being of a client.~~

~~"Best interest" includes, but is not limited to, client-centered benefits to:~~

- ~~(1) Prevent regression or loss of skills already acquired;~~
- ~~(2) Achieve or maintain economic self-support;~~
- ~~(3) Achieve or maintain self-sufficiency;~~
- ~~(4) Prevent or remedy neglect, abuse, or exploitation of individuals unable to protect their own interest;~~
- ~~(5) Preserve or reunite families; and~~
- ~~(6) Provide the least restrictive setting that will meet the person's medical and personal needs.)~~

~~"Client or person" means a person ((the division determines under RCW 71A.16.040 and WAC 388-825-030 eligible for division-funded services)) who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.~~

~~("Community support services" means one or more of the services listed in RCW 71A.12.040 including, but not limited to the following services: Architectural, case management, early childhood intervention, employment, counseling, family support, respite care, information and referral, health services and equipment, therapy services, and residential support.~~

~~"Companion home" means the same as "intensive individual supported living support.")~~

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

~~"Director" means the director of the division of developmental disabilities.~~

~~"Division or DDD" means the division of developmental disabilities within the aging and disability services administration of the department of social and health services.~~

~~("Emergency" means a sudden, unexpected occurrence demanding immediate action.~~

~~"Exemption" means the department's approval of a written request for an exception to a rule in this chapter.)~~

~~"Family" means ((individuals, of any age, living together in the same household and related by blood, marriage, adoption or as a result of sharing legal custody of a minor child)) relatives who live in the same home with the eligible client. Relatives include spouse; natural, adoptive or step parents; grandparents; brother; sister; stepbrother; step-sister; uncle; aunt; first cousin; niece; or nephew.~~

~~("Family resources coordinator" means the person who is:~~

- ~~(1) Recognized by the IDEA Part C lead agency; and~~
- ~~(2) Responsible for:~~

- ~~(a) Providing family resources coordination;~~
- ~~(b) Coordinating services across agencies; and~~

~~(c) Serving as a single contact to help families receiving assistance and services for their eligible children who are under three years of age.)~~

~~"ICF/MR" means a facility certified as an intermediate care facility for the mentally retarded by Title XIX to provide diagnosis, treatment and rehabilitation services to the mentally retarded or persons with related conditions.~~

~~"ICF/MR eligible" for admission to an ICF/MR means a person is determined by DDD as needing active treatment as defined in CFR 483.440. Active treatment requires:~~

- ~~(1) Twenty-four hour supervision; and~~
- ~~(2) Continuous training and physical assistance in order to function on a daily basis due to deficits in the following areas: Toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication.~~

~~"Individual Support Plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.~~

~~("Individual" means a person applying for services from the division.~~

~~"Individual alternative living" means provision of community based individualized client training, assistance and/or ongoing support to enable a client to live as independently as possible with minimal services.~~

~~"Intelligence quotient score" means a full scale score on the Wechsler, or the intelligence quotient score on the Stanford Binet or the Leiter International Performance Scale.~~

~~"Intensive individual supported living support" (also known as companion home) means provision of twenty-four hour residential support in a nonlicensed home for no more than one adult person with developmental disabilities in a regular family residence approved and contracted by the department ensuring client health, safety and well-being.)~~

~~"Medicaid personal care" is the provision of medically necessary personal care tasks as defined in chapter ((388-15) 388-106 WAC.~~

~~("Nonresidential programs" means programs including, but not limited to, county-funded habilitation services.~~

~~"Nursing facility eligible" means a person is assessed by DDD as meeting the requirements for admission to a licensed nursing home as defined in WAC 388-71-0700 (3) through (5). The person must require twenty-four hour care provided by or under the supervision of a licensed nurse.~~

~~"Other resources" means resources that may be available to the client, including but not limited to:~~

- ~~(1) Private insurance;~~
- ~~(2) Medicaid;~~
- ~~(3) Indian health care;~~
- ~~(4) Public school services through the office of the superintendent of public instruction; and~~
- ~~(5) Services through the department of health.~~

~~"Part C" means early intervention for children from birth through thirty-five months of age as defined in the Individuals with Disabilities Education Act (IDEA), Part C and 34 CFR, Part 303 and Washington's federally approved grant.)~~

~~"Residential habilitation center" or "RHC" means a state-operated facility certified to provide ICF/MR and/or nursing facility level of care for persons with developmental disabilities.~~

~~("RHC capacity" means the maximum number of eligible persons that can reside in a residential habilitation center without exceeding its 1997 legislated budgeted capacity.)~~

~~"Residential programs" means provision of support for persons in community living situations. Residential programs include DDD certified community residential services and support, both facility-based such as((-)) licensed group homes, and nonfacility based, ((i.e., supportive)) such as supported living((-intensive tenant support,)) and state-operated living alternatives (SOLA). Other residential programs include ((individual)) alternative living (as described in chapter 388-829A WAC, companion homes (as described in chapter 388-829C WAC), ((intensive individual supportive living services,)) adult family homes, adult residential care services, ((nursing homes, and)) children's foster homes, group care and staffed residential homes.~~

~~"Respite care" means ((temporary residential services provided to a person and/or the person's family on an emergency or planned basis)) short-term intermittent relief for persons normally providing care for the individuals.~~

~~"Secretary" means the secretary of the department of social and health services or the secretary's designee.~~

~~"State supplementary payment (SSP)" is the state paid cash assistance program for certain DDD eligible SSI clients.~~

~~("Vacancy" means an opening at a RHC, which when filled, would not require the RHC to exceed its 1997 biannually budgeted capacity, minus:~~

- ~~(1) Twenty-six beds designated for respite care use; and~~
- ~~(2) Any downsizing related to negotiations with the Department of Justice regarding community placements.~~

~~"Vulnerable adult" means a person who has a developmental disability as defined under RCW 71A.10.020.)~~

NEW SECTION

WAC 388-825-056 What benefits do DDD paid services provide to me? DDD paid services provide one or more of the following benefits:

- (1) An opportunity to learn, improve or retain social and adaptive skills necessary for living in the community;
- (2) Health and safety;
- (3) Personal power and choice;

- (4) Competence and self reliance;
- (5) Positive recognition by self and others;
- (6) Positive relationships; and
- (7) Integration into the physical and social life of the community.

NEW SECTION

WAC 388-825-057 Am I eligible to receive paid services from DDD? You may be eligible to receive paid services from DDD if you are currently an eligible client of DDD per chapter 388-823 WAC and:

- (1) You are under the age of three and meet the eligibility requirements contained in WAC 388-825-061 through 388-825-066; or
- (2) You are a recipient of Washington State medicaid under the categorically needy program (CNP) and meet the eligibility requirements contained in chapters 388-474, 388-475 and 388-513 WAC; or
- (3) You are enrolled in a DDD home and community based services waiver and meet the eligibility requirements contained in chapter 388-845 WAC; or
- (4) You have been enrolled in the individual and family services program and meet the eligibility requirements contained in chapter 388-832 WAC; or
- (5) You have been approved to receive a state-only funded service.

NEW SECTION

WAC 388-825-0571 What services am I eligible to receive from DDD if I am under the age of eighteen, have been determined to meet DDD eligibility requirements, and I am in a dependency guardianship or foster care with children's administration? Your services from DDD are limited to Medicaid personal care services and related case management if you meet the programmatic eligibility for Medicaid personal care in chapter 388-106 and 388-71 WAC governing Medicaid personal care (MPC) using the current department approved assessment form, comprehensive assessment reporting evaluation (CARE), and:

- (1) You are under the age of eighteen;
- (2) You have been determined to meet DDD eligibility requirements; and
- (3) You are in a dependency guardianship or foster care with children's administration.

NEW SECTION

WAC 388-825-058 What services does DDD authorize? DDD authorizes:

- (1) Medicaid state plan services;
- (2) Infant toddler early intervention program (ITEIP) services;
- (3) Home and community based services (HCBS) waiver services; and
- (4) State-only funded services.

NEW SECTION

WAC 388-825-059 How will I know which paid services I will receive? Your individual support plan (ISP) identifies the services and the amount of service you can receive.

NEW SECTION

WAC 388-825-061 What service am I eligible for if I am under the age of three? (1) Children under age three are eligible for the infant toddler early intervention program (ITEIP) under the individuals with disabilities education act, (IDEA), Part C, and Washington's federally approved plan.

(2) Infants and toddlers eligible for DDD may receive DDD state-only funded child development services if funding is available.

NEW SECTION

WAC 388-825-062 What is infant toddler early intervention program (ITEIP)? Infant toddler early intervention program (ITEIP) is a statewide, multi-agency program, administered by and located with DDD, to coordinate a system of early intervention services for children, birth to three, and their families under the individuals with disabilities education act (IDEA), Part C/ITEIP state rules and regulations.

NEW SECTION

WAC 388-825-063 What services can infant toddler early intervention program (ITEIP) provide? Infant toddler early intervention program (ITEIP) provides family resources coordination (FRC) services. The FRC assists the family and child through the team evaluation/assessment process, eligibility determination. If eligible, the FRC coordinates the development of the individualized family service plan (IFSP) that documents outcomes, early intervention services, funding sources, supports and other information required for service delivery.

NEW SECTION

WAC 388-825-066 Where do I find the program eligibility rules and service definitions for infant toddler early intervention program (ITEIP)? Eligibility for infant toddler early intervention program (ITEIP) is defined by the individuals with disabilities education act (IDEA), Part C, and Washington's federally approved plan. Additional ITEIP program and service information is on the ITEIP website: <http://www1.dshs.wa.gov/iteip>. You can locate the name of the family resources coordinator (FRC) online at <http://www1.dshs.wa.gov/iteip/CountyOrgLinks.html> or call the family health hotline at 1-800-322-2588. Parents may self-refer and do not need a doctor's referral for entry into early intervention.

NEW SECTION

WAC 388-825-067 What are medicaid state plan services? (1) Medicaid state plan services are those services available to all persons eligible for medicaid under the cate-

gorically needy program. See WAC 388-475-0100 for the categorically needy program requirements.

(2) To receive the service, you must be assessed by DSHS to have an unmet need for the service and meet the eligibility criteria for the program. See WAC 388-825-068 for services authorized by DDD.

NEW SECTION

WAC 388-825-068 What medicaid state plan services can DDD authorize? DDD can authorize the following medicaid state plan services:

- (1) Medicaid personal care, per chapter 388-106 WAC;
- (2) Private duty nursing for adults age eighteen and older; per chapter 388-106 WAC;
- (3) Private duty nursing for children under the age of eighteen, per WAC 388-551-3000;
- (4) Adult day health for adults, per WAC 388-106-0810 and 388-106-0815; and
- (5) ICF/MR services, per chapters 388-835 and 388-837 WAC.

| Medicaid State Plan Services | |
|--|--------------------------|
| Adult day health | Medicaid personal care |
| ICF/MR services | • In-home |
| Medically intensive home care program for children | • Adult family home |
| Private duty nursing for adults | • Adult residential care |

NEW SECTION

WAC 388-825-069 What services are provided under a home and community based services (HCBS) waiver?

(1) Home and community based services (HCBS) waivers provide specific services approved by the federal centers for medicare and medicaid services (CMS) under section 1915 (c) of the social security act as an alternative to placement in an intermediate care facility for the mentally retarded (ICF/MR).

(2) Certain federal regulations governing ICF/MRs are "waived" enabling the provision of services in the home and community to persons who would otherwise require the services provided in an ICF/MR as defined in chapters 388-835 and 388-837 WAC.

NEW SECTION

WAC 388-825-071 What services am I eligible for if I am enrolled in a DDD home and community based services (HCBS) waiver? If you are enrolled in a DDD home and community based services waiver, you are eligible for the services identified in your assessment and authorized in your Individual Support Plan.

- (1) Your waiver services are limited to the services available in your specific waiver based on an assessment of your health and welfare needs.
- (2) The services available through each of DDD's HCBS waivers are described in chapter 388-845 WAC.

NEW SECTION

WAC 388-825-072 Where do I find information on DDD's home and community based services (HCBS) waiver services, eligibility rules and definitions? Home and community based services (HCBS) waiver eligibility, the scope of services provided by each waiver, the definitions of the services, the limitations of the service, and qualified providers for the service are contained in chapter 388-845 WAC.

NEW SECTION

WAC 388-825-073 What is a "state-only funded" service? State-only funded services are those services paid entirely with state funds. These services are limited by available funding.

NEW SECTION

WAC 388-825-074 Am I eligible for state-only funded services? You are eligible to receive available state-only funded services if you have been approved for funding for that service, and all of the following conditions apply:

- (1) You have a current DDD assessment that identifies the need for the service;
- (2) You meet the programmatic and financial eligibility requirements for the specific service or program;
- (3) Your need cannot be met through medicaid state plan services;
- (4) You are not enrolled in a DDD home and community based services (HCBS) waiver;
- (5) You do not receive SSP as a replacement for the requested service;
- (6) The program or service is funded by the legislature.

NEW SECTION

WAC 388-825-079 If I am not on a DDD HCBS waiver, can I receive services that are available through the DDD HCBS waivers with state-only funding? (1) With the exception of personal care, you may be authorized to receive any of the services that are available through the DDD HCBS waivers with state-only funding.

- (2) Services that are available through the DDD HCBS waivers and authorized with state-only funding:
 - (a) Are subject to the definitions, limitations and provider qualifications contained in chapter 388-845 WAC; and
 - (b) Require prior approval by the director of DDD or designee.

NEW SECTION

WAC 388-825-081 Can I receive state-only funded services that are not available in a DDD HCBS waiver? You may be authorized to receive state-only funded services that are available in other DSHS rules as defined below:

- (1) Adult day care (WAC 388-106-0800);
- (2) Attendant care (WAC 388-825- 082);
- (3) Childcare for foster children (chapter 388-826 WAC);
- (4) Chore services (chapter 388-106 WAC);

- (5) Supported living allowance (chapter 388-101 WAC);
- (6) Individual and family assistance by the county (WAC 388-825-082);
- (7) Information and education by the county (WAC 388-825-082);
- (8) Medical and dental services (WAC 388-825-082);
- (9) Psychological counseling (WAC 388-825-082);
- (10) Reimbursement through a family support program to families for the purchase of approved items or service (WAC 388-825-242);
- (11) State supplementary payments (chapter 388-827 WAC); and
- (12) Transportation reimbursement for an escort (WAC 388-825-082).

NEW SECTION

WAC 388-825-082 What state-only funded services are authorized in DDD rules? The following state-only funded services defined below are authorized only by DDD and are not contained in other rules governing DDD.

(1) "Adult day care" not covered by Medicaid is a DDD county service providing a structured social program for adults and is limited to persons receiving the service prior to June 2005.

(2) "Attendant care" provides respite care or personal care and is limited to persons who:

(a) Are not eligible for other DDD services to meet their need; and

(b) Were receiving attendant care in March 2004.

(3) "Individual and family assistance" is a time limited county service available to individuals and families.

(a) Supports are provided to additional families and persons with developmental disabilities in need of services within existing resources;

(b) Individuals and families receiving services have more control and flexibility with the use of the resources; and

(c) The individual and family are assisted in connecting to and using natural and informal community supports.

(4) "Information and education" is a county service that provides a variety of activities and strategies to assure that individuals with developmental disabilities and families have full access to current information about services and support that will assist them in becoming full participants in their communities.

(5) "Medical and dental services" means those services which are necessary for the health of the client and are not covered by medicaid or private insurance.

(6) "Psychological counseling" may provide specialized cognitive counseling, strategies for effectively relating to people or coping with situations and problems.

(7) "Transportation reimbursement for an escort" is the payment for someone other than the driver to provide one-on-one attention to the client being transported.

NEW SECTION

WAC 388-825-083 Is there a comprehensive list of waiver and state-only DDD services? For Medicaid state plan services authorized by DDD, see WAC 388-825-068. The following is a list of waiver and state-only services that

DDD can authorize and those services that can be either a waiver or a state-only service:

(1) **Waiver personal care services that are not available with state-only funds include:**

- (a) In-home services;
- (b) Adult family home; and
- (c) Adult residential care.

(2) **Waiver services that can be funded as state-only services:**

- (a) Behavior management and consultation;
- (b) Community transition;
- (c) Environmental accessibility adaptations;
- (d) Medical equipment and supplies;
- (e) Occupational therapy;
- (f) Physical therapy;
- (g) Respite care;
- (h) Sexual deviancy evaluation;
- (i) Skilled nursing;
- (j) Specialized medical equipment or supplies;
- (k) Specialized psychiatric services;
- (l) Speech, hearing and language therapy;
- (m) Staff/family consultation and training;
- (n) Transportation/mileage;
- (o) Residential habilitation services (RHS), including:
 - (i) Alternative living;
 - (ii) Companion homes;
 - (iii) Supported living;
 - (iv) Group home;
 - (v) Child foster care;
 - (vi) Child group care;
 - (vii) Staffed residential; and
 - (viii) State operated SL;
- (p) Employment/day programs, including:
 - (i) Community access;
 - (ii) Community guide;
 - (iii) Person-to-person;
 - (iv) Prevocational services; and
 - (v) Supported employment;
- (q) ITEIP/County programs, including child development services;
- (r) Mental health stabilization services, including:
 - (i) Behavior management and consultation;
 - (ii) Mental health crisis; and
 - (iii) Skilled nursing; and
 - (s) Specialized psychiatric services.

(3) **State-only services that are not available as a waiver service:**

- (a) Adult day care;
- (b) Architectural and vehicle modification;
- (c) Attendant care;
- (d) Child care for foster children;
- (e) Chore services;
- (f) Community services grant;
- (g) Individual and family assistance;
- (h) Information/education;
- (i) Medical and dental services;
- (j) Medical insurance co-pays and costs exceeding other coverage;
- (k) Parent and sibling education;
- (l) Parent training and counseling;

- (m) Psychological counseling;
 - (n) Recreational opportunities;
 - (o) State supplementary payments;
 - (p) Specialized clothing;
 - (q) Specialized nutrition;
 - (r) Supported living;
 - (s) Training of the client;
 - (t) Transportation - cost of escort service or travel time;
- and
- (u) Reimbursement to families for the purchase of approved items or services.

NEW SECTION

WAC 388-825-084 What are the limitations of state-only funded services or programs? In addition to any limitations for state-only funded services or programs that are contained in the program specific rules, the following limitations apply to state-only funded services and programs.

- (1) All state-only funded services are limited by available funding.
- (2) The following programs are closed to new admissions:
 - (a) Adult day care; and
 - (b) Attendant care.
- (3) Chore services are limited to persons who were receiving the service in 1998 and who have continued to receive this service monthly.
- (4) Traditional family support (TFS) is limited to persons enrolled in the program as of May 31, 1996. This program ends on June 30, 2008.
- (5) Family support opportunity (FSO) is limited to persons enrolled in the program from June 1, 1996 through March 27, 2006. This program ends on June 30, 2008.
- (6) Family support pilot (FSP) is limited to persons enrolled in the program March 28, 2006 or later. This program ends on June 30, 2008.

NEW SECTION

WAC 388-825-0871 Does DDD provide out-of-home residential services that address the special needs of persons with developmental disabilities? DDD provides the following out-of-home residential services that address the special needs of adults and children with developmental disabilities:

- (1) Contracted and DDD-certified community based residential services for adults;
- (2) Contracted community based services for children; and
- (3) Residential habilitation centers (RHC) for a person of any age who requires ICF/MR or nursing facility care.

NEW SECTION

WAC 388-825-088 Where can I find more information about DDD contracted residential services? The information about DDD contracted residential services is in the following rules:

- (1) Certified community residential services and supports are contained in chapter 388-101 WAC and include information regarding:
 - (a) Group homes (GH);
 - (b) Group training home;
 - (c) Supported living (SL); and
 - (d) State operated living alternative (SOLA).
- (2) Alternative living services are contained in chapter 388-829A WAC;
- (3) Companion home services are contained in chapter 388-829C WAC;
- (4) Voluntary placement program services for children are contained in chapter 388-826 WAC and include information regarding:
 - (a) Foster homes;
 - (b) Group homes;
 - (c) Group training homes;
 - (d) Child placing agencies; and
 - (e) Staffed residential homes.

NEW SECTION

WAC 388-825-089 What is a residential habilitation center (RHC)? A residential habilitation center or RHC is a state-only facility certified to provide ICF/MR services (see chapter 388-837 WAC) and/or nursing facility services (chapter 388-97 WAC) for persons who are eligible clients of DDD. RHCs include:

- (1) Rainier School in Buckley, Washington;
- (2) Francis Hadden Morgan Center in Bremerton, Washington;
- (3) Fircrest School in Shoreline, Washington;
- (4) Yakima Valley School in Selah, Washington; and
- (5) Lakeland Village in Medical Lake, Washington.

NEW SECTION

WAC 388-825-091 Am I eligible for residential habilitation center (RHC) services? You are eligible to receive residential habilitation center (RHC) services if:

- (1) You are currently DDD eligible;
- (2) You choose to receive services in the RHC;
- (3) You need the level of care provided at the RHC; and
- (4) DDD has determined that you can be supported safely in an RHC environment and will not pose a danger to other residents of the RHC.

NEW SECTION

WAC 388-825-093 Can I receive a short term stay at a residential habilitation center (RHC)? If there is capacity at a residential habilitation center (RHC), the vacancies may be available for short term stays.

- (1) Short term stays are limited by available vacancies;
- (2) Short term stays must be included in your individual support plan; and
- (3) Short term stays in excess of thirty days in a calendar year require approval by the director of the division of developmental disabilities.

NEW SECTION**WAC 388-825-094 Can I request to live in an RHC?**

You may request admission to an RHC at any time.

(1) Your case/resource manager will update your DDD assessment and gather other information.

(2) Admission to an RHC requires approval by the director of the division of developmental disabilities or designee.

NEW SECTION

WAC 388-825-096 Will I have to pay for the services DDD authorizes for me? (1) If you live in your own home, you do not pay toward the cost of your services except chore services. You must pay toward the cost of chore services as described in WAC 388-106-0625.

(2) If DDD authorizes you to live in a licensed community residential facility you must pay your room and board costs from your earned and unearned income. You may also be responsible for a portion of the cost of your care.

(a) If you are eligible for and receiving SSI or have SSI related eligibility per WAC 388-475-0100 (2)(a) or (b), you are not required to pay toward the cost of your care if you are living at home or in a community setting.

(b) If you are enrolled in a DDD HCBS waiver you must pay toward the cost of your services as described in WAC 388-515-1510.

(c) If you are not enrolled in a DDD HCBS waiver you must pay toward the cost of your services as described in WAC 388-106-0225.

(3) If you live in a medical institution you must pay toward the cost of your care as described in WAC 388-513-1380. See WAC 388-500-0005 for the definition of a medical institution.

NEW SECTION

WAC 388-825-097 Are any of my expenses deducted from the income available to pay for my care in a licensed facility? After you pay for your room and board costs, some expenses may be deducted from the income available to pay for the cost of your care.

(1) If you have SSI related eligibility the cost of your payee or guardianship service may be deducted as described in chapter 388-79 WAC and WAC 388-475-0800(5).

(2) If you are enrolled in a DDD HCBS waiver refer to WAC 388-515-1510 for rules used to determine allowable deductions.

(3) If you are not enrolled in a DDD HCBS waiver refer to WAC 388-106-0225 for rules used to determine allowable deductions.

NEW SECTION

WAC 388-825-098 Does DDD provide guardianship services? If it appears that you require a guardian to make legal, medical, and/or services decisions and to exercise your appeal rights to department decisions, the division's field services may request that an assistant attorney general initiate and/or assist in guardianship proceedings. The state does not pay the cost of guardianship fees.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|-----------------|---------------------------------------|
| WAC 388-825-025 | Exemptions. |
| WAC 388-825-045 | Determination for necessary services. |
| WAC 388-825-050 | Individual service plan. |
| WAC 388-825-055 | Authorization of services. |
| WAC 388-825-065 | Financial services. |
| WAC 388-825-080 | Guardianship services. |

WSR 08-08-021**PROPOSED RULES****DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed March 20, 2008, 1:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-071.

Title of Rule and Other Identifying Information: WAC 415-02-710 What is the \$150,000 death benefit?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on May 7, 2008, at 1:30 p.m.

Date of Intended Adoption: May 9, 2008.

Submit Written Comments to: Sarah Monaly, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail sarahm@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on May 7, 2008.

Assistance for Persons with Disabilities: Contact Sarah Monaly, rules coordinator, by April 30, 2008, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement SHB 1266, passed by the 2007 legislature. This bill amends under what circumstances a beneficiary of a member of the law enforcement officers' and fire fighters' retirement system (LEOFF), public employees' retirement system (PERS), public safety employees' retirement system (PSERS), school employees' retirement system (SERS), teachers' retirement system (TRS), or the Washington state patrol retirement system (WSPRS) may receive a \$150,000 death benefit. Previously, while beneficiaries of LEOFF, PERS, PSERS, SERS, TRS, and WSPRS could receive the benefit if a member died as a result of injuries sustained during the course of employment, only beneficiaries of a member of LEOFF Plan 2 could receive the benefit if the member died as a result of an occupational disease or infection that arose naturally and proximately out of employment. Now, beneficiaries of LEOFF Plan 1, PERS, PSERS, SERS, TRS, and WSPRS may receive this benefit if the member dies as a result of an occupational disease or infection that arose naturally and proximately out of employment. The

department of retirement systems (DRS) rules need updating to accurately reflect these changes.

Reasons Supporting Proposal: SHB 1266 took effect on July 22, 2007. The department needs to update its rules to assist plan members, retirees, employers, and department staff.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.04.017, 41.26.-048, 41.32.053, 41.35.115, 41.37.110, 41.40.0931, 41.40.-0932, 41.40.700, and 43.43.285.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah Monaly, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Cathy Cale, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7305.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. DRS is not one of the named departments in RCW 34.05.328.

March 20, 2008

Sarah Monaly
Rules Coordinator

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

WAC 415-02-710 What is the \$150,000 death benefit? (1) **What is the \$150,000 death benefit?** This is a benefit consistent with workers' compensation law, Title 51 RCW((, for LEOFF, PERS, PSERS, SERS, TRS, and WSPRS beneficiaries where the member dies as a result of injuries³ sustained in the course of employment)). The benefit may be nontaxable under applicable federal law. It is payable to LEOFF, PERS, PSERS, SERS, TRS, and WSPRS beneficiaries if the member died as a result of:

(a) An injury sustained in the course of employment; or

(b) An occupational disease or infection that arose naturally and proximately out of employment.

(2) **Who is covered?** Deceased members of LEOFF, PERS, PSERS, SERS, TRS, and WSPRS. If the deceased was a member of another plan, please contact the department.

(3) **Who will determine eligibility for the benefit?** The Washington state department of labor and industries (L&I) will determine eligibility consistent with Title 51 RCW and applicable retirement statutes in chapter 41.26 RCW (LEOFF), chapter 41.40 RCW (PERS), chapter 41.37 RCW (PSERS), chapter 41.35 RCW (SERS), chapter 41.32 RCW (TRS), or chapter 43.43 RCW (WSPRS).

(4) **Who will receive the \$150,000 death benefit?**

(a) **LEOFF Plan 2, PERS, PSERS, SERS, TRS, and WSPRS Plan 2:** The person(s) the member designated as his or her beneficiary(ies) for his or her retirement plan will receive the benefit *unless* the member designated a *different* beneficiary(ies) for the \$150,000 death benefit. If the member did not designate a beneficiary for either the plan or death

benefit, then the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's estate.

(b) **LEOFF Plan 1 and WSPRS Plan 1:** In these plans, the member's surviving spouse is automatically the beneficiary for the member's retirement plan. The member may designate a different person(s) for the \$150,000 death benefit. If the member did not designate a beneficiary for either the plan or death benefit, then the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's estate.

(5) **How do I apply for the benefit?** To apply:

(a) Obtain an application from the department.

(b) Submit a correctly completed application to the department. The department will submit the application to L&I.

(6) **How will I receive the benefit?** L&I will notify you and the department of approval or disapproval of eligibility. If you are approved, you may choose to have the department send the ~~((sum))~~ lump sum payment directly to you or to your bank.

(7) **How will DRS treat the \$150,000 payment for tax purposes?**

(a) The department will treat the payment as nontaxable.

(b) The department does not guarantee that payments should or should not be designated as exempt from federal income tax.

(c) The department does not guarantee that it was correct in withholding or not withholding taxes from the death benefit payment.

(d) The department does not:

(i) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(ii) Assume any liability for your compliance with the Internal Revenue Code.

(e) You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

~~((Footnote to section:~~

³ A LEOFF Plan 2 beneficiary is entitled to the \$150,000 death benefit if the member dies as a result of injuries sustained in the course of employment, or if the member dies from an occupational disease or infection that arises naturally and proximately out of employment under LEOFF Plan 2. See RCW 41.26.048.))

WSR 08-08-032

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed March 25, 2008, 8:27 a.m.]

The Washington department of fish and wildlife is withdrawing the CR-102 proposal filed on December 14, 2007, as WSR 08-01-074. It concerned rule changes for mineral pros-

pecting activities and hydraulic project approvals. We will revise our proposal and file a new CR-102 at a later date.

Loreva M. Preuss
Rules Coordinator

WSR 08-08-041
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed March 26, 2008, 1:36 p.m.]

Supplemental Notice to WSR 08-06-026.

Preproposal statement of inquiry was filed as WSR 08-01-048.

Title of Rule and Other Identifying Information: WAC 220-88B-030 Emerging commercial fishery—Eligibility for coastal experimental fishery permits—Terms and conditions of use—Renewal—Vessel restriction—Incidental catch.

Hearing Location(s): Shilo Inn, 707 Ocean Shores Boulevard N.W., Ocean Shores, WA 98569, on June 6-7, 2008, at 8:00 a.m.

Date of Intended Adoption: July 20, 2008, via conference call.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by June 5, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager by May 23, 2008, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The total allowable harvest is reduced as a precautionary action to match up with estimates of population production, corresponding to the amount of harvest that can occur in a specified geographical area. This geographical restriction will limit the area impacts to prevent overharvest of the spot shrimp stocks within the subareas of the Washington coast. Removes the requirement for a continuing landing provision to maintain a valid permit.

Reasons Supporting Proposal: New analysis suggests that the total allowable catch is set at too high a level and that harvest is not being proportionately harvested from the existing habitat. Further reduction in active permits is unlikely as the fleet size has stabilized and fishers are unwilling to relinquish their permits.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

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

Name of Agency Personnel Responsible for Drafting: Morris Barker, 1111 Washington Street S.E., Olympia, (360) 902-2826; Implementation: Lew Atkins, 1111 Washington Street S.E., Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: Rule will cap the allowable harvest coast wide, set subarea quotas within the overall cap and drop the requirement for continuing landing provision to maintain a permit.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: Non required.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: Some fisheries will experience increased costs if they have to travel further from port to harvest the product - this only applies to those who are currently not making the further trips from port. Those fishers who choose not to fish will not have their permit cancelled and this will save them the legal costs of administrative appeals.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? Some fishers may chose [choose] not to travel further from port to access the available harvest and they will forego that harvest opportunity which may reduce their revenue from sales.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- a. Cost per employee;
- b. Cost per hour of labor; or
- c. Cost per one hundred dollars of sales.

There are less than [than] twenty permit holders operating in this fishery and this does not qualify as 10% under the defined business category.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The agency has not taken any special steps to reduce the cost of these rules on small businesses - the decrease in the allowable catch is to a level the fleet is not currently harvesting and the geographic shift to capping subareas will present only a minor hardship for a few vessels.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The agency will hold a public hearing under the auspices of the fish and wildlife commission public rule-making policy, as guided by the Administrative Procedure Act.

8. A List of Industries That Will Be Required to Comply with the Rule: Emerging commercial fishery ocean spot shrimp permit holders.

A copy of the statement may be obtained by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2826, fax (360) 902-2944, e-mail preuslmp@dfw.wa.gov.

March 26, 2008
Morris W. Barker
for Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 04-21, filed 2/10/04, effective 3/12/04)

WAC 220-88B-030 Emerging commercial fishery—Eligibility for coastal experimental fishery permits—Terms and conditions of use—Renewal—Vessel restriction—Incidental catch. (1) No individual may hold more than one Washington coastal spot shrimp experimental fishery permit.

(2) Coastal spot shrimp experimental fishery permits are not transferable. Only the vessel designated on the emerging commercial fishery license and coastal spot shrimp experimental fishery permit may be used to fish for or deliver spot shrimp.

(3) A coastal spot shrimp experimental fishery permit will be issued only to a natural person who

~~(a)) held such a permit the previous year~~ and

~~(b) Can demonstrate by valid Washington fish receiving tickets that at least 1,000 cumulative round weight pounds of spot shrimp taken from waters of the Pacific Ocean adjacent to the state of Washington were landed from the person's designated vessel or vessels during the previous two calendar years. Landings of spot shrimp reported as "tails" on fish receiving tickets will be converted to round pounds by multiplying the reported weight of tails by two).~~

(4) Coastal spot shrimp experimental fishery permits may be revoked by the director, and future permits denied by the director, for failure to comply with conditions specified in the permits or violations of other fishing regulations. A coastal spot shrimp experimental fishery permit will not be renewed if the emerging commercial fishery license is revoked or future fishing privileges of the licensee are suspended.

(5) The director may issue a coastal spot shrimp experimental fishery permit to another person if a permittee fails to make the requisite landings, if the person's experimental coastal spot shrimp experimental fishery permit is revoked, or if no application for an emerging commercial fishery license is received by March 31st of each year. The total number of permits issued, including replacement permits, shall not exceed fifteen. Selection of persons to receive replacement permits shall be by gear or gear replacement type, and replacement permits will be offered in descending order first to persons who made the largest total of Washington coastal spot shrimp landings in each gear type during the original qualifying period, and then in descending order to persons who made the largest total of Washington coastal spot shrimp landings in each gear type. If no persons with coastal spot shrimp landings wish to participate, the director may offer a replacement permit by random drawing.

(6) Coastal spot shrimp experimental fishery permits are only valid for the year issued and expire on December 31st of the year issued with the expiration of the emerging commercial fishery license.

(7) The total allowable catch of spot shrimp taken from Washington territorial waters west of the Bonilla-Tatoosh line and from adjacent waters of the Pacific Ocean during a calendar year is ~~((250,000))~~ 200,000 pounds round weight, provided that not more than 100,000 pounds ~~((may))~~ be taken

south of 47°04.00' N. latitude and no more than 100,000 pounds be taken north of 47°04.00' N. latitude.

~~(8) ((Beginning January 1, 2003, through December 31, 2005, the allowable catch shall be allocated as follows: 175,000 pounds available to all permit holders and 75,000 pounds available to fishers who were converted from trawl to pot permits. Beginning January 1, 2006, the allowable catch is available to all permit holders.~~

~~(9))~~ Vessel restriction: A coastal spot shrimp experimental fishery permit will not be issued to a person who designates a vessel greater than ten feet longer than the vessel designated as of March 31, 2003, provided that if the vessel designated as of March 31, 2003, is ten or more feet greater than the vessel used by the person to initially qualify for a coastal spot shrimp experimental fishery permit, the person may not designate a vessel greater in length than the vessel designated as of March 31, 2003.

~~((10))~~ (9) Incidental catch:

(a) It is unlawful to retain more than 50 pounds round weight of other shrimp species. It is ~~((lawful))~~ permissible to retain octopus and squid.

(b) It is unlawful to retain salmon.

(c) It is unlawful to retain any bottomfish species.

WSR 08-08-054
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed March 27, 2008, 2:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-02-070.

Title of Rule and Other Identifying Information: WAC 220-52-073 Sea urchins.

Hearing Location(s): Shilo Inn, 707 Ocean Shores Boulevard N.W., Ocean Shores, WA 98569, on June 6-7, 2008, at 8:00 a.m.

Date of Intended Adoption: July 20, 2008, via conference call.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by June 5, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager by May 23, 2008, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of proposal is to put into permanent rule what has been required by emergency rule for a number of years. This will defuse an issue raised by a plaintiff's attorney and will result in no substantive change to the rule intent or to the resource.

Reasons Supporting Proposal: Removes a potential defense to those who violate the size limit rules on sea urchins.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Morris Barker, 1111 Washington Street S.E., Olympia, (360) 902-2826; Implementation: Lew Atkins, 1111 Washington Street S.E., Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: No record keeping or reporting required. Compliance requires landing only sea urchins that meet the size requirements.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None required.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: No cost of compliance - rules are the same as have been enacted by emergency rule.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- a. Cost per employee;
- b. Cost per hour of labor; or
- c. Cost per one hundred dollars of sales.

There is no cost of compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: There is no cost so no steps are taken to reduce costs.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: Agency will involve effected [affected] fishers through the public rule-making process of the fish and wildlife commission.

8. A List of Industries That Will Be Required to Comply with the Rule: Sea urchin fishers.

A copy of the statement may be obtained by contacting Morris Barker, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2826, fax (360) 902-2944, e-mail barkemwb@dfw.wa.gov.

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

March 27, 2008
Morris W. Barker
for Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 04-210, filed 8/17/04, effective 9/17/04)

WAC 220-52-073 Sea urchins. It is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section.

(1) Sea urchin districts:

(a) Sea Urchin District 1 (Northern San Juan Islands) is defined as Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, and those waters of Area 22A north of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and west of a line projected true north from Limestone Point on San Juan Island.

(b) Sea Urchin District 2 (Southern San Juan Islands and Port Townsend) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and east of a line projected true north from Limestone Point on San Juan Island and Areas 21A, 21B, 22B, 23A, 23B, 25A and 25B. The following areas within Sea Urchin District 2 are closed to the harvest of sea urchins at all times:

(i) Those waters of Haro Strait north of a line projected due west from the southernmost point of Cattle Point on San Juan Island to the international border and south of a line projected due west from a point one-quarter mile north of Lime Kiln Light on San Juan Island to the international border.

(ii) Those waters of San Juan Channel and Upright Channel within the following lines: South of a line projected from Flat Point on Lopez Island true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island; south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island north of a line from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

(c) Sea Urchin District 3 (Port Angeles) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C east of a line projected true north from Low Point, along 123°49'30" W. longitude, and Area 23D.

(d) Sea Urchin District 4 (Sekiu) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C west of a line projected true north from Low Point, along 123°49'30" W. longitude, and those waters of Area 29 east of a line projected true north from the mouth of Rasmussen Creek (3.1 miles southeast of Sail Rock).

(e) Sea Urchin District 5 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 west of a line projected true north from the mouth of Rasmussen Creek (3.1 miles southeast of Sail Rock) and Areas 59A and 59B. Within Sea Urchin District 5, waters within one-quarter mile of Tatoosh Island are closed to the harvest of sea urchins at all times.

(f) Sea Urchin District 6 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A.

(g) Sea Urchin District 7 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26B, 26C, 26D and 28A. The following areas within

Sea Urchin District 7 are closed to the harvest of sea urchins at all times.

(i) Those waters of Eagle Harbor west of a line projected from Wing Point to Eagle Harbor Creosote Light Number 1, then projected due west to the shore on Bainbridge Island.

(ii) The waters of Sinclair Inlet west of a line projected southerly from the easternmost point of Point Turner to land-fall directly below the Veteran's Home in Annapolis.

(2) Sea urchin seasons and sizes:

(a) Sea urchin seasons (~~and sizes~~) will be set by emergency rule.

(b) Green sea urchins in all sea urchin districts - unlawful to harvest urchins smaller than 2.25 inches (size in largest test diameter exclusive of spines).

(c) Red sea urchins in Sea Urchin Districts 1 and 2: Unlawful to harvest urchins smaller than 4.0 inches or larger than 5.5 inches (size in largest test diameter exclusive of the spines).

(d) Red sea urchins in Sea Urchin Districts 3 and 4: Unlawful to harvest urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

(3) Shellfish diver gear:

(a) It is unlawful to take sea urchins by any means other than shellfish diver gear.

(b) Divers may only use hand-operated equipment that does not penetrate the shell.

(c) Sea urchins may not be taken from water shallower than 10 feet below mean lower low water.

(d) Purple sea urchins may not be taken.

(e) Divers operating from a vessel must have a number assigned by the department, placed on both sides and the top of the vessel in such a manner that the number is clearly visible when the vessel is viewed from either side or from the air and the number must be black on white no less than 18 inches high and of proportionate width.

(f) Divers may not take sea urchins from one-half hour after sunset to one-half hour before sunrise.

(g) No processing of sea urchins is permitted aboard the harvest vessel.

(h) Divers may not take sea urchins for use other than as human food.

(i) Only one diver from each harvesting vessel is allowed in the water at any one time during the sea urchin harvesting operation or when commercial quantities of sea urchins are aboard except that two divers may be in the water if the vessel has been designated on two sea urchin dive fishery licenses.

(j) Variance from any of the provisions of this subsection is only allowed if authorized by a permit issued by the director.

(k) Licensing: A sea urchin dive fishery license is the license required to operate the gear provided for in this section.

WSR 08-08-059

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed March 28, 2008, 1:10 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-525 What is an employee entitled to under the Family and Medical Leave Act of 1993? and 357-31-545 Under the Family and Medical Leave Act, can an employee request an intermittent or reduced schedule?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 8, 2008, at 8:30 a.m.

Date of Intended Adoption: May 8, 2008.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 1, 2008. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 1, 2008, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On January 28, 2008, President Bush signed into law amendments to the Family and Medical Leave Act which grant additional leave to employees who have family members in the military. Two new types of leave were added. The first is "exigency leave" which allows a fifth qualifying reason for the leave entitlement of twelve weeks of family medical leave due to a qualifying exigency arising from the fact that a spouse, child, or parent of an employee is on active duty or has been notified of pending call to active duty in the Armed Forces in support of a contingency operation. This provision is not effective until the federal Department of Labor (DOL) issues regulations. The second type is "service member leave." This addition allows up to twenty-six weeks of leave for an eligible employee who is the spouse, child, parent, or next of kin of a covered service member. This leave is used to care for a covered service member who is suffering from a serious illness or injury arising from injuries incurred in the line of duty. The amendment to WAC 357-31-525 (1)(c) is a housekeeping change. The other amendments to WAC 357-31-525 and 357-31-545 address service member leave. Once the DOL issues the regulations for the exigency leave, further amendments will be made.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

March 28, 2008

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 05-12-086, filed 5/27/05, effective 7/1/05)

WAC 357-31-525 What is an employee entitled to under the Family and Medical Leave Act of 1993? (1) The Family and Medical Leave Act of 1993 (29 USC 2601 et seq) and its implementing rules, 29 CFR Part 825, provide that an eligible employee must be granted, during a twelve-month period, a total of twelve work weeks of absence:

(a) As a result of the employee's serious health condition;

(b) To care for an employee's parent, spouse, or minor/dependent child who has a serious health condition; and/or

(c) ~~((Fø))~~ For the birth of and to provide care to an employee's newborn, adopted or foster child as provided in WAC 357-31-460.

(2) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of twenty-six work weeks of leave during a twelve-month period to care for the service member who is suffering from a serious illness or injury arising from injuries incurred in the line of duty. The leave described in this paragraph shall only be available during a single twelve-month period.

(a) For purposes of this section, "next of kin" with respect to an individual means the nearest blood relative of that individual.

(b) For purposes of this section, "covered service member" is a member of the Armed Forces, including the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on a temporary disability retired list for a serious illness or injury.

(c) For purposes of this section, "serious illness or injury" means an injury or illness incurred by the covered service member in the line of duty while on active duty in the Armed Forces that may render the service member medically unfit to perform the duties of the service member's office, grade, rank, or rating.

(3) During the twelve-month period described in subsection (2) above, an eligible employee shall be entitled to a combined total of twenty-six work weeks of leave under subsections (1) and (2) above. Nothing in this section shall be construed to limit the availability of leave under subsection (1) during any other twelve-month period.

~~((2))~~ (4) For general government employers, the twelve-month period in subsections (1) and (2) above is measured forward from the date the requesting employee begins leave under the Family and Medical Leave Act of 1993. The employee's next twelve-month period would begin the first time leave under the Family and Medical Leave Act is taken after completion of the previous twelve-month period. Higher education employers must define within their family

and medical leave policy how the twelve months are measured.

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

WAC 357-31-545 Under the Family and Medical Leave Act, can an employee request an intermittent or reduced schedule? Employee absence granted for the purpose of WAC 357-31-525 (1)(a) and (b) must be granted on an intermittent or reduced schedule at the employee's request when medically necessary. Employee absence granted for the purpose of WAC 357-31-525(2) must also be granted on an intermittent or reduced schedule at the employee's request.

WSR 08-08-060

PROPOSED RULES

SECRETARY OF STATE

[Filed March 28, 2008, 2:42 p.m.]

Continuance of WSR 05-20-115 [08-02-047].

Title of Rule and Other Identifying Information: Preservation of electronic public records at the Washington state digital archives.

Submit Written Comments to: Megan Moreno, P.O. Box 40220, Olympia, WA 98504, e-mail mmoreno@sec-state.wa.gov, fax (360) 586-5629, by April 11, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to educate and clarify the requirements of RCW 40.14.010 as it pertains to electronic public records. The proposal establishes procedures for use of the Washington state digital archives for storage of electronic public records. Anticipated effects include: Increased compliance with RCW 40.14.010; better awareness of RCW 42.17.020 (42); and, comprehension of procedures for use of the Washington state digital archives.

Reasons Supporting Proposal: RCW 40.14.010 states that any record made or received in the course of business is a public record and must be managed. Records are public records regardless of their physical form or characteristics, as defined in RCW 42.17.020(42). The proposal aids agency's use of the Washington state digital archives to meet requirements previously established in RCW 40.14.010.

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

March 28, 2008

Steve Excell

Assistant Secretary of State

Chapter 434-662 WAC

**PRESERVATION OF ELECTRONIC PUBLIC
RECORDS AT THE WASHINGTON STATE DIGITAL
ARCHIVES**

NEW SECTION

WAC 434-662-010 Purpose. Pursuant to the provisions of chapters 40.14 and 42.56 RCW, the rules contained in this chapter are intended to ensure that electronic public records that have archival value are securely preserved for present and future access and are transferred to the Washington state digital archives for permanent retention so that valuable historical records of the state may be centralized, made more widely available, and insure permanent preservation.

NEW SECTION

WAC 434-662-020 Definitions applicable to all sections of this chapter. Unless the context indicates otherwise, words used in this chapter shall have the meaning given in this section.

"Archival value" means those public records, as determined by state archivist's appraisal, that are worthy of indefinite or permanent preservation by the archives due to their historical, legal, fiscal, evidential, or informational value.

"Authentic" means that a public record is accepted by the state archives as genuine, trustworthy, or original. "Authentication" means the process of verifying that a public record is acceptable as genuine, original, or authentic.

"Chain of custody" means the documentation of the succession of offices or persons who held public records from the moment they were created until they are presented as evidence in a court of law.

"Confidential" means any public record series, file, record or data base field with restrictions on public access as mandated by federal, state or local laws, or court order.

"Copy" means a duplicate made from an original public record that is nearly identical to the original but can vary significantly in its fidelity to the original. The informational content on the copy is substantially the same as the original.

"Data base" means a set of data, consisting of one file, group of integrated files or tables, maintained as an information system managed by a data base management system.

"Data base management system" means a set of software programs that controls the organization, storage and retrieval of data in a data base, as well as the security and integrity of the data base.

"Digital archives" means the mass storage facility for electronic records located in Cheney, Washington and operated by the Washington state archives. The digital archives is designed to permanently preserve electronic state and local government records with archival value in an environment designed for long-term storage and retrieval.

"Digital image" means the product resulting from a process whereby nonelectronic materials such as records, maps, pictures, photographs, books, manuscripts, and newspapers are scanned or otherwise automatically processed to generate digital files.

"Disposition" means the action taken with a record once its required retention period has expired. Disposition actions include but are not limited to transfer to the archives, preservation on microfilm or digital image, or destruction.

"Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

"Electronic record" includes those public records which are stored on machine readable materials such as hard disks, floppy disks, CDs, DVDs, flash media cards, USB storage devices, magnetic tape, and any other media designed to store information electronically.

"Encryption" means the process of rendering plain text unintelligible by converting it to ciphertext so it can be securely transmitted and can only be read by those authorized to decode the plain text from the ciphertext.

"Media file format" means the type of data file stored on machine readable materials such as hard disks, floppy disks, CD-ROMs, DVDs, flash media cards, USB storage devices, magnetic tape, and any other media designed to store information electronically, as well as the application program necessary to view it.

"Metadata" means data used to describe other data. Metadata describes how, when, and by whom particular content was collected, how the content is formatted, and what the content is. Metadata is designed to provide a high level of categorization to aid in the storage, indexing, and retrieving of electronic records for public use.

"Public record" means any record, original or copy, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, received, used or owned by any state or local agency regardless of physical form or characteristic. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records includes any and all legislative records as defined in RCW 40.14.100.

"Records committees" means the local records committee created in RCW 40.14.070 and the state records committee created in RCW 40.14.050.

"Retention period" means the minimum amount of time required for the retention of a records series on a records retention schedule or general records retention schedule approved by a state or local records committee.

"Records retention schedule" means a legal document approved by the state or local records committee that specifies minimum retention periods for a records series and gives agencies ongoing disposition authority for the records series after the records' approved retention period has been satisfied.

"Spider, web spider, web crawler, robot, and bot" means a software program that automatically retrieves on-line web content and all documents linked to such content.

"Usable file format" means the transformation of the data contained in a legacy media file format into a format that can be read on computers currently in use without the loss of information contained in the original file.

NEW SECTION

WAC 434-662-030 Retention scheduling and disposition of electronic public records. Electronic records are bound by the same provisions as paper documents as set forth in chapter 40.14 RCW. Electronic records must be retained pursuant to the retention schedules adopted by the records committees. Destruction of, or changes to the retention period of, any public record, regardless of format, requires legal approval from the state or local records committee pursuant to chapters 40.14 RCW, 434-635 WAC and other applicable state laws. Public records that are designated "archival" by the state or local records committee must be maintained pursuant to the provisions of this chapter until such time as they can be transferred to the state archives.

NEW SECTION

WAC 434-662-040 Agency duties and responsibilities. Electronic records must be retained in electronic format and remain usable, searchable, retrievable and authentic for the length of the designated retention schedule. Printing and retaining a hard copy is not a substitute for the electronic version unless approved by the state or local records committee.

NEW SECTION

WAC 434-662-050 Disposition of electronic public records identified by records committees as archival. Electronic records designated as "archival" must be retained in their original format along with the hardware and software required to read the data in that format unless all the converted records have been sampled for completeness and accuracy of the migration to a new system and/or file format. Original data, hardware, and software must be maintained for a period not less than one year after successful migration to a new system. Agencies have a duty to work with the state archivist for transfer of archival data to the digital archives once records are not in active use and/or a data migration is planned.

NEW SECTION

WAC 434-662-055 Disposition of electronic public records identified by records committees as nonarchival. Electronic media rendered obsolete through the verified accurate migration to a more current media file format for readability and not designated as "archival" may be considered a secondary copy and disposed of as directed by chapter 40.14 RCW.

NEW SECTION

WAC 434-662-060 Authentication and chain of custody of electronic records. The agency must maintain chain of custody of the record, including employing sufficient security procedures to prevent additions, modifications, or deletion of a record by unauthorized parties. If there is a break in chain of custody, the digital archives must be notified along with the transmittal to the archives.

NEW SECTION

WAC 434-662-070 Use of encryption on electronic records. If encryption is employed on public records, the encryption key must be available and usable for the life of the record as designated by the retention schedule for that record. For records designated as archival, the records must be transferred unencrypted to the digital archives.

NEW SECTION

WAC 434-662-080 Transfer of electronic records to the digital archives. Archival copies of records maintained at the digital archives may not be backward compatible with the originating system. Therefore, the agency is responsible for an appropriate security back-up of active business records maintained in their own systems. This does not relieve an agency's responsibility to maintain records in original format or create security microfilm as required by other provisions of law.

NEW SECTION

WAC 434-662-090 Transmittal agreement for transfer of electronic records. The digital archives must develop a transmittal agreement for the transfer of electronic records from state and local government agencies to the digital archives. At a minimum, a transmittal agreement between the digital archives and a state or local government agency must contain:

- (1) Identification of the document series;
- (2) Disposition authority;
- (3) Number of records to be transferred;
- (4) Method, schedule, and frequency of record transmittal;
- (5) Required metadata fields;
- (6) Media file format;
- (7) Identification of any confidential information or record and the statutory authority for such confidentiality;
- (8) Other technical information necessary for ingestion of electronic data into the digital archives repository; and
- (9) Procedures for collecting any fees for public copies as provided by statute or ordinance.

NEW SECTION

WAC 434-662-100 Media format for transfer. When feasible, electronic records will be directly transferred to the digital archives via web services, secure File Transfer Protocol, T-1 line or other direct transmission as outlined in the transmittal agreement. When direct transmission is not practicable, records must be transmitted via portable media formats including, but not limited to tape, CD, DVD, flash media cards, USB storage devices, or diskette.

NEW SECTION

WAC 434-662-110 Metadata requirements. Electronic records transferred to the digital archives must contain sufficient metadata to categorize, search and retrieve the records. The digital archives will not accept electronic

records that do not contain appropriate metadata as specified in the transmittal agreement.

NEW SECTION

WAC 434-662-140 Web site management. All state and local government agencies must retain all web content in accordance with the approved retention schedules. Pursuant to a transmittal agreement, the digital archives will spider state and local government web sites annually, or more frequently. All state and local government agencies shall use the following best management practices in the maintenance of their web sites:

- (1) Each page shall contain meta tags identifying the agency, program area, and date of last modification;
- (2) Pages available for public viewing shall not contain a "no robots" or other tag precluding the spidering of the site;
- (3) Archived content should be stored on the web server in such a manner that it can be spidered; and
- (4) Data contained in back-end data bases should be identified in the transmittal agreement.

NEW SECTION

WAC 434-662-150 E-mail management. E-mail is a public record subject to all of the laws and regulations governing the retention, disclosure, destruction and archiving of public records. The e-mails of elected officials, agency directors, and other senior government officials and policy makers, are archival and must be retained per the approved state and local retention schedules. The e-mails of all other government officials and employees are subject to the records retention periods and disposition promulgated by the records committees, and any and all e-mails with archival value must be retained. Agencies may be relieved of the obligation to permanently retain archival e-mail by transmitting e-mail and all associated metadata to the digital archives pursuant to a transmittal agreement as provided for in WAC 434-662-090. This section does not apply to state legislators or members of the state judiciary.

**WSR 08-08-069
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS**

[Filed March 31, 2008, 1:50 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.

Hearing Location(s): 2901 Third Avenue, 4th Floor, Rainier Conference Room, Seattle, WA 98121, on May 8, 2008, at 9:30 a.m.

Date of Intended Adoption: May 8, 2008.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA

98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by May 1, 2008.

Assistance for Persons with Disabilities: Contact Judy Bell by May 5, 2008, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a Puget Sound pilotage district annual tariff.

The proposed rule reflects a range of adjustments to be charged for pilotage services in the Puget Sound pilotage district for the 2008-2009 tariff year. The low end of the range is proposed by the Pacific Merchant Shipping Association (PMSA) and the high end of the range is proposed by the Puget Sound pilots (PSP). Upon consideration of all written and oral testimony, it is anticipated that the adopted rule will reflect an across-the-board adjustment to the tariff in a range between a decrease of 10.3% and an increase of 9.2%.

Exceptions include some tariff categories which are outside of this range or specifically allocated to new charges and are specified below:

The proposed rule reflects no adjustments in the *Transportation* category.

The proposed rule reflects an increase of \$5 in the *Training Surcharge* category to support pilot training stipends.

The proposed rule reflects a new category, *British Columbia Direct Transit Charge*, resulting from the enactment of 2008 statutory amendments to the Pilotage Act, specifically RCW 88.16.035 (1)(e). These charges, already established outside of board rules until now, reflect a range of adjustments proposed by PSP and PMSA.

The proposed rule also reflects three versions of optional amendatory language describing the *LOA Rate Schedule* as it relates to the support of pilot retirement plans.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually.

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Puget Sound pilotage district expire on June 30, 2008. New rates must be set annually.

The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested parties.

The 2008 legislature enacted SSB 6602 as agency request legislation which provides for the inclusion of British Columbia direct transit charges as part of the Puget Sound pilotage district tariff.

Name of Proponent: Puget Sound pilots and Pacific Merchant Shipping Association, private.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services.

The application of the range of proposed adjustments is clear in the description of the proposal and its anticipated effects as well as the attached proposed tariff.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adop-

tion. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

March 31, 2008
 Peggy Larson
 Administrator

AMENDATORY SECTION (Amending WSR 07-12-028, filed 5/30/07, effective 7/1/07)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours July 1, (~~2007~~) 2008, through 2400 hours June 30, (~~2008~~) 2009.

| CLASSIFICATION | RATE |
|--|---|
| Ship length overall (LOA) | |
| Charges: | |
| Per LOA rate schedule in this section. | |
| Boarding fee: | ((\$45.00)) <u>\$40.00 to \$49.00</u> |
| Per each boarding/deboarding at the Port Angeles pilot station. | |
| Harbor shift - Live ship (Seattle Port) | LOA Zone I |
| Harbor shift - Live ship (other than Seattle Port) | LOA Zone I |
| Harbor shift - Dead ship | Double LOA Zone I |
| Towing charge - Dead ship: | Double LOA Zone |
| LOA of tug + LOA of tow + beam of tow | |
| Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable. | |
| Compass Adjustment | ((\$326.00)) <u>\$292.00 to \$356.00</u> |
| Radio Direction Finder Calibration | ((\$326.00)) <u>\$292.00 to \$356.00</u> |
| Launching Vessels | ((\$489.00)) <u>\$439.00 to \$534.00</u> |
| Trial Trips, 6 hours or less (minimum ((\$918.00)) | ((\$153.00)) <u>\$137.00 to \$167.00</u> |
| | per hour |
| Trial Trips, over 6 hours (two pilots) | ((\$306.00)) <u>\$274.00 to \$334.00</u> |
| | per hour |
| Shilshole Bay – Salmon Bay | ((\$191.00)) <u>\$171.00 to \$209.00</u> |
| Salmon Bay – Lake Union | ((\$148.00)) <u>\$133.00 to \$162.00</u> |
| Lake Union – Lake Washington (plus LOA zone from Webster Point) | ((\$191.00)) <u>\$171.00 to \$209.00</u> |
| Cancellation Charge | LOA Zone I |
| Cancellation Charge – Port Angeles: | LOA Zone II |
| (When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.) | |

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of (~~(\$240.00)~~) \$215.00 to \$262.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of (~~(\$114.00)~~) \$102.00 to \$124.00 per bridge.

Ships 90' beam and/or over:

A charge of (~~(\$327.00)~~) \$293.00 to \$357.00 shall be in addition to bridge fees for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of (~~(\$228.00)~~) \$205.00 to \$249.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus (~~(\$248.00)~~) \$222.00 to \$271.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is (~~(\$248.00)~~) \$222.00 to \$271.00 for every hour or fraction thereof.

Sailing Delay:

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is (~~(\$248.00)~~) \$222.00 to \$271.00 for every hour or fraction thereof. The assessment of the standby fee shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of (~~(\$248.00)~~) \$222.00 to \$271.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival – Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of (~~(\$248.00)~~) \$222.00 to \$271.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of (~~(\$0.0077)~~) \$0.0069 to \$0.0084 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of (~~(\$0.0789)~~) \$0.0708 to \$0.0862 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be (~~(\$0.0945)~~) \$0.0848 to \$0.1032 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

| | |
|-------------------------------|----------|
| March Point or Anacortes | \$157.00 |
| Bangor | 153.00 |
| Bellingham | 181.00 |
| Bremerton | 135.00 |
| Cherry Point | 209.00 |
| Dupont | 97.00 |
| Edmonds | 35.00 |
| Everett | 59.00 |
| Ferndale | 199.00 |
| Manchester | 131.00 |
| Mukilteo | 53.00 |
| Olympia | 125.00 |
| Point Wells | 35.00 |
| Port Gamble | 185.00 |
| Port Townsend (Indian Island) | 223.00 |
| Seattle | 15.00 |
| Tacoma | 71.00 |

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage fees on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or disembark a vessel at a British Columbia port, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

| | |
|--|--------------------------------------|
| <u>Direct Transit Fee</u> | <u>\$1,765.00 to \$2,150.00</u> |
| <u>Sailing Delay Charge.</u> Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the fee shall not exceed a period of 12 hours in any 24 hour period. | <u>\$237.70 to \$289.00 per hour</u> |
| <u>Slow Down Charge.</u> Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities. | <u>\$237.70 to \$289.00 per hour</u> |
| <u>Cancellation Fee.</u> Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The fee is in addition to the applicable direct transit fee, standby, transportation and expenses. | <u>\$439.53 to \$535.00</u> |
| <u>Transportation Fee Vancouver Area.</u> Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia. | <u>\$413.52 to \$482.00</u> |
| <u>Transportation Fee Outports.</u> Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range. | <u>\$522.05 to \$609.00</u> |

Training Surcharge:

((Effective January 20, 2007,)) A surcharge of ((~~\$5.00~~)) \$10.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes funds used by Puget Sound pilots for (1) expenses it incurs by making retirement payments required by the benefits and enforcement provisions of the Puget Sound retirement program; and (2) that portion of the expense of the Grays Harbor retirement program not covered by the Grays Harbor tariff.

LOA Rate Schedule:

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes ~~((retirement fund contributions))~~ funds used by Puget Sound pilots at its option to reimburse that association for all expenses it incurs by making retirement payments required by the benefits and enforcement provisions of the Puget Sound retirement program; and funds used by Puget Sound pilots to cover that portion of the expense of the Grays Harbor retirement program not covered by the Grays Harbor tariff.

OR

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile. Revenue generated by this schedule may include funds used to pay that portion of the expense of the Grays Harbor retirement program not covered by the Grays Harbor tariff. Revenue generated by this schedule may be used to pay retirees by a pilot association operating in the Puget Sound district that has opted to form an association retirement plan.

OR

| <u>((LOA</u> | <u>ZONE</u> | <u>ZONE</u> | <u>ZONE</u> | <u>ZONE</u> | <u>ZONE</u> | <u>ZONE</u> |
|------------------|---------------------|-------------------|--------------------|--------------------|---------------------|-----------------------------|
| | <u>I</u> | <u>II</u> | <u>III</u> | <u>IV</u> | <u>V</u> | <u>VI</u> |
| | <u>Intra Harbor</u> | <u>0-30 Miles</u> | <u>31-50 Miles</u> | <u>51-75 Miles</u> | <u>76-100 Miles</u> | <u>101 Miles & Over</u> |
| <u>Up to 449</u> | <u>238</u> | <u>369</u> | <u>630</u> | <u>939</u> | <u>1,264</u> | <u>1,640</u> |
| <u>450-459</u> | <u>248</u> | <u>376</u> | <u>634</u> | <u>953</u> | <u>1,285</u> | <u>1,649</u> |
| <u>460-469</u> | <u>250</u> | <u>380</u> | <u>644</u> | <u>969</u> | <u>1,302</u> | <u>1,656</u> |
| <u>470-479</u> | <u>259</u> | <u>391</u> | <u>652</u> | <u>988</u> | <u>1,306</u> | <u>1,659</u> |
| <u>480-489</u> | <u>266</u> | <u>398</u> | <u>655</u> | <u>1,007</u> | <u>1,314</u> | <u>1,666</u> |
| <u>490-499</u> | <u>270</u> | <u>403</u> | <u>664</u> | <u>1,025</u> | <u>1,330</u> | <u>1,675</u> |
| <u>500-509</u> | <u>284</u> | <u>411</u> | <u>674</u> | <u>1,037</u> | <u>1,340</u> | <u>1,685</u> |
| <u>510-519</u> | <u>286</u> | <u>418</u> | <u>681</u> | <u>1,052</u> | <u>1,355</u> | <u>1,691</u> |
| <u>520-529</u> | <u>289</u> | <u>433</u> | <u>690</u> | <u>1,057</u> | <u>1,366</u> | <u>1,705</u> |
| <u>530-539</u> | <u>298</u> | <u>438</u> | <u>699</u> | <u>1,069</u> | <u>1,388</u> | <u>1,724</u> |
| <u>540-549</u> | <u>303</u> | <u>444</u> | <u>715</u> | <u>1,080</u> | <u>1,410</u> | <u>1,740</u> |
| <u>550-559</u> | <u>309</u> | <u>460</u> | <u>720</u> | <u>1,096</u> | <u>1,421</u> | <u>1,757</u> |
| <u>560-569</u> | <u>320</u> | <u>478</u> | <u>734</u> | <u>1,106</u> | <u>1,434</u> | <u>1,773</u> |

| (LOA | ZONE | ZONE | ZONE | ZONE | ZONE | ZONE |
|----------------------|-------------------|------------------|--------------------|-------------------|-------------------|------------------------|
| | I Intra Harbor | II 0-30 Miles | III 31-50 Miles | IV 51-75 Miles | V 76-100 Miles | VI 101 Miles & Over |
| 570-579 | 327 | 482 | 737 | 1,111 | 1,449 | 1,785 |
| 580-589 | 340 | 489 | 754 | 1,119 | 1,458 | 1,803 |
| 590-599 | 357 | 500 | 759 | 1,125 | 1,479 | 1,824 |
| 600-609 | 369 | 515 | 769 | 1,129 | 1,497 | 1,833 |
| 610-619 | 390 | 520 | 783 | 1,134 | 1,512 | 1,849 |
| 620-629 | 405 | 527 | 789 | 1,147 | 1,529 | 1,871 |
| 630-639 | 424 | 536 | 798 | 1,150 | 1,542 | 1,887 |
| 640-649 | 440 | 548 | 807 | 1,152 | 1,555 | 1,901 |
| 650-659 | 471 | 558 | 821 | 1,162 | 1,574 | 1,920 |
| 660-669 | 481 | 564 | 828 | 1,168 | 1,591 | 1,936 |
| 670-679 | 498 | 579 | 837 | 1,189 | 1,610 | 1,947 |
| 680-689 | 505 | 588 | 848 | 1,199 | 1,623 | 1,966 |
| 690-699 | 520 | 597 | 861 | 1,220 | 1,640 | 2,007 |
| 700-719 | 543 | 617 | 877 | 1,236 | 1,672 | 2,030 |
| 720-739 | 575 | 634 | 899 | 1,253 | 1,705 | 2,063 |
| 740-759 | 597 | 664 | 916 | 1,264 | 1,740 | 2,100 |
| 760-779 | 621 | 686 | 939 | 1,285 | 1,773 | 2,128 |
| 780-799 | 652 | 716 | 953 | 1,302 | 1,803 | 2,165 |
| 800-819 | 678 | 737 | 972 | 1,309 | 1,833 | 2,198 |
| 820-839 | 699 | 763 | 994 | 1,330 | 1,871 | 2,224 |
| 840-859 | 729 | 794 | 1,013 | 1,345 | 1,899 | 2,262 |
| 860-879 | 756 | 821 | 1,032 | 1,380 | 1,936 | 2,294 |
| 880-899 | 783 | 845 | 1,052 | 1,412 | 1,966 | 2,328 |
| 900-919 | 806 | 873 | 1,070 | 1,448 | 2,007 | 2,360 |
| 920-939 | 831 | 899 | 1,096 | 1,479 | 2,028 | 2,392 |
| 940-959 | 861 | 922 | 1,112 | 1,512 | 2,063 | 2,421 |
| 960-979 | 881 | 949 | 1,132 | 1,542 | 2,100 | 2,458 |
| 980-999 | 910 | 972 | 1,151 | 1,574 | 2,128 | 2,489 |
| 1000-1019 | 965 | 1,035 | 1,202 | 1,658 | 2,228 | 2,597 |
| 1020-1039 | 991 | 1,065 | 1,239 | 1,705 | 2,295 | 2,673 |
| 1040-1059 | 1,021 | 1,091 | 1,276 | 1,757 | 2,361 | 2,752 |
| 1060-1079 | 1,052 | 1,130 | 1,313 | 1,810 | 2,435 | 2,834 |
| 1080-1099 | 1,084 | 1,162 | 1,352 | 1,862 | 2,506 | 2,919 |
| 1100-1119 | 1,114 | 1,197 | 1,393 | 1,919 | 2,581 | 3,007 |
| 1120-1139 | 1,149 | 1,235 | 1,436 | 1,975 | 2,659 | 3,096 |
| 1140-1159 | 1,182 | 1,269 | 1,477 | 2,035 | 2,739 | 3,190 |
| 1160-1179 | 1,217 | 1,306 | 1,523 | 2,096 | 2,820 | 3,285 |
| 1180-1199 | 1,255 | 1,346 | 1,567 | 2,159 | 2,906 | 3,384 |
| 1200-1219 | 1,293 | 1,387 | 1,613 | 2,224 | 2,993 | 3,484 |
| 1220-1239 | 1,330 | 1,428 | 1,661 | 2,290 | 3,081 | 3,588 |
| 1240-1259 | 1,369 | 1,470 | 1,710 | 2,358 | 3,174 | 3,695 |
| 1260-1279 | 1,410 | 1,513 | 1,762 | 2,429 | 3,270 | 3,806 |
| 1280-1299 | 1,452 | 1,560 | 1,815 | 2,502 | 3,365 | 3,921 |
| 1300-1319 | 1,496 | 1,604 | 1,868 | 2,576 | 3,467 | 4,037 |
| 1320-1339 | 1,541 | 1,653 | 1,926 | 2,653 | 3,570 | 4,159 |

| (LOA | ZONE I Intra Harbor | ZONE II 0-30 Miles | ZONE III 31-50 Miles | ZONE IV 51-75 Miles | ZONE V 76-100 Miles | ZONE VI 101 Miles & Over |
|----------------------------|---------------------------|--------------------------|----------------------------|---------------------------|---------------------------|--------------------------------|
| 1340-1359 | 1,586 | 1,703 | 1,983 | 2,732 | 3,677 | 4,284 |
| 1360-1379 | 1,634 | 1,752 | 2,041 | 2,815 | 3,786 | 4,410 |
| 1380-1399 | 1,682 | 1,805 | 2,104 | 2,898 | 3,900 | 4,544 |
| 1400-1419 | 1,733 | 1,860 | 2,164 | 2,984 | 4,016 | 4,680 |
| 1420-1439 | 1,784 | 1,915 | 2,230 | 3,074 | 4,138 | 4,820 |
| 1440-1459 | 1,839 | 1,973 | 2,298 | 3,165 | 4,262 | 4,963 |
| 1460-1479 | 1,890 | 2,031 | 2,365 | 3,260 | 4,389 | 5,111 |
| 1480-1499 | 1,948 | 2,091 | 2,436 | 3,357 | 4,519 | 5,264 |
| 1500 & Over | 2,007 | 2,155 | 2,508 | 3,460 | 4,654 | 5,421)) |

LOW RANGE

| <u>LOA</u> (Length Overall) | <u>ZONE</u> I Intra Harbor | <u>ZONE</u> II 0-30 Miles | <u>ZONE</u> III 31-50 Miles | <u>ZONE</u> IV 51-75 Miles | <u>ZONE</u> V 76-100 Miles | <u>ZONE</u> VI 101 Miles & Over |
|--------------------------------|----------------------------------|---------------------------------|-----------------------------------|----------------------------------|----------------------------------|---------------------------------------|
| <u>Up to 449</u> | <u>214</u> | <u>331</u> | <u>565</u> | <u>842</u> | <u>1,134</u> | <u>1,471</u> |
| <u>450 - 459</u> | <u>222</u> | <u>337</u> | <u>569</u> | <u>855</u> | <u>1,153</u> | <u>1,479</u> |
| <u>460 - 469</u> | <u>224</u> | <u>341</u> | <u>577</u> | <u>869</u> | <u>1,168</u> | <u>1,485</u> |
| <u>470 - 479</u> | <u>233</u> | <u>350</u> | <u>585</u> | <u>886</u> | <u>1,172</u> | <u>1,488</u> |
| <u>480 - 489</u> | <u>238</u> | <u>357</u> | <u>588</u> | <u>903</u> | <u>1,178</u> | <u>1,495</u> |
| <u>490 - 499</u> | <u>242</u> | <u>362</u> | <u>595</u> | <u>919</u> | <u>1,193</u> | <u>1,502</u> |
| <u>500 - 509</u> | <u>254</u> | <u>368</u> | <u>605</u> | <u>931</u> | <u>1,202</u> | <u>1,512</u> |
| <u>510 - 519</u> | <u>256</u> | <u>375</u> | <u>611</u> | <u>944</u> | <u>1,215</u> | <u>1,516</u> |
| <u>520 - 529</u> | <u>259</u> | <u>388</u> | <u>619</u> | <u>948</u> | <u>1,225</u> | <u>1,530</u> |
| <u>530 - 539</u> | <u>267</u> | <u>393</u> | <u>627</u> | <u>959</u> | <u>1,245</u> | <u>1,547</u> |
| <u>540 - 549</u> | <u>272</u> | <u>398</u> | <u>641</u> | <u>969</u> | <u>1,265</u> | <u>1,561</u> |
| <u>550 - 559</u> | <u>277</u> | <u>413</u> | <u>646</u> | <u>983</u> | <u>1,274</u> | <u>1,576</u> |
| <u>560 - 569</u> | <u>287</u> | <u>429</u> | <u>658</u> | <u>992</u> | <u>1,287</u> | <u>1,591</u> |
| <u>570 - 579</u> | <u>293</u> | <u>432</u> | <u>661</u> | <u>996</u> | <u>1,300</u> | <u>1,601</u> |
| <u>580 - 589</u> | <u>305</u> | <u>439</u> | <u>676</u> | <u>1,004</u> | <u>1,308</u> | <u>1,617</u> |
| <u>590 - 599</u> | <u>320</u> | <u>448</u> | <u>681</u> | <u>1,009</u> | <u>1,327</u> | <u>1,636</u> |
| <u>600 - 609</u> | <u>331</u> | <u>462</u> | <u>689</u> | <u>1,012</u> | <u>1,343</u> | <u>1,644</u> |
| <u>610 - 619</u> | <u>349</u> | <u>466</u> | <u>703</u> | <u>1,017</u> | <u>1,356</u> | <u>1,659</u> |
| <u>620 - 629</u> | <u>364</u> | <u>473</u> | <u>707</u> | <u>1,029</u> | <u>1,371</u> | <u>1,678</u> |
| <u>630 - 639</u> | <u>381</u> | <u>480</u> | <u>716</u> | <u>1,031</u> | <u>1,384</u> | <u>1,693</u> |
| <u>640 - 649</u> | <u>395</u> | <u>492</u> | <u>724</u> | <u>1,033</u> | <u>1,395</u> | <u>1,705</u> |
| <u>650 - 659</u> | <u>423</u> | <u>500</u> | <u>737</u> | <u>1,043</u> | <u>1,412</u> | <u>1,723</u> |
| <u>660 - 669</u> | <u>431</u> | <u>506</u> | <u>743</u> | <u>1,047</u> | <u>1,427</u> | <u>1,737</u> |
| <u>670 - 679</u> | <u>446</u> | <u>519</u> | <u>751</u> | <u>1,066</u> | <u>1,444</u> | <u>1,746</u> |
| <u>680 - 689</u> | <u>453</u> | <u>527</u> | <u>761</u> | <u>1,076</u> | <u>1,456</u> | <u>1,763</u> |
| <u>690 - 699</u> | <u>466</u> | <u>536</u> | <u>772</u> | <u>1,094</u> | <u>1,471</u> | <u>1,800</u> |
| <u>700 - 719</u> | <u>487</u> | <u>554</u> | <u>786</u> | <u>1,109</u> | <u>1,499</u> | <u>1,821</u> |
| <u>720 - 739</u> | <u>516</u> | <u>569</u> | <u>806</u> | <u>1,124</u> | <u>1,530</u> | <u>1,851</u> |
| <u>740 - 759</u> | <u>536</u> | <u>595</u> | <u>821</u> | <u>1,134</u> | <u>1,561</u> | <u>1,884</u> |
| <u>760 - 779</u> | <u>557</u> | <u>615</u> | <u>842</u> | <u>1,153</u> | <u>1,591</u> | <u>1,909</u> |

| <u>LOA</u> (Length Overall) | <u>LOW RANGE</u> | | | | | |
|--------------------------------|----------------------------------|---------------------------------|-----------------------------------|----------------------------------|----------------------------------|--|
| | <u>ZONE</u> I Intra Harbor | <u>ZONE</u> II 0-30 Miles | <u>ZONE</u> III 31-50 Miles | <u>ZONE</u> IV 51-75 Miles | <u>ZONE</u> V 76-100 Miles | <u>ZONE</u> VI 101 Miles & Over |
| <u>780 - 799</u> | <u>585</u> | <u>642</u> | <u>855</u> | <u>1,168</u> | <u>1,617</u> | <u>1,942</u> |
| <u>800 - 819</u> | <u>608</u> | <u>661</u> | <u>872</u> | <u>1,174</u> | <u>1,644</u> | <u>1,971</u> |
| <u>820 - 839</u> | <u>627</u> | <u>685</u> | <u>892</u> | <u>1,193</u> | <u>1,678</u> | <u>1,995</u> |
| <u>840 - 859</u> | <u>654</u> | <u>712</u> | <u>909</u> | <u>1,207</u> | <u>1,704</u> | <u>2,029</u> |
| <u>860 - 879</u> | <u>678</u> | <u>737</u> | <u>926</u> | <u>1,238</u> | <u>1,737</u> | <u>2,058</u> |
| <u>880 - 899</u> | <u>703</u> | <u>758</u> | <u>944</u> | <u>1,267</u> | <u>1,763</u> | <u>2,088</u> |
| <u>900 - 919</u> | <u>723</u> | <u>783</u> | <u>960</u> | <u>1,299</u> | <u>1,800</u> | <u>2,117</u> |
| <u>920 - 939</u> | <u>745</u> | <u>806</u> | <u>983</u> | <u>1,327</u> | <u>1,819</u> | <u>2,146</u> |
| <u>940 - 959</u> | <u>772</u> | <u>827</u> | <u>997</u> | <u>1,356</u> | <u>1,851</u> | <u>2,172</u> |
| <u>960 - 979</u> | <u>790</u> | <u>851</u> | <u>1,015</u> | <u>1,384</u> | <u>1,884</u> | <u>2,205</u> |
| <u>980 - 999</u> | <u>817</u> | <u>872</u> | <u>1,032</u> | <u>1,412</u> | <u>1,909</u> | <u>2,232</u> |
| <u>1000 - 1019</u> | <u>866</u> | <u>929</u> | <u>1,078</u> | <u>1,487</u> | <u>1,999</u> | <u>2,329</u> |
| <u>1020 - 1039</u> | <u>889</u> | <u>955</u> | <u>1,111</u> | <u>1,530</u> | <u>2,059</u> | <u>2,398</u> |
| <u>1040 - 1059</u> | <u>915</u> | <u>979</u> | <u>1,144</u> | <u>1,576</u> | <u>2,118</u> | <u>2,469</u> |
| <u>1060 - 1079</u> | <u>944</u> | <u>1,013</u> | <u>1,177</u> | <u>1,624</u> | <u>2,184</u> | <u>2,542</u> |
| <u>1080 - 1099</u> | <u>972</u> | <u>1,043</u> | <u>1,213</u> | <u>1,670</u> | <u>2,248</u> | <u>2,618</u> |
| <u>1100 - 1119</u> | <u>999</u> | <u>1,074</u> | <u>1,250</u> | <u>1,722</u> | <u>2,315</u> | <u>2,697</u> |
| <u>1120 - 1139</u> | <u>1,030</u> | <u>1,108</u> | <u>1,288</u> | <u>1,772</u> | <u>2,385</u> | <u>2,778</u> |
| <u>1140 - 1159</u> | <u>1,061</u> | <u>1,139</u> | <u>1,325</u> | <u>1,825</u> | <u>2,457</u> | <u>2,861</u> |
| <u>1160 - 1179</u> | <u>1,092</u> | <u>1,172</u> | <u>1,366</u> | <u>1,880</u> | <u>2,530</u> | <u>2,947</u> |
| <u>1180 - 1199</u> | <u>1,126</u> | <u>1,207</u> | <u>1,405</u> | <u>1,936</u> | <u>2,607</u> | <u>3,036</u> |
| <u>1200 - 1219</u> | <u>1,159</u> | <u>1,244</u> | <u>1,447</u> | <u>1,995</u> | <u>2,684</u> | <u>3,125</u> |
| <u>1220 - 1239</u> | <u>1,193</u> | <u>1,281</u> | <u>1,490</u> | <u>2,054</u> | <u>2,763</u> | <u>3,218</u> |
| <u>1240 - 1259</u> | <u>1,228</u> | <u>1,319</u> | <u>1,534</u> | <u>2,115</u> | <u>2,847</u> | <u>3,314</u> |
| <u>1260 - 1279</u> | <u>1,265</u> | <u>1,357</u> | <u>1,580</u> | <u>2,178</u> | <u>2,933</u> | <u>3,414</u> |
| <u>1280 - 1299</u> | <u>1,303</u> | <u>1,400</u> | <u>1,628</u> | <u>2,244</u> | <u>3,019</u> | <u>3,517</u> |
| <u>1300 - 1319</u> | <u>1,342</u> | <u>1,439</u> | <u>1,676</u> | <u>2,310</u> | <u>3,110</u> | <u>3,621</u> |
| <u>1320 - 1339</u> | <u>1,383</u> | <u>1,482</u> | <u>1,727</u> | <u>2,380</u> | <u>3,202</u> | <u>3,731</u> |
| <u>1340 - 1359</u> | <u>1,422</u> | <u>1,528</u> | <u>1,779</u> | <u>2,451</u> | <u>3,298</u> | <u>3,843</u> |
| <u>1360 - 1379</u> | <u>1,466</u> | <u>1,572</u> | <u>1,831</u> | <u>2,525</u> | <u>3,396</u> | <u>3,956</u> |
| <u>1380 - 1399</u> | <u>1,509</u> | <u>1,619</u> | <u>1,887</u> | <u>2,600</u> | <u>3,498</u> | <u>4,076</u> |
| <u>1400 - 1419</u> | <u>1,554</u> | <u>1,668</u> | <u>1,941</u> | <u>2,677</u> | <u>3,603</u> | <u>4,198</u> |
| <u>1420 - 1439</u> | <u>1,600</u> | <u>1,718</u> | <u>2,000</u> | <u>2,758</u> | <u>3,712</u> | <u>4,323</u> |
| <u>1440 - 1459</u> | <u>1,649</u> | <u>1,770</u> | <u>2,062</u> | <u>2,839</u> | <u>3,823</u> | <u>4,452</u> |
| <u>1460 - 1479</u> | <u>1,695</u> | <u>1,822</u> | <u>2,121</u> | <u>2,924</u> | <u>3,937</u> | <u>4,585</u> |
| <u>1480 - 1499</u> | <u>1,747</u> | <u>1,875</u> | <u>2,185</u> | <u>3,011</u> | <u>4,054</u> | <u>4,721</u> |
| <u>1500 & Over</u> | <u>1,800</u> | <u>1,933</u> | <u>2,250</u> | <u>3,103</u> | <u>4,174</u> | <u>4,863</u> |

| <u>LOA</u> | <u>HIGH RANGE</u> | | | | | |
|--------------------|----------------------------------|---------------------------------|-----------------------------------|----------------------------------|----------------------------------|--|
| | <u>ZONE</u> I Intra Harbor | <u>ZONE</u> II 0-30 Miles | <u>ZONE</u> III 31-50 Miles | <u>ZONE</u> IV 51-75 Miles | <u>ZONE</u> V 76-100 Miles | <u>ZONE</u> VI 101 Miles & Over |
| <u>Up to 449</u> | <u>260</u> | <u>402</u> | <u>688</u> | <u>1,025</u> | <u>1,381</u> | <u>1,791</u> |
| <u>450 - 459</u> | <u>271</u> | <u>410</u> | <u>693</u> | <u>1,041</u> | <u>1,403</u> | <u>1,800</u> |
| <u>460 - 469</u> | <u>273</u> | <u>415</u> | <u>703</u> | <u>1,058</u> | <u>1,422</u> | <u>1,808</u> |
| <u>470 - 479</u> | <u>283</u> | <u>427</u> | <u>712</u> | <u>1,079</u> | <u>1,426</u> | <u>1,812</u> |
| <u>480 - 489</u> | <u>290</u> | <u>435</u> | <u>715</u> | <u>1,100</u> | <u>1,434</u> | <u>1,820</u> |
| <u>490 - 499</u> | <u>295</u> | <u>440</u> | <u>725</u> | <u>1,119</u> | <u>1,453</u> | <u>1,829</u> |
| <u>500 - 509</u> | <u>310</u> | <u>448</u> | <u>736</u> | <u>1,133</u> | <u>1,463</u> | <u>1,840</u> |
| <u>510 - 519</u> | <u>312</u> | <u>456</u> | <u>744</u> | <u>1,149</u> | <u>1,479</u> | <u>1,846</u> |
| <u>520 - 529</u> | <u>315</u> | <u>472</u> | <u>753</u> | <u>1,155</u> | <u>1,492</u> | <u>1,862</u> |
| <u>530 - 539</u> | <u>326</u> | <u>478</u> | <u>764</u> | <u>1,167</u> | <u>1,516</u> | <u>1,883</u> |
| <u>540 - 549</u> | <u>331</u> | <u>485</u> | <u>781</u> | <u>1,180</u> | <u>1,540</u> | <u>1,900</u> |
| <u>550 - 559</u> | <u>337</u> | <u>502</u> | <u>787</u> | <u>1,197</u> | <u>1,551</u> | <u>1,918</u> |
| <u>560 - 569</u> | <u>350</u> | <u>522</u> | <u>801</u> | <u>1,207</u> | <u>1,566</u> | <u>1,937</u> |
| <u>570 - 579</u> | <u>357</u> | <u>526</u> | <u>805</u> | <u>1,213</u> | <u>1,582</u> | <u>1,949</u> |
| <u>580 - 589</u> | <u>371</u> | <u>534</u> | <u>823</u> | <u>1,222</u> | <u>1,593</u> | <u>1,969</u> |
| <u>590 - 599</u> | <u>390</u> | <u>546</u> | <u>829</u> | <u>1,228</u> | <u>1,616</u> | <u>1,992</u> |
| <u>600 - 609</u> | <u>402</u> | <u>562</u> | <u>839</u> | <u>1,233</u> | <u>1,635</u> | <u>2,002</u> |
| <u>610 - 619</u> | <u>425</u> | <u>568</u> | <u>855</u> | <u>1,238</u> | <u>1,651</u> | <u>2,019</u> |
| <u>620 - 629</u> | <u>443</u> | <u>576</u> | <u>861</u> | <u>1,252</u> | <u>1,669</u> | <u>2,043</u> |
| <u>630 - 639</u> | <u>463</u> | <u>585</u> | <u>871</u> | <u>1,256</u> | <u>1,684</u> | <u>2,060</u> |
| <u>640 - 649</u> | <u>480</u> | <u>599</u> | <u>882</u> | <u>1,258</u> | <u>1,698</u> | <u>2,075</u> |
| <u>650 - 659</u> | <u>515</u> | <u>609</u> | <u>897</u> | <u>1,269</u> | <u>1,719</u> | <u>2,097</u> |
| <u>660 - 669</u> | <u>525</u> | <u>616</u> | <u>905</u> | <u>1,275</u> | <u>1,737</u> | <u>2,114</u> |
| <u>670 - 679</u> | <u>543</u> | <u>632</u> | <u>914</u> | <u>1,298</u> | <u>1,758</u> | <u>2,126</u> |
| <u>680 - 689</u> | <u>552</u> | <u>642</u> | <u>926</u> | <u>1,309</u> | <u>1,773</u> | <u>2,146</u> |
| <u>690 - 699</u> | <u>568</u> | <u>652</u> | <u>940</u> | <u>1,332</u> | <u>1,791</u> | <u>2,191</u> |
| <u>700 - 719</u> | <u>593</u> | <u>674</u> | <u>957</u> | <u>1,350</u> | <u>1,825</u> | <u>2,216</u> |
| <u>720 - 739</u> | <u>628</u> | <u>693</u> | <u>981</u> | <u>1,368</u> | <u>1,862</u> | <u>2,253</u> |
| <u>740 - 759</u> | <u>652</u> | <u>725</u> | <u>1,000</u> | <u>1,381</u> | <u>1,900</u> | <u>2,293</u> |
| <u>760 - 779</u> | <u>678</u> | <u>749</u> | <u>1,025</u> | <u>1,403</u> | <u>1,937</u> | <u>2,324</u> |
| <u>780 - 799</u> | <u>712</u> | <u>782</u> | <u>1,041</u> | <u>1,422</u> | <u>1,969</u> | <u>2,364</u> |
| <u>800 - 819</u> | <u>741</u> | <u>805</u> | <u>1,062</u> | <u>1,430</u> | <u>2,002</u> | <u>2,400</u> |
| <u>820 - 839</u> | <u>764</u> | <u>834</u> | <u>1,086</u> | <u>1,453</u> | <u>2,043</u> | <u>2,428</u> |
| <u>840 - 859</u> | <u>796</u> | <u>867</u> | <u>1,106</u> | <u>1,469</u> | <u>2,074</u> | <u>2,470</u> |
| <u>860 - 879</u> | <u>826</u> | <u>897</u> | <u>1,127</u> | <u>1,507</u> | <u>2,114</u> | <u>2,505</u> |
| <u>880 - 899</u> | <u>855</u> | <u>923</u> | <u>1,149</u> | <u>1,542</u> | <u>2,146</u> | <u>2,542</u> |
| <u>900 - 919</u> | <u>881</u> | <u>953</u> | <u>1,168</u> | <u>1,581</u> | <u>2,191</u> | <u>2,578</u> |
| <u>920 - 939</u> | <u>907</u> | <u>981</u> | <u>1,197</u> | <u>1,616</u> | <u>2,214</u> | <u>2,612</u> |
| <u>940 - 959</u> | <u>940</u> | <u>1,007</u> | <u>1,214</u> | <u>1,651</u> | <u>2,253</u> | <u>2,644</u> |
| <u>960 - 979</u> | <u>962</u> | <u>1,037</u> | <u>1,236</u> | <u>1,684</u> | <u>2,293</u> | <u>2,684</u> |
| <u>980 - 999</u> | <u>994</u> | <u>1,062</u> | <u>1,257</u> | <u>1,719</u> | <u>2,324</u> | <u>2,717</u> |
| <u>1000 - 1019</u> | <u>1,054</u> | <u>1,131</u> | <u>1,313</u> | <u>1,810</u> | <u>2,433</u> | <u>2,836</u> |
| <u>1020 - 1039</u> | <u>1,082</u> | <u>1,163</u> | <u>1,353</u> | <u>1,862</u> | <u>2,506</u> | <u>2,919</u> |

| <u>LOA</u> (Length Over- all) | <u>HIGH RANGE</u> | | | | | |
|-------------------------------------|----------------------------------|---------------------------------|-----------------------------------|----------------------------------|----------------------------------|--|
| | <u>ZONE</u> I Intra Harbor | <u>ZONE</u> II 0-30 Miles | <u>ZONE</u> III 31-50 Miles | <u>ZONE</u> IV 51-75 Miles | <u>ZONE</u> V 76-100 Miles | <u>ZONE</u> VI 101 Miles & Over |
| <u>1040 - 1059</u> | <u>1,114</u> | <u>1,191</u> | <u>1,393</u> | <u>1,918</u> | <u>2,579</u> | <u>3,005</u> |
| <u>1060 - 1079</u> | <u>1,149</u> | <u>1,234</u> | <u>1,433</u> | <u>1,977</u> | <u>2,659</u> | <u>3,095</u> |
| <u>1080 - 1099</u> | <u>1,183</u> | <u>1,269</u> | <u>1,477</u> | <u>2,033</u> | <u>2,737</u> | <u>3,188</u> |
| <u>1100 - 1119</u> | <u>1,217</u> | <u>1,307</u> | <u>1,522</u> | <u>2,096</u> | <u>2,818</u> | <u>3,284</u> |
| <u>1120 - 1139</u> | <u>1,254</u> | <u>1,348</u> | <u>1,569</u> | <u>2,157</u> | <u>2,903</u> | <u>3,381</u> |
| <u>1140 - 1159</u> | <u>1,291</u> | <u>1,386</u> | <u>1,613</u> | <u>2,222</u> | <u>2,991</u> | <u>3,483</u> |
| <u>1160 - 1179</u> | <u>1,329</u> | <u>1,426</u> | <u>1,663</u> | <u>2,289</u> | <u>3,080</u> | <u>3,588</u> |
| <u>1180 - 1199</u> | <u>1,370</u> | <u>1,470</u> | <u>1,711</u> | <u>2,357</u> | <u>3,174</u> | <u>3,695</u> |
| <u>1200 - 1219</u> | <u>1,411</u> | <u>1,515</u> | <u>1,761</u> | <u>2,428</u> | <u>3,268</u> | <u>3,804</u> |
| <u>1220 - 1239</u> | <u>1,453</u> | <u>1,559</u> | <u>1,814</u> | <u>2,501</u> | <u>3,364</u> | <u>3,918</u> |
| <u>1240 - 1259</u> | <u>1,495</u> | <u>1,605</u> | <u>1,868</u> | <u>2,575</u> | <u>3,466</u> | <u>4,035</u> |
| <u>1260 - 1279</u> | <u>1,540</u> | <u>1,652</u> | <u>1,924</u> | <u>2,652</u> | <u>3,571</u> | <u>4,156</u> |
| <u>1280 - 1299</u> | <u>1,586</u> | <u>1,704</u> | <u>1,982</u> | <u>2,732</u> | <u>3,675</u> | <u>4,281</u> |
| <u>1300 - 1319</u> | <u>1,634</u> | <u>1,752</u> | <u>2,040</u> | <u>2,813</u> | <u>3,786</u> | <u>4,409</u> |
| <u>1320 - 1339</u> | <u>1,683</u> | <u>1,805</u> | <u>2,103</u> | <u>2,897</u> | <u>3,898</u> | <u>4,542</u> |
| <u>1340 - 1359</u> | <u>1,731</u> | <u>1,860</u> | <u>2,166</u> | <u>2,983</u> | <u>4,015</u> | <u>4,678</u> |
| <u>1360 - 1379</u> | <u>1,784</u> | <u>1,914</u> | <u>2,229</u> | <u>3,074</u> | <u>4,135</u> | <u>4,816</u> |
| <u>1380 - 1399</u> | <u>1,837</u> | <u>1,971</u> | <u>2,298</u> | <u>3,165</u> | <u>4,258</u> | <u>4,962</u> |
| <u>1400 - 1419</u> | <u>1,892</u> | <u>2,031</u> | <u>2,363</u> | <u>3,259</u> | <u>4,386</u> | <u>5,110</u> |
| <u>1420 - 1439</u> | <u>1,948</u> | <u>2,091</u> | <u>2,435</u> | <u>3,357</u> | <u>4,519</u> | <u>5,263</u> |
| <u>1440 - 1459</u> | <u>2,008</u> | <u>2,154</u> | <u>2,510</u> | <u>3,456</u> | <u>4,654</u> | <u>5,420</u> |
| <u>1460 - 1479</u> | <u>2,064</u> | <u>2,218</u> | <u>2,582</u> | <u>3,560</u> | <u>4,793</u> | <u>5,582</u> |
| <u>1480 - 1499</u> | <u>2,127</u> | <u>2,283</u> | <u>2,660</u> | <u>3,666</u> | <u>4,935</u> | <u>5,748</u> |
| <u>1500 & Over</u> | <u>2,191</u> | <u>2,353</u> | <u>2,739</u> | <u>3,778</u> | <u>5,082</u> | <u>5,920</u> |

WSR 08-08-076
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 (Board of Boiler Rules)
 [Filed April 1, 2008, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-130.

Title of Rule and Other Identifying Information: Board of boiler rules—Substantive (chapter 296-104 WAC).

Hearing Location(s): Department of Labor and Industries, 950 Broadway, Suite 200, Tacoma, WA, on May 14, 2008, at 10:00 a.m.

Date of Intended Adoption: May 20, 2008.

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 5:00 p.m. on May 14, 2008.

Assistance for Persons with Disabilities: Contact Sally Elliott by April 15, 2008, yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to make clarification and technical changes to the Board of boiler rules—Substantive (chapter 296-104 WAC) based on actions and requests of the board of boiler rules. The changes include:

- Removing the board's responsibilities for national board (NB) exams and allowing the boiler chief to accept applications for board approved criteria.
- Extending the periods between boiler internal inspections to companies with owner/user inspection programs.
- Revisions to lower pressure boiler and pool heaters.
- A 5.53% fee increase, which is the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2008 as approved

by the legislature. The fee increase will help cover the cost of ongoing services for the boiler program.

- Housekeeping and reference changes.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, and 70.79.350.

Statute Being Implemented: Chapter 70.79 RCW.

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

Name of Proponent: Board of boiler rules, governmental.

Name of Agency Personnel Responsible for Drafting: Board of Boiler Rules, Tumwater, Washington, (360) 902-5270; Implementation and Enforcement: Linda Williamson, Tumwater, Washington, (360) 902-5270.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The board of boiler rules has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they do not require a small business economic impact statement because the costs associated with the proposed rules will not place a more than minor impact on any business or contractor and/or they are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310(4)) from the small business economic impact requirements. The fees are exempt from the small business economic impact statement under RCW 34.05.328 (5)(b)(vi).

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule for clarification (see RCW 19.85.025 referencing RCW 34.05.310(4) and 34.05.328 (5)(b)(vi)).

April 1, 2008
Steven E. Bacon, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 06-24-042, filed 11/30/06, effective 1/1/07)

WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Agriculture purposes" shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

"Attendant" shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

"Automatic operation of a boiler" shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

"Board of boiler rules" or "board" shall mean the board created by law and empowered under RCW 70.79.010.

"Boiler and unfired pressure vessel installation/reinstallation permit," shall mean a permit approved by the

chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

Owner/user inspection agency's, and Washington specials are exempt from "boiler and unfired pressure vessel installation/reinstallation permit."

"Boilers and/or unfired pressure vessels" - below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- **"Condemned boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements and appropriately marked by an inspector.
- **"Expansion tank"** shall mean a tank used to absorb excess water pressure. Expansion tanks installed in closed water heating systems and hot water supply systems shall meet the requirements of ASME Section IV, HG-709.
- **"Hot water heater"** shall mean a closed vessel designed to supply hot water for external use to the system. All vessels must be listed by a nationally recognized testing agency and shall be protected with an approved temperature and pressure safety relief valve and shall not exceed any of the following limits:
 - * Pressure of 160 psi (1100 kpa);
 - * Temperature of 210 degrees F (99°C);
 - * Capacity of 120 U.S. gallons (454 liters);
 - * Input of 200,000 BTU/hr (58.58 kw). Note that if input exceeds 200,000 BTU/hr (58.58 kw), other terms defined in this section may apply.
 - * Hot water heaters exceeding 200,000 BTU/hr (58.58 kw) must be ASME code stamped.
- **"Low pressure heating boiler"** shall mean a steam or vapor boiler operating at a pressure not exceeding 15 psig or a boiler in which water or other fluid is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy, excluding lined hot water heaters supplying potable hot water for external use to the system.
- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more than 15 psig for use external to itself or a boiler in which water (~~or other fluid~~) is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.
- **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.

- **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.
- **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
- **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
- **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:
 - * Fired process tubular heaters;
 - * Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;
 - * Piping whose primary function is to transport fluids from one location to another;
 - * Those vessels defined as low pressure heating boilers or power boilers.
- **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.

"Certificate of competency" shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.

"Certificate of inspection" shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.

"Code, API-510" shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, ASME" shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, NBIC" shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Commission" shall mean an annual commission card issued to a person in the employ of Washington state, an

insurance company or a company owner/user inspection agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.

"Department" as used herein shall mean the department of labor and industries of the state of Washington.

"Director" shall mean the director of the department of labor and industries.

"Domestic and/or residential purposes" shall mean serving a private residence or an apartment house of less than six families.

"Existing installations" shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.

"Inspection certificate" see "certificate of inspection."

"Inspection, external" shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.

"Inspection, internal" shall mean an inspection made when a boiler or unfired pressure vessel is shut down and handholes, manholes, or other inspection openings are open or removed for examination of the interior. An external ultrasonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

"Inspector" shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

- **"Chief inspector"** shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.
- **"Deputy inspector"** shall mean an inspector appointed under RCW 70.79.120.
- **"Special inspector"** shall mean an inspector holding a Washington commission identified under RCW 70.79.130.

"Nationwide engineering standard" shall mean a nationally accepted design method, formulae and practice acceptable to the board.

"Operating permit" see "certificate of inspection."

"Owner" or "user" shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

"Owner/user inspection agency" shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

"Place of public assembly" or "assembly hall" shall mean a building or portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), public and private hospitals, nursing and boarding homes.

"Special design" shall mean a design using nationwide engineering standards other than the codes adopted in WAC 296-104-200 or other than allowed in WAC 296-104-230.

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-050 Administration—What are the requirements for a boiler inspector? ~~((In order to qualify as a prospective National Board Commissioned Inspector an applicant shall meet the minimum requirements as set forth in the national board's "Rules for Commissioned Inspectors," NB263, Revision 8 (4/02).))~~ Application for examination for a Washington state certificate of competency shall be in writing upon a form to be furnished by the chief inspector stating the school and education of the applicant, a list of employers, period of employment and position held with each employer. Applications containing willful falsification or untruthful statements shall be rejected.

In order to qualify as a prospective inspector, an applicant shall meet the minimum requirements as set forth in the national board's "Rules for Commissioned Inspectors," NB263, Revision 17 (02/07) or API-510 (eighth edition), as appropriate.

If the applicant's history and experience meet with the approval of the chief inspector based on the board of boiler rules approved criteria, the candidate shall be given the ~~((national board examination and the))~~ Washington state examination. If the applicant is accepted on the merits of these examinations or as provided for in WAC 296-104-065, and the applicant is in possession of a national board commission or API-510 certification, as appropriate, a Washington state certificate of competency will be issued by the chief inspector.

For those applicants sitting for the national board examination in conjunction with the Washington state examination, a certificate of competency will be issued by the chief inspector upon receipt of a valid national board commission.

Examinations shall be held at locations and times when considered necessary by the ~~((board of boiler rules))~~ chief inspector. The examinations may be offered four times each year, namely, the first Wednesday and following Thursday of the months of March, June, September and December. Special examinations may be held when considered necessary by the ~~((board of boiler rules))~~ chief inspector.

AMENDATORY SECTION (Amending WSR 04-21-069, filed 10/19/04, effective 1/1/05)

WAC 296-104-100 Inspection—How often must boilers and unfired pressure vessels be inspected? In accordance with RCW 70.79.080, 70.79.090, and 70.79.240 the following inspection requirements shall apply:

- (1) **Power boilers** shall be inspected:
 - (a) Internally and externally while not under pressure - Annually.
 - (b) Externally while under pressure - Annually, except as noted in the following paragraph.

A power boiler in a national board accredited owner-user inspection program may have the internal inspection intervals extended by the owner-user inspection organization to five years maximum under the following conditions:

- (i) The boiler water treatment and specific chemical limits are prescribed and monitored by an individual or company that specializes in the water treatment field;

(ii) Nondestructive examination (NDE) is performed along with the internal inspections;

(iii) The boiler is monitored within a manned operating facility;

(iv) Inspection, maintenance, and water treatment records are maintained;

(v) There is sufficient inspection history for the boiler or a boiler in similar service to justify the increase in the inspection interval; and

(vi) This provision shall not apply to a black liquor recovery boiler or any boiler with an unsuitable corrosion rate, remaining life, and/or repair history.

(2) **Organic vapor boilers** shall be inspected:

(a) ~~((Internally and externally while not under pressure - Biennially-))~~ Externally while under pressure - Annually.

(b) ~~((Externally while under pressure - Annually-))~~ Internally and externally while not under pressure - Biennially.

(3) **Low pressure heating boilers** shall be inspected:

(a) Externally while in operation and under pressure - Biennially.

(b) Where construction permits, internally while not under pressure. Also, as a minimum, an internal of their low water fuel cutoff(s) must be completed, where construction permits - Biennially.

(4) **Hot water heaters** shall be inspected:

(a) Externally - Biennially.

(b) Internally - None required.

(5) **Unfired pressure vessels** shall be inspected:

(a) Externally - Biennially.

(b) Internally:

(i) When subject to corrosion and construction permits - Biennially. Vessels in an owner(~~(+)~~)-user inspection program may follow intervals established by the NBIC or API-510 ~~((eighth))~~ ninth edition with addenda, provided nondestructive examination (NDE) is performed at the biennial external inspection.

(ii) Pulp or paper dryer rolls may be inspected on a five-year basis in accordance with TAPPI TIP 0402-16 2001 edition, provided the owner has established a written inspection program accepted by the inspector that meets the minimum requirements of TAPPI TIP 0402-16 2001 edition.

(iii) Vessels not subject to corrosion do not require an internal.

AMENDATORY SECTION (Amending WSR 02-23-036, filed 11/13/02, effective 12/14/02)

WAC 296-104-155 Inspection—What preparations are necessary prior to internal inspections? The owner or user has the responsibility to prepare a pressure-retaining item for internal inspection. Requirements of occupational safety and health regulations (federal, state, local, or other) as well as the owner or user's own safety program and the safety program of the inspector's employer are applicable. In the absence of such rules, prudent and generally accepted engineering safety procedures satisfactory to the inspector shall be employed by the owner or user.

The owner or user shall prepare a boiler for internal inspection in the following manner or as required by the inspector:

(1) Water shall be drawn off and the boiler thoroughly washed (when a boiler is being prepared for internal inspection, the water should not be withdrawn until it has been sufficiently cooled).

(2) All manhole and handhole plates and wash-out plugs and water column connections shall be removed, the furnace and combustion chambers thoroughly cooled and cleaned.

(3) All grates of internally fired boilers shall be removed.

(4) At each annual inspection brickwork shall be removed as required by the inspector in order to determine the condition of the boiler headers, drums, furnace, supports, or other parts.

(5) The steam gauge shall be removed for testing or evidence of testing shown.

(6) Any leakage of steam or water into the boiler shall be prevented by either disconnecting the pipe or block valve at the most convenient point or installing isolation blinds. The owner or user must ensure that an effective energy isolation program (lock out and/or tag out) is in place and in effect that will prevent the unexpected energizing, start up, or release of stored energy.

The inspector shall determine that a safe atmosphere exists before entering the boiler or pressure-retaining item is inspected.

(7) The low water cutout shall be disassembled to such a degree as the inspector shall require.

(8) Pressure Relief devices shall be removed and tested if required by the inspector.

Unfired pressure vessels shall be prepared for internal inspection to the extent deemed necessary by the inspector.

AMENDATORY SECTION (Amending WSR 06-24-042, filed 11/30/06, effective 1/1/07)

WAC 296-104-200 Construction—What are the standards for new construction? The standards for new construction are:

(1) ASME Boiler and Pressure Vessel Code, (~~2004~~) 2007 edition, with addenda Sections I, III, IV, VIII, Division 1, 2, 3, X, XII;

(2) ASME PVHO-1 (~~2002-2003~~) 2007 Safety Standard for Pressure Vessels for Human Occupancy; and

(3) ASME CSD-1 2004 edition with addenda (as referenced in WAC 296-104-302); and

(4) NFPA 85 Boiler and Combustion Systems Hazards Code 2004 edition (for use with boilers with fuel input ratings of 12, 500,000 BTU/hr) or greater; and

(5) Standards of construction approved by the chief inspector and meeting the National Board Criteria for Registration of Boilers, Pressure Vessels and Other Pressure Retaining Items.

These codes and standards may be used on or after the date of issue and become mandatory twelve months after adoption by the board as specified in RCW 70.79.050(2). ASME Code Cases may be approved for use when accepted by the chief inspector. The board recognizes that the ASME Code states that new editions of the code become mandatory on issue and that subsequent addenda become mandatory six months after the date of issue. For nuclear systems, compo-

nents and parts the time period for addenda becoming mandatory is defined in the Code of Federal Regulations.

AMENDATORY SECTION (Amending WSR 97-20-109, filed 9/30/97, effective 10/31/97)

WAC 296-104-330 Installation—What are the relief or safety valve requirements when pressure reducing valves are used? (1) Where pressure reducing valves are used, one or more relief or safety valve(s) and pressure gauge(s) shall be provided on the low pressure side of the reducing valve. The relief or safety valve(s) shall be located as close as possible to the reducing valve. The combined discharge capacity of the relief valves shall be such that the pressure rating of the lower pressure piping or equipment shall not be exceeded in case the reducing valve sticks open. Discharge lines shall comply with WAC (~~296-104-310~~) 296-104-320.

(2) The use of hand-controlled bypasses around reducing valves is permissible. The bypass shall not be greater in capacity than the reducing valve unless the piping or equipment is adequately protected by a relief valve(s) or meets the requirements of the high pressure system.

AMENDATORY SECTION (Amending WSR 07-11-137, filed 5/22/07, effective 6/30/07)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

| | | |
|---|----------------------|----------------------|
| Heating boilers: | Internal | External |
| Cast iron—All sizes | \$(33.00) | \$(26.40) |
| | <u>34.80</u> | <u>27.80</u> |
| All other boilers less than 500 sq. ft. | \$(39.60) | \$(26.40) |
| | <u>27.80</u> | <u>27.80</u> |
| 500 sq. ft. to 2500 sq. ft. | \$(65.80) | \$(33.00) |
| | <u>69.40</u> | <u>34.80</u> |
| Each additional 2500 sq. ft. of total heating surface, or any portion thereof | \$(26.40) | \$(13.00) |
| | <u>27.80</u> | <u>13.70</u> |
| Power boilers: | Internal | External |
| Less than 100 sq. ft. | \$(33.00) | \$(26.40) |
| | <u>34.80</u> | <u>27.80</u> |
| 100 sq. ft. to less than 500 sq. ft. | \$(39.90) | \$(26.40) |
| | <u>42.10</u> | <u>27.80</u> |
| 500 sq. ft. to 2500 sq. ft. | \$(65.80) | \$(33.00) |
| | <u>69.40</u> | <u>34.80</u> |
| Each additional 2500 sq. ft. of total heating surface, or any portion thereof | \$(26.40) | \$(13.00) |
| | <u>27.80</u> | <u>13.70</u> |
| Pressure vessels: | | |

| | | |
|---|--------------------------------------|--------------------------------------|
| Automatic utility hot water supply heaters per RCW 70.79.090 | \$(6.20) <u>6.50</u> | |
| All other pressure vessels: Square feet shall be determined by multiplying the length of the shell by its diameter. | | Internal External |
| Less than 15 sq. ft. | \$(26.40) <u>27.80</u> | \$(19.70) <u>20.70</u> |
| 15 sq. ft. to less than 50 sq. ft. | \$(39.20) <u>41.30</u> | \$(19.70) <u>20.70</u> |
| 50 sq. ft. to 100 sq. ft. | \$(45.60) <u>48.10</u> | \$(26.40) <u>27.80</u> |
| For each additional 100 sq. ft. or any portion thereof | \$(45.60) <u>48.10</u> | \$(13.00) <u>13.70</u> |
| Certificate of inspection fees: For objects inspected, the certificate of inspection fee is \$(19.70) <u>20.00</u> per object. | | |
| Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee) | | \$50.00 |
| Nonnuclear shop inspections, field construction inspections, and special inspection services: | | |
| For each hour or part of an hour up to 8 hours | \$(39.90) <u>42.10</u> | |
| For each hour or part of an hour in excess of 8 hours | \$(59.60) <u>62.80</u> | |
| Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit: | | |
| For each hour or part of an hour up to 8 hours | \$(59.60) <u>62.80</u> | |
| For each hour or part of an hour in excess of 8 hours | \$(93.10) <u>98.20</u> | |
| Nonnuclear triennial shop survey and audit: | | |
| When state is authorized inspection agency: | | |
| For each hour or part of an hour up to 8 hours | \$(39.90) <u>42.10</u> | |
| For each hour or part of an hour in excess of 8 hours | \$(59.60) <u>62.80</u> | |
| When insurance company is authorized inspection agency: | | |
| For each hour or part of an hour up to 8 hours | \$(59.60) <u>62.80</u> | |

For each hour or part of an hour in excess of 8 hours ~~\$(93.10)~~ 98.20

Examination fee: A fee of ~~\$(73.70)~~ 77.70 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: An initial fee of ~~\$(25)~~ 26.30 and an annual renewal fee of ~~\$(40)~~ 10.50 along with an annual work card fee of ~~\$(45)~~ 15.80.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of ~~\$(370.10)~~ 390.50 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 08-08-077

**WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed April 1, 2008, 8:52 a.m.]

WAC 230-04-202, 230-04-203, 230-04-204, and 230-08-017, proposed by the gambling commission in WSR 07-19-071 appearing in issue 07-19 of the State Register, which was distributed on October 3, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 08-08-078

**WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed April 1, 2008, 8:53 a.m.]

WAC 230-50-080, 230-50-100, 230-50-160, 230-50-170, 230-50-180, 230-50-350, 230-50-360, 230-50-370, 230-50-

380, 230-50-390, 230-50-400, 230-50-410, 230-50-420, 230-50-520, 230-50-580 and 230-50-800, proposed by the gambling commission in WSR 07-19-076 appearing in issue 07-19 of the State Register, which was distributed on October 3, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 08-08-086

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed April 1, 2008, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-054.

Title of Rule and Other Identifying Information: Chapter 246-650 WAC, Newborn screening, establishes rules to detect, in newborns, congenital disorder leading to development impairment or physical disabilities.

Hearing Location(s): Rosario Resort, Orcas Island, 1400 Rosario Road, Eastsound, WA 98245, on May 14, 2008, at 1:30 p.m.

Date of Intended Adoption: May 29, 2008.

Submit Written Comments to: Michael Glass, mike.glass@doh.wa.gov, 1610 N.E. 150th Street, Shoreline, WA 98155, web site <http://www3.doh.wa.gov/policyreview/>, fax (206) 418-5411, by May 2, 2008.

Assistance for Persons with Disabilities: Contact Desiree Robinson by May 1, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to: Update the definitions in WAC 246-650-010; revise WAC 246-650-020 to add sixteen new disorders to the panel of required screening tests for all newborns; and to provide a timeline for implementation of the screening for the sixteen disorders in WAC 246-650-030. Screening will be conducted by the department of health using the same blood spot specimen currently submitted by hospitals for screening for the ten conditions currently specified in WAC 246-650-020.

Reasons Supporting Proposal: Screening for these sixteen disorders will save lives and prevent disabilities that will occur without early detection and treatment. Following careful review by a newborn screening advisory committee comprised of major stakeholders, the committee has recommended that the board of health add these disorders to the required panel.

Statutory Authority for Adoption: RCW 70.83.050.

Statute Being Implemented: RCW 70.83.020.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Michael Glass, 1610 N.E. 150th, Shoreline, WA 98155, (206) 418-5470.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not impose any costs on small businesses. And, therefore, a small business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Michael Glass, 1610 N.E. 150th, Shoreline, WA 98155, phone (206) 418-5470, fax (206) 418-5415, e-mail mike.glass@doh.wa.gov.

March 31, 2008

Craig McLaughlin

Executive Director

AMENDATORY SECTION (Amending WSR 06-04-009, filed 1/20/06, effective 2/20/06)

WAC 246-650-010 Definitions. For the purposes of this chapter:

(1) "Amino acid disorders" means disorders of metabolism characterized by the body's inability to correctly process amino acids or the inability to detoxify the ammonia released during the breakdown of amino acids. The accumulation of amino acids or their by-products may cause severe complications including mental retardation, coma, seizures, and possibly death. For the purpose of this chapter amino acid disorders include: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria (HCY), maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR I).

(2) "Board" means the Washington state board of health.

~~((2))~~ (3) "Biotinidase deficiency" means a deficiency of an enzyme (biotinidase) that facilitates the body's recycling of biotin. The result is biotin deficiency, which if undetected and untreated, may result in severe neurological damage or death.

~~((3))~~ (4) "Congenital adrenal hyperplasia" means a severe disorder of adrenal steroid metabolism which may result in death of an infant during the neonatal period if undetected and untreated.

~~((4))~~ (5) "Congenital hypothyroidism" means a disorder of thyroid function during the neonatal period causing impaired mental functioning if undetected and untreated.

~~((5))~~ (6) "Cystic fibrosis" means a life-shortening disease caused by mutations in the gene encoding the cystic fibrosis transmembrane conductance regulator (CFTR), a transmembrane protein involved in ion transport. Affected individuals suffer from chronic, progressive pulmonary disease and nutritional deficits. Early detection and enrollment in a comprehensive care system provides improved outcomes and avoids the significant nutritional and growth deficits that are evident when diagnosed later.

~~((6))~~ (7) "Department" means the Washington state department of health.

~~((7))~~ (8) "Fatty acid oxidation disorders" means disorders of metabolism characterized by the inability to efficiently use fat to make energy. When the body needs extra

energy, such as during prolonged fasting or acute illness, these disorders can lead to hypoglycemia and metabolic crises resulting in serious damage affecting the brain, liver, heart, eyes, muscle, and possibly death. For the purpose of this chapter fatty acid oxidation disorders include: Carnitine uptake defect (CUD), carnitine palmitoyl transferase deficiency type 1-A (CPT 1), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium-chain acyl-CoA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).

(9) "Galactosemia" means a deficiency of enzymes that help the body convert the simple sugar galactose into glucose resulting in a buildup of galactose and galactose-1-PO₄ in the blood. If undetected and untreated, accumulated galactose-1-PO₄ may cause significant tissue and organ damage often leading to sepsis and death.

~~((8))~~ (10) "Hemoglobinopathy" means a hereditary blood disorder caused by genetic alteration of hemoglobin which results in characteristic clinical and laboratory abnormalities and which leads to developmental impairment or physical disabilities.

~~((9))~~ "Homocystinuria" means deficiency of enzymes necessary to break down or recycle the amino acid homocysteine resulting in a buildup of methionine and homocysteine. If undetected and untreated may cause thromboembolism, mental and physical disabilities.

~~(10)~~ "Maple syrup urine disease" (MSUD) means deficiency of enzymes necessary to breakdown the branched amino acids leucine, isoleucine, and valine resulting in a buildup of these and metabolic intermediates in the blood. If undetected and untreated may result in mental and physical retardation or death.

~~(11)~~ "Medium chain acyl coA dehydrogenase deficiency" (MCADD) means deficiency of an enzyme (medium chain acyl coA dehydrogenase) necessary to breakdown medium chain length fatty acids. If undetected and untreated, fasting, infection or stress may trigger acute hypoglycemia leading to physical and neurological damage or death.) (11) "Organic acid disorders" means disorders of metabolism characterized by the accumulation of nonamino organic acids and toxic intermediates. This may lead to metabolic crisis with ketoacidosis, hyperammonemia and hypoglycemia resulting in severe neurological and physical damage and possibly death. For the purpose of this chapter organic acid disorders include: 3-OH 3-CH₃ glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA I), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), and propionic acidemia (PROP).

(12) "Newborn" means an infant born in a hospital in the state of Washington prior to discharge from the hospital of birth or transfer.

(13) "Newborn screening specimen/information form" means the information form provided by the department including the filter paper portion and associated dried blood spots. A specimen/information form containing patient information is "Health care information" as defined by the Uniform Healthcare Information Act, RCW 70.02.010(6).

~~(14)~~ ("Phenylketonuria" (PKU) means a deficiency of an enzyme necessary to convert the amino acid phenylalanine into tyrosine resulting in a buildup of phenylalanine in the blood. If undetected and untreated may cause severely impaired mental functioning.

~~(15))~~ "Significant screening test result" means a laboratory test result indicating a suspicion of abnormality and requiring further diagnostic evaluation of the involved infant for the specific disorder.

AMENDATORY SECTION (Amending WSR 06-04-009, filed 1/20/06, effective 2/20/06)

WAC 246-650-020 Performance of screening tests.

(1) Hospitals providing birth and delivery services or neonatal care to infants shall:

(a) Inform parents or responsible parties, by providing a departmental information pamphlet or by other means, of:

(i) The purpose of screening newborns for congenital disorders,

(ii) Disorders of concern as listed in WAC 246-650-020(2),

(iii) The requirement for newborn screening, and

(iv) The legal right of parents or responsible parties to refuse testing because of religious tenets or practices as specified in RCW 70.83.020, and

(v) The specimen storage, retention and access requirements specified in WAC 246-650-050.

(b) Obtain a blood specimen for laboratory testing as specified by the department from each newborn prior to discharge from the hospital or, if not yet discharged, no later than five days of age.

(c) Use department-approved newborn screening specimen/information forms and directions for obtaining specimens.

(d) Enter all identifying and related information required on the specimen/information form following directions of the department.

(e) In the event a parent or responsible party refuses to allow newborn screening, obtain signatures from parents or responsible parties on the department specimen/information form.

(f) Forward the specimen/information form with dried blood spots or signed refusal to the Washington state public health laboratory no later than the day after collection or refusal signature.

(2) Upon receipt of specimens, the department shall:

(a) Perform appropriate screening tests for:

(i) Biotinidase deficiency(;)₂

(ii) Congenital hypothyroidism(;)₂

(iii) Congenital adrenal hyperplasia(;)₂

(iv) Galactosemia(;)₂

(v) Homocystinuria(;)₂

(vi) Hemoglobinopathies(;)₂

(vii) Maple syrup urine disease(;) (MSDU);

(viii) Medium chain acyl-coA dehydrogenase deficiency(, and) (MCADD);

(ix) Phenylketonuria (PKU);

~~((x))~~ (x) Cystic fibrosis;

(xi) The amino acid disorders: Argininosuccinic acidemia (ASA), citrullinemia (CIT), and tyrosinemia type I (TYR 1) according to the schedule in WAC 246-650-030;

(xii) The fatty acid oxidation disorders: Carnitine uptake defect (CUD), carnitine palmitoyl transferase deficiency type 1-A (CPT 1), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD) according to the schedule in WAC 246-650-030;

(xiii) The organic acid disorders: 3-OH 3-CH3 glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (mutase deficiency) (MUT), multiple carboxylase deficiency (MCD), propionic acidemia (PROP) according to the schedule in WAC 246-650-030;

(b) Report significant screening test results to the infant's attending physician or family if an attending physician cannot be identified; and

(c) Offer diagnostic and treatment resources of the department to physicians attending infants with presumptive positive screening tests within limits determined by the department.

AMENDATORY SECTION (Amending WSR 06-04-009, filed 1/20/06, effective 2/20/06)

WAC 246-650-030 Implementation of screening to detect (~~eystie fibrosis~~) amino acid disorders, fatty acid oxidation disorders and organic acid disorders. The department shall implement screening to detect (~~eystie fibrosis~~) the amino acid disorders, fatty acid oxidation disorders, and organic acid disorders listed in WAC 246-650-020 (2)(a)(xi), (xii) and (xiii) as quickly as feasible and not later than (~~June 2006~~) September 2008.

WSR 08-08-087

PROPOSED RULES

STATE BOARD OF HEALTH

[Filed April 1, 2008, 3:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-21-143.

Title of Rule and Other Identifying Information: WAC 246-282-006 *Vibrio parahaemolyticus* control plan.

Hearing Location(s): Rosario Resort, 1400 Rosario Road, Eastsound, WA 98245, on May 14, 2008, at 11:30 a.m.

Date of Intended Adoption: May 14, 2008.

Submit Written Comments to: Jessie DeLoach, Department of Health, Office of Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by May 14, 2008.

Assistance for Persons with Disabilities: Contact Jan Jacobs by May 7, 2008, TTY (800) 833-6388 or 711.

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

the proposal is to protect public health by establishing a state-specific control plan to reduce the incidence of *Vibrio parahaemolyticus*-associated illness (vibriosis). The control plan consists of time-to-temperature controls, training, illness response, record-keeping requirements, and modified hazard analysis critical control point plans.

Reasons Supporting Proposal: In 2006 there was an unprecedented number of vibriosis cases involving Washington shellfish. The state board of health adopted modifications to the existing *Vibrio parahaemolyticus* control plan as an emergency measure for the summer months of 2007 to better protect shellfish consumers from vibriosis. The permanent rule is needed to establish ongoing state-specific control measures.

Statutory Authority for Adoption: Chapter 69.30 RCW.

Statute Being Implemented: Chapter 69.30 RCW.

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jessie DeLoach, 111 Israel Road S.E., Tumwater, WA, (360) 236-3302.

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

Small Business Economic Impact Statement

Brief Description of the Rule: The *Vibrio parahaemolyticus* control plan outlined in the proposed Washington state board of health rule is intended to reduce the risk to the public of acquiring vibriosis from the consumption of raw and undercooked oysters. The rule is designed to do this by establishing shorter time-to-temperature controls during the months of most concern (May through September) in growing areas most likely to be associated with vibriosis. This rule also establishes additional time-to-temperature controls and potential growing area closure requirements in response to sporadic cases of vibriosis.

The proposed rule also imposes requirements for records that reflect the time of harvest, in addition to the date and the time the product is placed under temperature control. This record requirement is necessary to verify appropriate handling that limits pathogen growth in oysters intended for raw consumption.

In order for this rule to be properly implemented and practiced by the commercial oyster growers in Washington state, a training requirement for all who intend to commercially harvest raw oysters for human consumption is established by the proposed rule.

Finally, this rule requires changes in the hazard analysis critical control point (HACCP) plans of licensed dealers. The HACCP plan is a food safety process control system that establishes a requirement for licensed harvesters to have a written *Vibrio parahaemolyticus* control plan and checklist to document compliance with the handling and record-keeping requirements of this rule.

Small Business Economic Impact Statement (SBEIS) Requirement: Yes, an SBEIS is required for this rule.

Industries Affected by the Rule: The shellfish fishing industry, North American Industry Classification System

Code (NAICS Code) 114112, is the only industry affected by this rule.

Costs of Complying with the Rule: The largest 10% of shellfish dealers consists of some shucker packer companies, some shellstock shipper companies, and one harvester company. They all share the same characteristic, regardless of license category, and that is that they all have multiple crews working either a very large farm or several to many farms throughout Washington's estuarine waters. The small companies on the other hand typically have one or two employees or just the owner doing the harvesting. The largest companies have from three to eight crews harvesting oysters each tide; each team leader maintains the harvest records for that team.

The costs of compliance for the proposed rule are associated with time-to-temperature control including effects on tribal harvest. There is no quantifiable cost attributed to sporadic illness response, record keeping, training, or modification of HACCP plans and creation of harvest checklists.

Time-to-Temperature Control: The department of health (DOH) assumes that companies will likely choose from two options to comply with the time-to-temperature requirements of the proposed rule: Reduce harvest times to only those identified in the control plan for the geographic location and month of year, or submerge oysters for storage and later retrieval. The department further assumes that 50% of the approximately two hundred licensed companies will choose to reduce harvest times and 50% will choose to use submerged harvest techniques. Under this assumption, the compliance costs for the proposed requirements are the opportunity costs of the hours that harvesting is not conducted beyond the specified time-to-temperature control. The costs estimated below are based on annual Puget Sound harvest figures for oysters. Willapa and Grays Harbor would see reduced harvest opportunities with a reduced time-to-temperature control from twelve to ten hours for July and August only. However, by basing the calculation of costs on annual production rates for the more productive growing areas in Puget Sound, the reduced harvest opportunity for Willapa and Grays Harbor are adequately addressed. Although time-to-temperature control for May is reduced from thirty-six hours to twelve hours, there are no costs calculated for this change. The department assumes that dealers are meeting this harvest time currently in preparation for warmer weather months.

For those companies that elect to store oysters submerged for later retrieval as provided for in the proposed rule, the harvest curtailment would not apply. However, this method could probably only be employed by about half of the two hundred companies identified above because of equipment requirements and location considerations. This means approximately one hundred companies would be able to continue harvesting at normal capacity May through September with no lost revenue.

For those companies who elect to harvest within the time-to-temperature controls specified in the proposed rule, the department assumes available harvest time would be reduced in Puget Sound from twelve hours to five hours during the months of June and September, and from twelve hours to four hours in July and August. Assuming twenty-

eight days of harvest for each of these months, the result is a decrease in hours available for harvest of three hundred ninety-two hours total during June and September, and four hundred forty-eight hours during July and August. Natural tidal cycles limit the amount of time harvesting can occur.

Harvesting can only occur during daylight hours and low tides. Because the low tide for a twenty-four hour cycle intermittently occurs during the night when harvesting cannot be done, this analysis does not assume a direct reduction in harvest opportunity from twelve hours for all four months of control. (Based on the hours calculated above, direct reductions would be 58% in June and September, and 67% in July and August.) Instead, harvest opportunity reductions are calculated based on projected tide cycles for 2008 taking into account the time of day for each low tide. This equates to a 29% reduction in available harvest time for June and September, and a 33% reduction in available harvest time for July and August. Because tide cycles change yearly, these changes will vary from year to year.

The department assumes that 65% of the 31,000,000 pounds of shellfish harvested annually in Washington is oysters harvested from Puget Sound, including those intended for raw consumption (approximately 20,150,000 pounds). The department also assumes equal distribution of harvested oysters across the twelve months (1,679,167 pounds monthly). The total volume of oysters normally harvested during June through September (6,716,668) equates to a retail value of \$4,365,834.00 (6,716,668 divided by five pounds per dozen, multiplied by \$3.25 per dozen). This averages to \$1,091,459.00 per month.

Applying the 29% reduction in available harvest time for June and September results in an estimated reduced income of \$316,523.00 (\$1,091,459.00 multiplied by .50 of companies, multiplied by two months, multiplied by 0.29). Applying the 33% reduction in available harvest time for July and August results in an estimated reduced income of \$360,181.00 (\$1,091,459.00 multiplied by .50 of companies, multiplied by two months, multiplied by 0.33). The total estimated annual reduction is \$676,704.00.

Based on the assumptions identified above, the total estimated cost of compliance for the proposed time-to-temperature control is \$676,704.00. However, actual costs are expected to be different due to the following factors: Additional costs for wages associated with transporting oysters after being submerged, reduced costs associated with oysters that don't meet time-to-temperature control that are sold under a "for cook only" label, reduced costs associated with the practice of icing oysters to achieve temperature control while continuing to harvest during the entire low tide, and reduced costs associated with the fact that there is not a strict one-to-one relationship between available harvest time and income because such factors as weather are being discounted. With these variables, the department assumes the cost estimated in this analysis for reduced time-to-temperature control requirements is overestimated.

There are harvesters for whom the proposed time-to-temperature control would impose a unique cost. Tribal harvesters, whose growing areas are often remote and difficult to access, might have to forego harvest in some instances with a resulting loss in revenue of \$110.00 to \$220.00 per harvest

(\$2.20 per dozen oysters harvested, multiplied by a typical daily harvest of fifty to one hundred dozen oysters per harvester). There are fourteen tribes that harvest oysters in Washington state with approximately twelve harvesters per tribe for a total of one hundred sixty-eight harvesters. A second concern of tribal harvesters is the lack of security at some of their growing areas, which are also public beaches or state parks. If they were forced to submerge their days' harvest of oysters prior to delivering them to the buyer, they could lose some to all of their oysters to theft which, again, would amount to \$110.00 to \$220.00 per harvest for each harvester. The estimated cost of this requirement is based on the percentage of licensed companies that did not harvest oysters for raw consumption in 2007: 10%. The estimated cost of this requirement to tribal harvesters ranges from \$31,790.00 (\$110.00 multiplied by seventeen harvesters multiplied by seventeen weeks) to \$63,580.00 (\$220.00 multiplied by seventeen harvesters multiplied by seventeen weeks).

The estimated range of cost associated with reduced time-to-temperature control, including costs for tribal harvesters, is from \$679,883.00 to \$740,284.00.

Disproportionate Impact on Small Businesses: To calculate the impact of the proposed regulations for small businesses, the department assumes that the size of a business is determined by number of employees. Of the two hundred companies affected by this rule, three are considered large with approximately fifty employees each for a total of one hundred fifty employees for large businesses, and one hundred ninety-seven are considered small businesses with an average of two employees each for a total of three hundred ninety-four.

The department has determined that this rule does not impose a disproportionate impact on small businesses compared to large businesses.

Time-to-Temperature Control: The total estimated annual reduction of income associated with this requirement is at most \$740,284.00. Of the oysters produced in Washington state, approximately 67% are produced by large businesses and approximately 33% are from small businesses. Thus, the loss to large and small business is apportioned according to these percentages. This equates to a loss for large businesses of \$495,990.00 equaling \$3,307.00 per employee. For small business, the total cost is \$244,294.00 equaling \$620.00 per employee. This indicates that there is no disproportionate impact to small businesses on a per employee basis.

Mitigation Measures: Because the department has determined that the rule does not impose a disproportionate impact on small businesses, no mitigation measures are necessary.

Small Business Involvement in Rule Development: DOH staff worked closely with industry and interested constituents such as the Northwest Indian Fisheries Commission, Point No-Point Treaty Council, the United States Food and Drug Administration, individual tribes, and the Pacific Coast Shellfish Growers Association, to minimize the burden of this rule. The office of shellfish and water protection had five meetings with a *Vibrio* Advisory Group selected from among the interested parties listed above. Of the dozen members of the *Vibrio* Advisory Group that represented oyster harvester[s] and dealers, one represented Washington's largest

dealer and the remainder represented companies with fewer than fifty employees.

Jobs Created or Lost as a Result of the Rule: The proposed rule is likely to result in temporary unemployment as a result of harvest area closures for oysters intended for raw consumption due to sporadic cases of *Vibrio parahaemolyticus*-associated illness. This job loss is temporary during the summer months when the risk of *Vibrio* is greatest. Once the summer has ended and the increased risk of *Vibrio* has passed, employees are rehired. The largest companies, the thirty-five that make up the top 10%, have historically kept as many people employed as possible, assigning them to farm-work on the shellfish beds and postponed repair, maintenance, and construction tasks around the company's physical facilities. However, temporary unemployment will remain a hazard of employment in the oyster industry.

A copy of the statement may be obtained by contacting Jessie DeLoach, Department of Health, P.O. Box 47824, Olympia, WA 98504, phone (360) 236-3302, fax (360) 236-2257, e-mail jessie.deloach@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jessie DeLoach, Department of Health, P.O. Box 47824, Olympia, WA 98504, phone (360) 236-3302, fax (360) 236-2257, e-mail jessie.deloach@doh.wa.gov.

March 31, 2008
Craig McLaughlin
Executive Director

NEW SECTION

WAC 246-282-006 Washington state *Vibrio parahaemolyticus* control plan. (1) The Washington state *Vibrio parahaemolyticus* control plan, also known as the control plan, establishes harvest and transport requirements for oysters intended for raw consumption during the months of May through September. This section does not apply to shucked oyster meats labeled "for cooking only." The requirements of this section are in addition to Chapter VIII of the 2005 National Shellfish Sanitation Program Model Ordinance (NSSP), Requirements for Harvesters, .03 Shellfish Temperature, Control Option 2; and consists of:

- (a) Time-to-temperature controls based on the growing area and month of the year;
- (b) Harvest record requirements;
- (c) *Vibrio* illness response requirements;
- (d) Training requirements; and
- (e) Hazard Analysis Critical Control Point (HACCP) plan and harvest checklist requirements.

(2) All Puget Sound growing areas, including the Strait of Juan de Fuca, are subject to the requirements of this section. Growing areas in Grays Harbor and Willapa Bay where oysters have been epidemiologically associated (linked) as the source of any *Vibrio parahaemolyticus*-associated illness are also subject to the requirements of this section.

(3) The department may grant an exemption to the control plan for Puget Sound growing areas, including the Strait of Juan de Fuca, where there has been no epidemiologically associated (linked) *Vibrio parahaemolyticus*-associated ill-

ness if the licensed harvester or dealer can demonstrate safe and effective harvest and transportation methods, as developed in a written agreement.

(4) Time-to-temperature controls are:

Table 1
Puget Sound Growing Areas
(including the Strait of Juan de Fuca):

| Months of Control | Time-to-Temperature Control |
|--------------------|-----------------------------|
| May | Twelve hours |
| June and September | Five hours |
| July and August | Four hours |

Table 2
Coastal Growing Areas:

| Months of Control | Time-to-Temperature Control |
|-------------------|-----------------------------|
| July and August | Ten hours |

(5) Licensed dealers and harvesters shall maintain harvest records showing the time of harvest to assure compliance with the control plan. The harvest times begin as follows:

(a) Intertidal (exposed) harvest - Time must begin after the first oysters to be harvested are exposed to the air by the receding tide.

(b) Submerged harvest - Time must begin after the first oysters harvested are exposed to the air and have been placed onto a conveyance, such as a barge or boat. Submerged harvest includes dredge harvesting or retrieval of harvest tubs, bags, baskets, or other containers of oysters previously filled which have been under water for a minimum of one hour for coastal areas and four hours for Puget Sound growing areas.

(6) In the event of two sporadic *Vibrio parahaemolyticus*-associated illnesses within thirty days where oysters from a single growing area are epidemiologically associated (linked) as the source, all licensed harvesters and dealers in the implicated growing area shall reduce the time-to-temperature control by one hour. The implicated growing area shall remain under the reduced time-to-temperature control throughout the control months for that area as defined in Table 1 or 2 of subsection (4) of this section.

(7) In the event of two additional sporadic *Vibrio parahaemolyticus*-associated illnesses within thirty days under the one hour reduced time-to-temperature control where oysters from a single growing area are epidemiologically associated (linked) as the source, the growing area shall be closed to harvest and shipment of oysters intended for raw consumption throughout the control months as defined in Table 1 or 2 of subsection (4) of this section. If the two additional *Vibrio parahaemolyticus*-associated illnesses are attributed to the same licensed harvester or dealer as the first two illnesses, the department shall conduct an investigation in accordance with the requirements as stated in the 2005 NSSP, Chapter II, Risk Assessment and Risk Management, to determine if the illnesses resulted from dealer practices or the growing area.

(8) An exemption to closure identified in subsection (7) of this section may be granted if the licensed harvester or dealer can demonstrate to the department, as developed in a written agreement, that an additional one hour reduction in time-to-temperature controls can be successfully implemented. If approved, the licensed harvester or dealer shall remain under the reduced time-to-temperature control throughout the control months for that area as defined in Table 1 or 2 of subsection (4) of this section.

(9) If the required time-to-temperature control period is not met, the licensed harvester or dealer shall either:

(a) Destroy the oysters; or

(b) Remove all oysters from containers, disperse them within the original growing area, and allow a minimum of twenty-four hours for purging before reharvesting.

(10) In the event of a *Vibrio parahaemolyticus*-associated illness outbreak where oysters from a particular growing area are epidemiologically associated (linked) as the source, the requirements as stated in the 2005 NSSP, Chapter II, Risk Assessment and Risk Management, shall apply.

(11) All licensed harvesters and dealers shall complete department-approved training specific to the control plan prior to harvesting or shipping oysters intended for raw consumption during the months of May through September. Licensed harvesters and dealers who complete the training shall provide the training to those responsible for the on-site management of harvest activities for their operation.

(12) Following completion of the training required in subsection (11) of this section, all licensed harvesters intending to harvest oysters intended for raw consumption from May through September shall develop a harvest plan and checklist that defines the harvest protocols that will be employed to assure oysters are placed under temperature control as defined in Table 1 or 2 of subsection (4) of this section, and subsection (6) of this section. Licensed dealers (other than harvesters) shall amend their Hazard Analysis Critical Control Point (HACCP) plans to define what harvest protocols will be employed to assure oysters are placed under temperature control as defined in Table 1 or 2 of subsection (4) of this section, and subsection (6) of this section.

WSR 08-08-089
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed April 1, 2008, 3:36 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amending WAC 246-10-606 Administrative procedure—Adjudicative proceedings—Standard of proof and 246-11-520 Model procedural rules for boards—Standard of proof.

Hearing Location(s): Department of Health, Point Plaza East Room 152, 310 Israel Road S.E., Tumwater, WA 98501, on May 27, 2008, at 10:00 a.m.

Date of Intended Adoption: June 25, 2008.

Submit Written Comments to: Margaret Gilbert, Department of Health, P.O. Box 47873, Olympia, WA 98504-7873,

web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4913, by May 16, 2008.

Assistance for Persons with Disabilities: Contact Margaret Gilbert by May 16, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules would amend the procedural rules for adjudicative proceedings conducted by the department of health and its affiliated health profession boards and commissions. The rules would be amended to reconcile the rules with case law.

Reasons Supporting Proposal: The Washington supreme court established the standard of proof for health profession disciplinary hearings in *Nguyen v. DOH*, 144 Wn.2d 516 (2001) and *Ongom v. DOH*, 159 Wn.2d 132 (2006). The standard of proof for other adjudicative proceedings conducted by the department was not addressed in those cases. The proposed amendments would reconcile the rules with the law.

Statutory Authority for Adoption: RCW 18.130.050 and 34.05.220.

Statute Being Implemented: RCW 34.05.220.

Rule is necessary because of state court decision, *Nguyen v. DOH*, 144 Wn.2d 516 (2001) and *Ongom v. DOH*, 159 Wn.2d 132 (2006).

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Gilbert, P.O. Box 47873, Olympia, WA 98504-7873, (360) 236-4913; Implementation: Karl Hoehn, P.O. Box 47873, Olympia, WA 98504-7873, (360) 236-4717; and Enforcement: Laura Farris, P.O. Box 47879, Olympia, WA 98504-7879, (360) 236-4677.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310 (4)(b), an SBEIS is not required for proposed rules that relate only to internal governmental operations and that are not subject to violation by a nongovernmental party.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts rules that relate only to internal governmental operations that are not subject to violation by a nongovernmental party.

April 1, 2008
Mary C. Selecky
Secretary

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

WAC 246-10-606 Standard of proof. (1) The order shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(2) In all cases involving an application for license the burden shall be on the applicant to establish that the application meets all applicable criteria. In all other cases the burden

is on the department to prove the alleged factual basis set forth in the initiating document.

(3) Except as otherwise ((provided)) required by ((statute)) law, the burden in all cases is a preponderance of the evidence.

AMENDATORY SECTION (Amending Order 347, filed 3/24/93, effective 4/24/93)

WAC 246-11-520 Standard of proof. (1) The order shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(2) In all cases involving an application for license the burden shall be on the applicant to establish that the application meets all applicable criteria. In all other cases the burden is on the department to prove the alleged factual basis set forth in the initiating document.

(3) Except as otherwise ((provided)) required by ((statute)) law, the burden in all cases is a preponderance of the evidence.

WSR 08-08-090
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed April 1, 2008, 4:42 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Revisions to the Group A public water supplies regulations, chapter 246-290 WAC, are necessary to be consistent with RCW 70.119A.180 Water use efficiency requirements.

Hearing Location(s): Department of Health, Point Plaza East, Conference Room 152, 310 Israel Road S.E., Tumwater, WA 98504, on May 6, 2008, at 2:00 p.m.

Date of Intended Adoption: May 20, 2008.

Submit Written Comments to: Theresa Phillips, Office of Drinking Water, P.O. Box 47822, Olympia, WA 98504-7822, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2252, by May 6, 2008.

Assistance for Persons with Disabilities: Contact Theresa Phillips by April 29, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The objective of the rule revision is to amend the water use efficiency goal setting requirement to align with RCW 70.119A.180 (4)(c) by requiring that water use efficiency goals are set for consumers.

Reasons Supporting Proposal: The proposed rule amendment is necessary to meet the direction in the statute.

Statutory Authority for Adoption: RCW 70.119A.180.

Statute Being Implemented: RCW 70.119A.180.

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, Implementation and Enforcement: Theresa Phillips, 243 Israel Road S.E., Tumwater, WA 98504-7822, (360) 236-3147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310 (4)(e), an SBEIS is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

March 31, 2008
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 07-02-025B, filed 12/22/06, effective 1/22/07)

WAC 246-290-830 Water use efficiency goal setting.

(1) The elected governing board or governing body of the public water system shall establish water use efficiency goals within one year of the effective date of this rule for systems serving one thousand or more total connections, and within two years of the effective date of this rule for systems serving less than one thousand total connections.

(2) Water use efficiency goals must be designed to enhance the efficient use of water by the water system's ((and/or its)) consumers.

(3) If a municipal water supplier determines that further reductions over current consumption levels are not reasonably achievable, the municipal water supplier shall provide justification that considers historic water use efficiency performance and investment and any other factors that support that determination. Justification must be provided in water use efficiency programs developed under WAC 246-290-810 and in water use efficiency performance reports developed under WAC 246-290-840.

(4) Municipal water suppliers must provide documentation when requested by the department and in water use efficiency programs developed under WAC 246-290-810 that demonstrates the following goal setting requirements have been met:

(a) Goals shall be set in a public forum that provides opportunity for consumers and the public to participate and comment on the water use efficiency goals;

(b) Public notice must occur at least two weeks prior to the public forum. Public notice must include the purpose, date, time, and place of the forum, and where materials supporting the rationale for the proposed goals can be reviewed;

(c) The elected governing board or governing body of the public water system shall review and consider all comments received;

(d) The following must be made available to the public for the purpose of fully documenting the basis for each goal:

(i) The information listed under WAC 246-290-810(4);

(ii) Annual water use efficiency performance reports prepared under WAC 246-290-840;

(iii) Water supply characteristics description in accordance with WAC 246-290-100 (4)(f)(iii)(B) or source description in accordance with WAC 246-290-105 (4)(f); and

(iv) A summary of the comments received and how they were considered.

(5) Existing public processes may be used if all requirements listed under subsection (4) of this section are met.

(6) Water use efficiency goals must include:

(a) Consideration of the system's forecasted demand and water supply characteristics;

(b) Measurable outcomes in terms of reduced or maintained water production or usage. Outcomes may be expressed on a per capita, per connection, total system, or other basis as deemed appropriate by the municipal water supplier;

(c) A schedule for achieving the water use efficiency goals; and

(d) Implementation schedule for each water use efficiency measure selected under WAC 246-290-810(4).

(7) The elected governing board or governing body of the public water system shall evaluate and reestablish water use efficiency goals following the process identified in subsection (4) of this section at least every six years and as part of a water system plan approval under WAC 246-290-100 or small water system management program approval under WAC 246-290-105.

(8) Water use efficiency goals may be changed at any time in accordance with subsection (4) of this section. Changes to goals must be identified in the next performance report.

(9) Water use efficiency programs must be modified if any water use efficiency goal is not met. Program modifications must be designed to achieve the system's water use efficiency goals.

WSR 08-08-093
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
[Filed April 1, 2008, 4:56 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 5.07 (Annual Registration Fees); 6.04 (Notice of Construction Fees); 7.07 (Operating Permit Fees); and Regulation III, Section 4.03 (Asbestos Notification Requirements).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on May 22, 2008, at 9:15 a.m.

Date of Intended Adoption: May 22, 2008.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA

98101, e-mail lynns@psc Clean Air, fax (206) 343-7522, by May 21, 2008.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by May 15, 2008, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency annually reviews the fee structure for the registration, notice of construction, operating permit, and asbestos programs to determine if fees collected cover the costs incurred by the programs. Fee increases are proposed for each of the programs due to an increase in the cost-of-living, and inflationary impacts to other operational costs.

In addition, technical changes/clarifying edits are proposed as follows:

In Regulation I, Section 5.07 (c)(6): Add a fee category for large commercial composting operations (with compost processing capacity of $\geq 100,000$ tons per year) to reflect the amount of staff time required.

In Regulation I, Section 6.04(a) Electric Generation Project: Remove the MW ratings paired with the combined heat input capacity, and rely solely on the heat input capacity to set the fee category because there is not always a one MMBtu to MW ratio.

In Regulation I, Section 7.07 (b)(1)(ii): Remove saw-mills from fee category (ii) to reflect an equity adjustment based on the amount of staff time required.

Reasons Supporting Proposal: The proposal aligns each of the four programs with their projected operating expenses.

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.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, Suite 105, 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.

April 1, 2008
Dennis J. McLerran
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 5.07 ANNUAL REGISTRATION FEES

(a) The Agency shall assess annual fees as set forth in Section 5.07(c) of this regulation for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the program, which shall be defined as initial registration and annual or other periodic reports from the source

owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program. Payment of these fees by the owner or operator of a source shall maintain its active registration status (even if it is not actively operating).

(b) Upon assessment by the Agency, registration fees are due and payable within 45 days of the date of the invoice. They shall be deemed delinquent if not fully paid within 45 days of the date of the invoice and shall be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$1,000. Persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(c) Except as specified in Section 5.07 (d) and (e) of this regulation, registered sources shall be assessed a fee of (~~(\$935)~~) \$1,000, plus the following fees:

(1) Sources subject to a federal emission standard as specified in Section 5.03 (a)(1) of this regulation shall be assessed \$1,750 per subpart of 40 CFR Parts 60-63;

(2) Sources subject to a federally enforceable emission limitation as specified in Section 5.03 (a)(2) or meeting the emission thresholds specified in Section 5.03 (a)(3) of this regulation shall be assessed \$2,000;

(3) Sources subject to the emission reporting requirements under Section 5.05(b) of this regulation shall be assessed (~~(\$23)~~) \$25 for each ton of CO and (~~(\$46)~~) \$50 for each ton of NO_x, PM₁₀, SO_x, HAP, and VOC, based on the emissions reported during the previous calendar year;

(4) Sources with more than one coffee roaster installed on-site that are approved under a Notice of Construction Order of Approval shall be assessed \$2,000; (~~and~~)

(5) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of $< 100,000$ tons per year shall be assessed \$5,000; ~~and((-))~~

(6) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of $\geq 100,000$ tons per year shall be assessed \$10,000.

(d) Gasoline dispensing facilities shall be assessed the following fees based on their gasoline throughput during the previous calendar year (as certified at the time of payment):

- (1) More than 6,000,000 gallons . . . (~~(\$3,300)~~) \$3,550;
- (2) 3,600,001 to 6,000,000 gallons . . . (~~(\$1,650)~~) \$1,765;
- (3) 1,200,001 to 3,600,000 gallons . . . (~~(\$1,100)~~) \$1,175;
- (4) 840,001 to 1,200,000 gallons (~~(\$550)~~) \$590;
- (5) 200,001 to 840,000 gallons (~~(\$275)~~) \$295.

(e) The following registered sources shall be assessed an annual registration fee of (~~(\$140)~~) \$120, provided that they

meet no other criteria listed in Section 5.03(a) of this regulation:

- (1) Sources with spray-coating operations subject to Section 9.16 of this regulation that use no more than 4,000 gallons per year of total coatings and solvents;
- (2) Gasoline dispensing facilities subject to Section 2.07 of Regulation II with gasoline annual throughput during the previous calendar year (as certified at the time of payment) of no more than 200,000 gallons;
- (3) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;
- (4) Unvented dry cleaners subject to Section 3.03 of Regulation III; and
- (5) Batch coffee roasters subject to notification under Section 6.03 (b)(11) of this regulation.

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) <u>\$1,000</u>) |
| (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) <u>\$700</u>) |
| SEPA Threshold Determination (MDNS, under Regulation I, Section 2.07) | \$1,500 |
| Public Notice (under WAC 173-400-171)(+ publication costs) | \$500 |
| <u>Public Hearing (under WAC 173-400-171)(+ publication costs, if separate public notice)</u> | <u>\$500</u> |
| 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) <u>\$700</u>) |
| Major Source, Major Modification, or Emission Increases Greater than Prevention of Significant Deterioration (PSD) Thresholds (under WAC 173-400-112 or WAC 173-400-113) (+ Ecology fees) | \$5,000 |
| 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)(+ Ecology fees) | \$5,000 |
| 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 pro-

vided 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.

AMENDATORY SECTION

REGULATION I SECTION 7.07 OPERATING PERMIT FEES

(a) The Agency shall assess annual operating permit fees as set forth in Section 7.07(b) below to cover the cost of administering the operating permit program.

(b) Upon assessment by the Agency, the following annual operating permit fees are due and payable within 45 days of the invoice date. They shall be deemed delinquent if not fully paid within 90 days of the date of the invoice and will be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$5,000. In addition, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(1) Sources in the following North American Industry Classification System (NAICS) codes (*North American Industry Classification System Manual*, U.S. Executive Office of the President, Office of Management and Budget, 1997), or sources subsequently determined by the control officer to be assigned to either Section 7.07 (b)(1)(i) or 7.07 (b)(1)(ii) shall be subject to the following facility fees:

(i) Operating permit sources with the following NAICS codes:

| NAICS | NAICS Description | Fee |
|--------|---------------------------------------|-----|
| 221112 | Fossil Fuel Electric Power Generation | |
| 324110 | Petroleum Refineries | |
| 327213 | Glass Container Manufacturing | |
| 327310 | Cement Manufacturing | |

| NAICS | NAICS Description | Fee |
|--------|--|--|
| 331111 | Iron and Steel Mills | |
| 336411 | Aircraft Manufacturing | |
| 336413 | Other Aircraft Parts and Auxiliary Equipment Manufacturing | |
| 928110 | National Security | |
| | |((\$40,000)) <u>\$44,000</u> |

(ii) Operating permit sources with the following NAICS codes:

| NAICS | NAICS Description | Fee |
|---------------------|--|--|
| 311119 | Other Animal Food Manufacturing | |
| 311812 | Commercial Bakeries | |
| (321113) | Sawmills) | |
| 321912 | Cut Stock, Resawing Lumber, and Planing | |
| 321918 | Other Millwork (including Flooring) | |
| 321999 | All Other Miscellaneous Wood Product Manufacturing | |
| 322222 | Coated and Laminated Paper Manufacturing | |
| 326140 | Polystyrene Foam Product Manufacturing | |
| 327121 | Brick and Structural Clay Tile Manufacturing | |
| 332996 | Fabricated Pipe and Pipe Fitting Manufacturing | |
| | |((\$10,000)) <u>\$11,000</u> |

(iii) Operating permit sources with NAICS codes other than listed above.(~~(\$20,000)~~) \$22,000

(2) Additional emission rate fees shall be paid in addition to the annual operating permit fees of Section 7.07 (b)(1):

(~~(\$23)~~) \$25 for each ton of CO reported in the previous calendar year, and

(~~(\$46)~~) \$50 for each ton of NOx reported in the previous calendar year, and

(~~(\$46)~~) \$50 for each ton of PM10 reported in the previous calendar year, and

(~~(\$46)~~) \$50 for each ton of SOx reported in the previous calendar year, and

(~~(\$46)~~) \$50 for each ton of VOC reported in the previous calendar year, and

(~~(\$46)~~) \$50 for each ton of HAP reported in the previous calendar year.

(c) In addition to the fees under Sections 7.07 (b)(1) and (b)(2) above, the Agency shall, on a source-by-source basis, assess the following fees:

(1) \$250 for administrative permit amendments [WAC 173-401-720], and

(2) for minor permit modifications [WAC 173-401-725 (2) and (3)], a fee equal to 10% of the annual operating permit fee, not to exceed \$5,000, and

(3) for the original issuance [WAC 173-401-700], significant modification [WAC 173-401-725(4)], reopening for

cause [WAC 173-401-730], or renewal [WAC 173-401-710] of an operating permit, a fee equal to 20% of the annual operating permit fee, not to exceed \$10,000, and

(4) to cover the costs of public involvement under WAC 173-401-800, and

(5) to cover the costs incurred by the Washington State Department of Health in enforcing 40 CFR Part 61, Subpart I and chapter 246-247 WAC.

(d) In addition to the fees described under Sections 7.07 (b) and (c) above, the Agency shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology under chapter 173-401 WAC to cover the Department of Ecology's program development and oversight costs.

(e) Continued payment to the Agency of the annual operating permit fee maintains the operating permit and the status of the source as an operating facility.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

REGULATION III SECTION 4.03 ASBESTOS NOTIFICATION REQUIREMENTS

(a) General Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the appropriate nonrefundable fee and any additional information requested by the Control Officer, has been submitted to the Agency in accordance with the waiting period and fee requirements in Section 4.03(d) of this regulation. Except for the annual notification requirements in Section 4.03 (a)(8) of this regulation, the notification must be submitted on approved forms through the Agency website.

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects involving less than 10 linear feet of friable, asbestos-containing material on pipes and/or 48 square feet of friable, asbestos-containing material on other components (per structure, building, or vessel, per calendar year).

(3) Notification is not required for removal and disposal of nonfriable, asbestos-containing material.

(4) Notification is required for all demolitions involving structures with a projected roof area greater than 120 square feet, even if no asbestos-containing material is present.

(5) All demolitions require a 10-day waiting period unless waived under Section 4.03 (c)(1) of this regulation.

(6) A printout of the notification, all amendments to the notification, and the asbestos survey shall be available for

inspection at all times at the asbestos project or demolition site.

(7) A notification for multiple asbestos projects or demolitions may be submitted on one form if the structures are located in a contiguous area.

(8) Annual Notification

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(A) The annual notification shall be filed with the Agency before commencing work on any asbestos project included in an annual notification;

(B) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section is less than 260 linear feet on pipes and/or less than 160 square feet on other components; and

(C) The property owner submits quarterly written reports to the Control Officer on Agency-approved forms within 15 days after the end of each calendar quarter.

(b) Amendments

(1) An amendment shall be submitted to the Control Officer in a notification through the Agency website for the following changes and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this regulation:

(A) Changes between asbestos and demolition project types;

(B) Increases in the job size category that increase the fee;

(C) Changes in the start date; or

(D) Changes in the completion date.

(2) Amendments may not be used to add or change project site addresses listed on a previously submitted notification.

(c) Emergencies

(1) The waiting period may be waived if an asbestos project or demolition must be conducted immediately because of any of the following:

(A) There was a sudden, unexpected event that resulted in a public health or safety hazard;

(B) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

(C) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

(D) The project must proceed to avoid imposing an unreasonable burden.

(2) The waiting period and fees may be waived for disposal of abandoned, (without the knowledge or consent of the property owner) friable, asbestos-containing material by written approval of the Control Officer.

(d) Waiting Period and Fees

| Project | Waiting Period | Asbestos Fee | Demolition Fee |
|--------------------------|----------------------------|-----------------------------------|----------------|
| Single-Family Residence: | | | |
| • Asbestos Project | prior written notification | ((\$25)) <u>\$30</u> | |

| Project | Waiting Period | Asbestos Fee | Demolition Fee |
|---|---|---------------------------------|--------------------------------|
| • Demolition (with or without asbestos project) | 10 days | \$0 | (\$50) <u>\$75</u> |
| Other than Single-Family Residence: | | | |
| • less than 10 linear ft and/or • less than 48 square ft | 10 days for demolition | \$0 | (\$50) <u>\$75</u> |
| • 10 - 259 linear ft and/or 48 - 159 square ft | prior written notification for asbestos | (\$50) <u>\$75</u> | |
| | 10 days for demolition | | (\$50) <u>\$75</u> |
| • 260 - 999 linear ft and/or 160 - 4,999 square ft | 10 days | (\$200) <u>\$250</u> | (\$50) <u>\$75</u> |
| • 1,000+ linear ft and/or 5,000+ square ft | 10 days | (\$600) <u>\$750</u> | (\$50) <u>\$100</u> |
| Emergency - 4.03(c)* | prior written notification | applicable fees+ \$50 | |
| Amendment - 4.03(b) | prior written notification | applicable fees+ \$25 | |
| Annual Notice of Intent - 4.03 (a)(8) | prior written notification | \$1,000 | |

*Single-family residences are exempt from the emergency fee.

WSR 08-08-095
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed April 1, 2008, 5:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-147.

Title of Rule and Other Identifying Information: Chapter 296-150I WAC, Manufactured housing installer training and certification program.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., S129, Tumwater, WA, on May 7, 2008, at 9:00 a.m.; and at the Department of Labor and Industries, 15 West Yakima Avenue, Suite 100, Yakima, WA, on May 8, 2008, at 10:00 a.m.

Date of Intended Adoption: May 20, 2008.

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 May 8, 2008.

Assistance for Persons with Disabilities: Contact Sally Elliott by April 15, 2008, (360) 902-6411 or yous235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule making is a result of SHB 2118, which passed the 2007 legislature. This bill transferred the mobile and manufactured home installation program and the state administrative agency (SAA) programs from the community, trade, and economic development (CTED) to the department of labor and industries (L&I). Therefore, the department needs to adopt new rules to be consistent with the statute.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 43.22A RCW and chapter 432, Laws of 2007 (SHB 2118).

Statute Being Implemented: Chapter 43.22A RCW and chapter 432, Laws of 2007 (SHB 2118).

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: Pete Schmidt, Tumwater, (360) 902-5571; Implementation and Enforcement: Patrick Woods, Tumwater, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined the proposed rules do not require a small business economic impact statement because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule based upon Washington state statutes and clarifying the rule for ease of use and understanding (see RCW 34.05.310 (4)(c) and (d)).

A cost-benefit analysis is not required under RCW 34.05.328. The department determined the proposed changes do not require a cost-benefit analysis because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule based upon Washington state statutes and clarifying the rule for ease of use and understanding (see RCW 19.85.025 referencing RCW 34.05.328 (5)(b)(iii) and (iv)).

April 1, 2008
Judy Schurke
Director

Chapter 296-150I WAC

MANUFACTURED HOME INSTALLER TRAINING
AND CERTIFICATION PROGRAMNEW SECTION

WAC 296-150I-0010 Authority, purpose, scope. This chapter is authorized by chapter 43.22A RCW, Mobile and manufactured home installation, which requires the department to train and certify manufactured home installers.

NEW SECTION

WAC 296-150I-0020 What definitions apply to this chapter? (1) "**Administrative law judge**" is any person appointed by the chief administrative law judge (as defined in RCW 34.12.020(2)) to preside at a notice of infraction appeal hearing convened under chapter 43.22A RCW.

(2) "**Appeal hearing**" is any proceeding in which an administrative law judge is empowered to determine legal rights, duties or privileges of specific parties on behalf of the director.

(3) "**Appellant**" means any person, contractor, firm, partnership, corporation, or other entity that has filed an appeal.

(4) "**Certified manufactured home installer**" means a person who is in the business of installing mobile or manufactured homes and who has been issued a certificate by the department as provided in this chapter.

(5) "**Compliance inspector**" refers to the departmental staff responsible for investigating potential violations of chapter 43.22A RCW.

(6) "**Contractor**" is as defined in chapters 18.27, 18.106, and 19.28 RCW.

(7) "**Department**" refers to the department of labor and industries.

(8) "**Extension of the pressure relief valve for the water heater**" means extension to the outside of the home as described in the Uniform Plumbing Code.

(9) "**Infraction**" means a violation of chapter 43.22A RCW as cited by the department's compliance inspectors.

(10) "**Manufactured home**" means a single-family dwelling built in accordance with the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act, which is a national, preemptive building code.

(11) "**Manufactured/mobile home dealer**" is defined in chapter 46.70 RCW.

(12) "**Manufacturer**" refers to a manufacturer of single-family dwellings built according to the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act, which is a national, preemptive building code.

(13) "**Mobile or manufactured home installation**" as defined in RCW 43.22A.010 does not include installation of electrical wires and equipment that convey electrical power to the home or to an outlet in the home, and does not include the ground crossover. Installation of electrical wires and equipment that convey electrical power to the home or to an outlet in the home must be performed by a journeyman or

specialty electrician as defined in chapter 19.28 RCW. Equipment does not include plug-in household appliances.

(14) "**Other equivalent experience**" means six months of hands-on experience installing manufactured homes under the guidance of a reputable, recognized manufactured home installer; or two years experience in residential or commercial construction.

(15) "**Site**" means the parcel of land designed to accommodate the dwelling and auxiliary structures.

NEW SECTION

WAC 296-150I-0030 What should the training program include? The training program must include, but not be limited to, the following topics:

- Relevant federal, state and local laws and standards;
- Supports, footings, anchors, site preparation, placement, closing in, plumbing, electrical, combustion appliances, skirting, interior, and exterior finishing;
- Operational checks and adjustments;
- Auxiliary structures; and
- Alterations.

The department will provide a training manual to each applicant as part of the training program, the contents of which will include, but not be limited to, the above topics.

NEW SECTION

WAC 296-150I-0040 Examination—Failure—Retaking. The examination must only include topics covered in the training program. In order to pass the examination, applicants must answer seventy percent of the questions correctly. An applicant who fails the examination will be permitted to retake the training course and/or the examination as often as is necessary to secure a passing rate of seventy percent.

NEW SECTION

WAC 296-150I-0050 What is the application process? A person desiring to be certified as a manufactured home installer under chapter 43.22A RCW must submit a signed application form to the department, which contains the following information:

(1) The applicant's full name and Social Security number of the person applying for certification. Social Security numbers are required on applications for professional licenses pursuant to RCW 26.23.150 and federal law PL 104-193, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) Application fee specified in WAC 296-150I-3000.

(3) Written affidavit documenting evidence of experience as required under RCW 43.22A.040.

(4) Any application received after the class cut-off date is subject to the late application fee specified in WAC 296-150I-3000.

(5) If the application is denied by the department as a result of the applicant's failure to meet the requirements of chapter 43.22A RCW and this chapter, the department will attempt to notify the applicant prior to the date the applicant is scheduled to attend the training and examination.

NEW SECTION

WAC 296-150I-0060 Manufactured home installer—Continuing education requirements. Certified manufactured home installers must complete a minimum of four credit hours of continuing education every three years. The continuing education credit hours may be satisfied by attending an annual class offered by the department or a class offered by an alternative education provider approved by the department pursuant to chapter 296-150I WAC. All fees required by WAC 296-150I-3000 for continuing education classes must be paid to the department in advance.

(1) Continuing education class curriculum will include statute, code, or rule changes and common installation problems.

(2) If a certified installer is unable to attend the continuing education classes offered by the department or alternative education provider, the installer may attend a regularly scheduled installer certification training course.

NEW SECTION

WAC 296-150I-0070 Manufactured home installer certification renewal—Application process. A certified manufactured home installer desiring to renew certification as a manufactured home installer under chapter 43.22A RCW must file a certification renewal application with the department.

(1) The application must:

(a) Be hand-delivered to the department or postmarked no later than midnight on the date of expiration of an installer's current certification.

(b) Be accompanied by the certification renewal fee specified in WAC 296-150I-3000.

(2) If a certified installer fails to apply for renewal and provide proof of continuing education within ninety days of the expiration of the installer's current certification, the installer must reapply for installer certification and meet all requirements for installer certification as set forth in chapter 43.22A RCW and this chapter.

(3) Before a new certification is issued, the certified installer must provide proof to the department that the certified installer has met the continuing education requirements set forth in this chapter.

(4) The department will attempt to notify installers prior to expiration; however, it is the installer's responsibility to ensure timely renewal.

NEW SECTION

WAC 296-150I-0080 Notification to employer. Where applicable, the department must send notice to the certificate holder's employer regarding revocation of an installer certification.

NEW SECTION

WAC 296-150I-0090 Requirement for applicable licenses and registrations. The issuance of a certificate of manufactured home installation by the department under chapter 43.22A RCW and these rules does not exempt the

certified installer from compliance with any local, state, or federal requirements relative to any business or occupational licenses or registrations.

NEW SECTION

WAC 296-150I-0100 Manufactured home on-site work and equipment installation—Manufactured home installer certification required. On-site work or equipment installation work which falls within the scope of installation as set forth in RCW 43.22A.010(6) shall not be performed on a manufactured home at any time after the initial installation of a manufactured home without the supervision of a certified manufactured home installer.

On-site work and equipment installation work shall not be performed until a permit for such work has been issued by the local enforcement agency. On-site work and equipment installation work must be inspected upon completion by the local enforcement agency in the same manner initial home installations are inspected.

On-site work and equipment installation work include, but are not limited to:

(1) Releveling a home such as installing all new pier blocks or footings;

(2) Complete skirting replacement;

(3) Installing earthquake resistant bracing systems; and

(4) Any other work described in RCW 43.22A.010(6).

On-site work and equipment installation work does not include routine maintenance or other routine repairs such as periodic adjustments to piers, replacement of a damaged pier, or skirting repair.

NEW SECTION

WAC 296-150I-0110 Manufactured home installation, on-site work or equipment installation—Homeowner performing work on their own home—Exceptions.

(1) The owner of a mobile or manufactured home may install or perform on-site work or equipment installation work on his or her own home without obtaining certification from the department as a certified manufactured home installer if the home is intended for use as the homeowner's primary residence.

(2) The installation, on-site work or equipment installation work must be performed in compliance with this chapter, Washington installation code.

(3) If the owner of a manufactured home hires any individual or business to assist the owner in the installation, on-site work, or equipment installation work, a certified installer is required to be on-site supervising such work and must meet all the requirements of this chapter.

(4) For the purposes of this chapter, an "owner" of a manufactured home does not include a manufactured home dealer, distributor, park owner or manager, contractor, or developer who installs or performs on-site work or equipment installation work on a manufactured home intended for resale or rental.

NEW SECTION

WAC 296-150I-0120 Manufactured home installation permit and inspections—Obligation of certified installer. If a certified installer obtains the manufactured home installation or placement permit from the local enforcement agency, the certified installer shall ensure that all required installation inspections, relative to the work performed by the certified installer, are completed.

Installer certification requirements do not eliminate any requirements of chapter 18.27 RCW to become a registered contractor.

NEW SECTION

WAC 296-150I-0130 Manufactured home installer—Responsibilities to the consumer. A certified manufactured home installer shall:

- (1) Ensure all phases of the installation work performed by the installer or crew being supervised are complete and in compliance with this chapter, Washington installation code;
- (2) Notify the local enforcement agency upon completion of the installation work; and
- (3) Correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same.

NEW SECTION

WAC 296-150I-0140 Manufactured home installation—Installer certification tags required. Prior to installing, performing on-site work or equipment installation work on a manufactured home, certified manufactured home installers or the retailers by whom they are employed must obtain an "installer certification tag" from the department or from the local enforcement agency who participates in tag sales. The installer certification tag shall be in the form approved by the department. No manufactured home may be installed by a certified installer without an installer certification tag affixed thereto. Only currently certified manufactured home installers shall be issued installer certification tags.

Homeowners performing the installation, on-site work or equipment installation work on their own manufactured home are not required to acquire and affix an installer certification tag.

- (1) Installer certification tags may only be purchased by a certified manufactured home installer or by a manufactured home retailer licensed by Washington state department of licensing.
 - (a) The certified manufactured home installer or manufactured home retailer purchasing the installer certification tag is responsible for complying with the security, use, and reporting requirements of this chapter.
 - (b) Manufactured home retailers may purchase installer certification tags in bulk and issue them to certified manufactured home installers employed by the manufactured home retailer.

(2) In order to purchase installer certification tags, the certified manufactured home installer or manufactured home

retailer shall submit an application to the department or local enforcement agency on a form approved by the department. The application shall be accompanied by the appropriate installer certification tag fee as set forth in WAC 296-150I-3000.

(3) The department or manufactured home retailer may issue a maximum of thirty certification tags to a certified manufactured home installer. A certified manufactured home installer may not have more than thirty installer certification tags issued at any one time for which the reporting requirements of this section have not been met.

(4) Installer certification tags cannot be transferred or assigned without the written approval of the department. Fees paid for installer certification tags are not refundable.

(a) If a certified manufactured home installer's certification is suspended, revoked, or expires, all unused installer certification tags assigned to the certified manufactured home installer must be returned to the department.

(b) If a certified manufactured home installer or manufactured home retailer ceases to do business, all unused installer certification tags must be returned to the department.

(c) If a manufactured home retailer changes ownership, unused installer certification tags may be transferred to the new ownership if the department approves the transfer following receipt of a written request for transfer from the manufactured home retailer.

(5) Issuance of installer certification tags may be denied if:

(a) The certified manufactured home installer's certification has been revoked or suspended pursuant to chapter 43.22A RCW;

(b) The certified manufactured home installer has failed to comply with the reporting requirements of this chapter;

(c) The department has evidence that the certified manufactured home installer has misused the installer certification tag by not complying with the requirements of this chapter; or

(d) The certified manufactured home installer possesses installer certification tags in excess of the quantity authorized by subsection (3) of this section for which the reporting requirements of this chapter have not been met.

NEW SECTION

WAC 296-150I-0150 Installer certification tag—Issuance by local enforcement agency. A local enforcement agency may issue installer certification tags to certified manufactured home installers if:

(1) The local enforcement agency has entered into an agreement with the department to issue installer certification tags on a "per installation" basis;

(2) The local enforcement agency has verified that the certified installer is qualified to purchase an installer certification tag under the requirements of this chapter; and

(3) The local enforcement agency must file with the department a monthly report complying with the requirements of WAC 296-150I-0170.

NEW SECTION

WAC 296-150I-0160 Installer certification tag—Placement—Removal. (1) The installer certification tag

must be placed on the home upon completion of the installation and prior to inspection by the local enforcement agency.

(2) The installer certification tags must be placed on the end of a home section directly above or below the HUD certification tag or temporarily located in plain sight within three feet of the home's front entry.

(3) The local enforcement agency may not issue final approval of a home installation until one or more installer certification tags have been affixed to the home indicating all installation work was performed by a certified manufactured home installer.

EXCEPTION: Installation work performed by a homeowner on his or her own residence does not require an installer certification tag.

(4) The installer certification tag must be removed only by the owner of the home following final approval of the installation of the home by the local enforcement agency.

NEW SECTION

WAC 296-1501-0170 Monthly certification tag report. Certified manufactured home installers and manufactured home retailers who purchase installer certification tags from the department must submit a monthly report to the department on a form approved by the department relative to all installer certification tags issued.

(1) The report is due no later than the **15th day of each month** following the month of installation work being performed on a home. A certification tag report is not required for those months in which no installation work was performed.

(2) A manufactured home retailer who assigns tags to a certified manufactured home installer is responsible for ensuring completion of the monthly report. The manufactured home retailer must file a separate report for each certified manufactured home installer to whom the manufactured home retailer assigned installer certification tag(s).

(3) The installer certification tag report must contain the following information for each installation:

- (a) The installer certification tag number;
- (b) The address of the installation;
- (c) The date of the installation;
- (d) The name and certification number of the certified manufactured home installer; and
- (e) Any other information required by the department.

NEW SECTION

WAC 296-1501-0180 Alternative education providers—Approval process and compliance. Pursuant to RCW 43.22A.060, the department may approve education providers to offer the certification training and/or continuing education required by RCW 43.22A.050, 43.22A.070 and this chapter. The factory assembled structures board will review each installer training course and will recommend approval or disapproval of the course to the department. The department will either approve or disapprove the course.

(1) To be considered for approval, an installer certification course must:

- Consist of not less than twelve hours of instruction for new applicants;
- Consist of not less than four hours for continuing education; and
- Be open to monitoring by a representative of the department.

If the department determines that the continuing education course does not meet or exceed the minimum requirements for approval, the department may deny the course approval or reduce the number of credited hours.

(2) The education provider must submit to the department a written proposal including the following:

- (a) The education and experience of proposed instructors;
- (b) A detailed description of course content and materials; and
- (c) The proposed course schedule.

(3) All instructors identified by the education providers must meet the following requirements:

- (a) Two years' experience in one or more of the following areas:
 - (i) Supervising manufactured home installation, service, or repair;
 - (ii) Design, engineering, or architectural work related to building construction;
 - (iii) Inspecting manufactured home installation or construction for a local, state, or federal agency;
 - (iv) Completion of a two-year educational program in a construction-related field; or
 - (v) A combination of any of the above to meet the two-year requirement; and
- (b) Complete the department-sponsored training and pass the certification exam with a score of ninety percent or higher.

(4) The curriculum proposed by the education provider must meet or exceed the department-sponsored training curriculum.

(5) The department must provide the education service provider written notice of approval or rejection as an alternative education service provider within sixty days of submittal of the complete proposal.

(6) All approved alternative education providers must:

- (a) Make all necessary arrangements (scheduling class dates/times and facilities) and provide all educational materials for the classes presented;

- (b) Provide to the department a list of participants within ten days of each class;

- (c) Provide to the participant a certificate of completion. Each certificate must indicate:

- (i) The name of participant;
- (ii) The date of training;
- (iii) A statement indicating the participant has completed the training as required by chapter 43.22A RCW.

(7) The alternative education provider must notify the department in writing fourteen days prior to the scheduled class date of the date, time and location of each class. Department representatives must be permitted to audit any class without fee.

(8) Curriculum changes must be submitted to and approved by the department prior to implementation.

(9) If the application is not approved, the rejection notice will include an explanation of the reason(s) for rejection. If the course sponsor disagrees with the board's decision, the course sponsor may request a reconsideration hearing by the full factory assembled structures advisory board. A request to appeal course rejection must be received by the department forty-five days before a regularly scheduled board meeting.

The course sponsor must submit, to the department, any additional information to be considered during the hearing, in writing, at least thirty days before the board hearing.

The course sponsor must provide at least twenty copies of any written information to be submitted to the board.

NEW SECTION

WAC 296-1501-0190 Legal action—Installer certification required. No person may file a lien against a homeowner, or bring or maintain in any court of this state a suit or action, that seeks compensation for the performance of any work requiring certification under chapter 43.22A RCW or for the breach of any contract for installation work which is subject to chapter 43.22A RCW unless:

(1) The manufactured home installer was certified under chapter 43.22A RCW at the time the installer entered into contract for performance of the work and was certified continuously while performing the work for which compensation is sought; or

(2) The supervising manufactured home installer was the employee of the contractor or retailer seeking compensation and was certified under chapter 43.22A RCW continuously during performance of the work for which compensation is sought.

NEW SECTION

WAC 296-1501-0200 How does the department ensure compliance with the requirements of chapter 43.22A RCW? The department of labor and industries will ensure installers comply with the requirements of RCW 43.22A.130 which requires a certified manufactured/mobile home installer to be present for each phase of the installation being performed by all members of the installation crew by:

- (1) Random site inspections; and
- (2) Audit of installers certification tag reports.

The certified installer must enter their Washington installer number (WAINS) on the installer tag for each element you are supervising.

NEW SECTION

WAC 296-1501-0210 What violations of RCW 43.22A.130 can result in the issuance of a notice of infraction? (1) Under RCW 43.22A.130, the department can issue a notice of infraction to a person, contractor, manufactured/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent for:

- (a) Failure to have a certified installer on the installation site whenever installation work is being performed;
- (b) Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by

an authorized representative of the department within thirty days of issuance of notice of the same;

(c) Failure by a certified installer to affix a certification tag to an installed manufactured/mobile home;

(d) Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department;

(e) Transfer of certification tag(s) from a certified installer to a noncertified installer;

(f) Transfer of unused installer certification tags by a manufactured home retailer to a new ownership without prior written approval of the department.

(2) Each worksite and day at which a violation occurs constitutes a separate infraction.

(3) See WAC 296-150I-3000 for the specific monetary penalties associated with each of the violations discussed in this section.

NEW SECTION

WAC 296-1501-0220 What information must be included in a notice of infraction? When an installer violates chapter 43.22A RCW, the department may issue a notice of infraction which must contain the following:

(1) The department shall prescribe the form of the notice of infraction issued under this chapter.

(2) The notice of infraction must include the following:

(a) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;

(b) A statement that the infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued;

(d) A statement of a monetary penalty that has been established for the infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that, at a hearing to contest the determination, the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed, and that the person may subpoena witnesses including the authorized representative who issued and served the notice of the infraction; and

(g) A statement that failure to respond to a notice of infraction is a misdemeanor and may be punished by a fine or imprisonment in jail.

NEW SECTION

WAC 296-1501-0230 Who can be issued a notice of infraction? A person, firm, contractor, partnership, or corporation may be issued a notice of infraction for violations of chapter 43.22A RCW and this chapter.

The department must send the written notice, by certified mail, of civil penalties imposed under chapter 43.22A RCW and this chapter to the last known address of the party named in the notice.

NEW SECTION

WAC 296-1501-0240 How does a person, firm, contractor, partnership, corporation or certified installer appeal a notice of infraction? (1) File two copies of an appeal notice, specifying the reasons for the appeal, at the office designated on the notice of infraction; and

(2) File the appeal notice within twenty days of the date the infraction is mailed.

NEW SECTION

WAC 296-1501-0250 Who presides over an appeal hearing and where is it held? An administrative law judge from the office of administrative hearings will preside over the hearing and give a decision. The hearing shall be conducted in the county where the infraction occurred. However, both the appellant and the department have a right to ask the administrative law judge to change the hearing's location.

NEW SECTION

WAC 296-1501-0260 Who will represent the appellant and the department at the appeal hearings? Appellants may either represent themselves or be represented by an attorney. The department will be represented by the office of the attorney general.

NEW SECTION

WAC 296-1501-0270 How is the appeal hearing conducted? The hearing process shall be conducted according to chapter 34.05 RCW, Administrative Procedure Act and chapter 10-08 WAC. All appeals of the hearing decision shall be to the superior court according to chapter 34.05 RCW.

NEW SECTION

WAC 296-1501-0280 What does the department do with the appeal notices that they receive? (1) Appeal notices that are received timely are first reviewed by the department for purposes of reconsideration.

(2) Appeal notices that are not received timely will be returned to the appellant with appeal rights stated.

(3) Appeal notices that are received timely and are not reconsidered according to subsection (1) of this section are recorded and forwarded to the office of the attorney general then to the office of administrative hearings.

NEW SECTION

WAC 296-1501-0290 When must a person, contractor, manufactured/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent pay assessed monetary penalties? (1) If a person, contractor, manufactured/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent named in a notice of infraction does not choose to appeal the notice, then the person, contractor, manufactured/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent must pay the department the amount of the penalty prescribed for the infraction.

(2) After an administrative law judge decides that an infraction has been committed, a person, contractor, manufactured/mobile home dealer, manufacturer, or home dealer's or manufacturer's agent who does not appeal the decision to a superior court, has thirty days to pay any outstanding monetary penalties.

NEW SECTION

WAC 296-1501-0300 Who establishes standards for installation of manufactured homes? (1) The director of labor and industries is responsible for establishing uniform installation standards where possible and practical for persons or entities engaged in performing the installation of manufactured homes within the state.

(2) Local jurisdictions may adopt additional installation requirements only for those installation situations not covered by federal standards. For example, local jurisdictions may impose noise control construction ordinances, prescribe the frost depth and soil bearing capacity at the installation site, and adopt requirements to protect manufactured homes in hazardous areas (see WAC 296-1501-0310).

Also, local jurisdictions may impose their requirements for snow loads as long as all structures within their jurisdiction are required to comply with the same standard and provided those installing the manufactured home are given options in satisfying that standard. Such an option might include, but not be limited to, allowing an installer to erect an additional structure, which meets local standards, and protects the manufactured home. For example, an installer could erect a free standing ramada over a manufactured home to protect it from local snow loads.

Local jurisdictions **may not**:

(a) Dictate foundation design and construction which is built according to either the manufacturer's installation instructions or a design created by an engineer or architect licensed in Washington state.

(b) Impose regulations on smoke detectors because they are regulated by federal standards.

NEW SECTION

WAC 296-1501-0310 What instructions are used for a manufactured home installation? To the extent that the installation of a manufactured home is not covered by a manufacturer's, engineer's, or architect's instructions, the manufactured home shall comply with the installation requirements of this section.

(1) Installation of a new manufactured home.

(a) The initial manufactured home installation must be conducted according to the manufacturer's instructions.

(b) If the manufacturer's instructions do not address an aspect of the installation, you may request:

(i) Specific instructions from the manufacturer; or

(ii) Specific instructions from a professional engineer or architect licensed in Washington state.

For example:

- A manufactured home is installed over a basement and the manufacturer's instructions do not address this application;

- A manufactured home is installed on a site where the specific soil bearing capacity is not addressed in the manufacturer's instructions.

(c) All manufactured homes installed in Washington state must be permanently anchored except for those installed on dealer lots. On dealer lots, temporary sets are permitted without anchoring being installed. A manufactured home must be anchored according to the manufacturer's installation instructions or according to the design of a professional engineer or architect licensed in Washington state. Local jurisdictions **may not** prescribe anchoring methods.

(d) A manufactured home must have a skirting around its entire perimeter. It must be installed per the manufacturer's installation instructions or if the manufacturer is not specific, to the standards in this section. It must be vented and allow access to the under floor area per the manufacturer's installation instructions or per the standards below if the manufacturer's instructions are not available.

If the manufacturer's skirting and access instructions are not specific, skirting, ventilation and access shall be installed as follows:

(i) Skirting:

- Must be made of materials suitable for ground contact.
- Metal fasteners must be made of galvanized, stainless steel or other corrosion-resistant material.
- Ferrous metal members in contact with the earth, except those made of galvanized or stainless steel, must be coated with an asphaltic emulsion.
- Must not trap water between the skirting and siding or trim.
- Must be recessed behind the siding or trim.

(ii) Ventilation:

For homes sited in a flood plain, contact the local jurisdiction regarding proper skirting ventilation. Except for those manufactured homes sited in a flood plain, all skirting and vent openings must:

- Be covered with corrosion-resistant wire mesh to prevent the entrance of rodents. The size of the mesh opening cannot exceed 1/4 inch.
- Have a net area of not less than one square foot for each one hundred fifty square feet of under floor area.
- Be located as close to corners and as high as practical and they must provide cross ventilation on at least two opposite sides.

(iii) Access:

- The under floor area of a manufactured home must have a finished opening at least eighteen inches by twenty-four inches in size.
- Opening must be located so that all areas under a manufactured home are available for inspection.
- Opening must be covered and that cover must be made of metal, pressure treated wood or vinyl.

(e) A manufactured home site must be prepared per the manufacturer's installation manual or per ANSI A225.1, 1994 edition, section 3.

(f) Heat duct crossovers must be installed per the manufacturer's installation instruction manual or per ANSI A225.1 or the following instructions if the manufacturer's instructions are not available:

Heat duct crossovers must be supported at least one inch above the ground by strapping or blocking. They must be installed to avoid standing water. Also, they must be installed to prevent compression, sharp bends, and to minimize stress at the connections.

(g) Dryer vents must exhaust to the exterior side of the wall or skirting. Dryer ducts outside the manufactured home shall comply with the dryer manufacturer's specifications or shall be made of metal with smooth interior surfaces.

(h) Hot water tank pressure relief lines must exhaust to the exterior side of the exterior wall or skirting and must exhaust downward. The end of the pipe must be at least six inches but not more than two feet above the ground.

(i) Water piping must be protected against freezing as per the manufacturer's installation instructions or by use of a heat tape listed for use with manufactured homes and installed per the heat tape manufacturer's installation instructions.

(j) The testing of water lines, waste lines, gas lines, and electrical systems must be as per the manufacturer's installation instructions. If the manufacturer's installation instructions require testing of any of these systems, the local jurisdiction is responsible for verifying that the tests have been performed and passed. Electrical connections and testing are the responsibility of the electrical section of labor and industries except where a city has assumed the electrical inspection responsibilities for their jurisdiction. In that case, the city's electrical inspectors are responsible for the electrical connections and testing.

(k) During the installation process, a ground cover must be installed under all manufactured homes. The ground cover must be a minimum of six-mil **black** polyethylene sheeting or its equivalent (exception to ANSI A225.1 (3.5.2)). The ground cover may be omitted if the under floor area of the home has a concrete slab floor with a minimum thickness of three and one-half inches.

(l) Clearances underneath manufactured homes must be maintained at a minimum of eighteen inches beneath at least seventy-five percent of the lowest member of the main frame (I-beam or channel beam) and the ground or footing. No more than twenty-five percent of the lowest member of the main frame of the home shall be less than eighteen inches above the ground or footing. In no case shall clearance be less than twelve inches anywhere under the home (exception to ANSI A225.1 (4.1.3.3)).

(m) Heat pump and air conditioning condensation lines must be extended to the exterior of the manufactured home.

(2) Installation of a relocated manufactured (mobile) home.

(a) A relocated manufactured home installation should be conducted according to the manufacturer's installation instructions.

(b) If the manufacturer's instructions are unavailable, you may use either:

(i) The American National Standard Institute (ANSI) standard ANSI A225.1 - Manufactured Homes Installation, 1994 edition instructions; or

(ii) The instructions of a professional engineer or architect licensed in Washington state.

(c) If either (b)(i) or (ii) of this subsection is used, all of the requirements of subsection (1)(c) through (m) of this section must also be followed.

NEW SECTION

WAC 296-1501-0320 How may I obtain a copy of the American National Standards Institute (ANSI) A225.1 - Manufactured Homes Installation? Contact the department at 1-800-647-0982.

NEW SECTION

WAC 296-1501-0330 What are the requirements for temporary placement of manufactured (mobile) homes? Manufactured (mobile) homes placed on temporary display or in storage by a manufacturer, dealer or distributor in excess of thirty days shall be:

(1) Supported under each main frame beam by supports located within two feet of each end and within four feet of the front and rear axle and other supports so that no span shall exceed sixteen feet; and

(2) Made weather tight at any marriage line joint at the roof and wall lines.

NEW SECTION

WAC 296-1501-0340 Do local enforcement agencies have special requirements for installing manufactured homes in hazardous areas? (1) Local enforcement agencies may have special installation requirements for manufactured homes installed in hazardous areas.

(2) A hazardous area is:

(a) An area recognized as a flood plain by the local jurisdiction; or

(b) An area considered hazardous due to the probability of earthquake. In such areas, local jurisdictions may require an earthquake resistant bracing system designed for the earthquake zone in which the home is located by the home manufacturer or by a registered professional engineer or architect.

NEW SECTION

WAC 296-1501-0350 Who may install a manufactured home? (1) A manufactured home may be installed by:

- A homeowner;
- A certified installer;
- An individual who is supervised by an on-site certified installer; or
- A specialty trades person, for certain aspects of installation.

(2) A certified installer must be a registered contractor, an employee of a registered contractor, or an employee of a registered dealership. (See chapter 43.22A RCW for details about which aspects of installation require the presence of a certified installer.)

NEW SECTION

WAC 296-1501-0360 Does a person who installs a manufactured home need an installation permit? (1) A

dealer, owner or agent must not deliver a manufactured home to its site without verifying that an installation permit has been obtained; and

(2) Any permit fees set by the local enforcement agency must be paid in full and included with the permit application.

NEW SECTION

WAC 296-1501-0370 Does a manufactured home installation require an inspection? All manufactured home installations must be inspected and approved by the local enforcement agency.

NEW SECTION

WAC 296-1501-0380 How does the local enforcement agency gain access to the manufacturer's installation instructions? A manufacturer's installation manual must be provided for the inspecting jurisdiction whenever any portions of the manufacturer's installation instructions have been used for any portion of the installation.

(1) The installation instructions must be located between the I-beam and the bottom board within five feet of the main electrical feeder when the skirting has not been installed.

(2) When the skirting has been installed, the installation instructions shall be located between the I-beam and the bottom board within five feet of the access opening.

(3) Instructions must be returned to such location when the inspection is completed.

NEW SECTION

WAC 296-1501-0390 What are the requirements for on-site structures and who regulates them? On-site structures, sometimes referred to as auxiliary structures, such as, but not limited to, carports, decks, and steps should be self-supporting.

(1) Local enforcement agency jurisdiction.

(a) On-site self-supporting structures that do not use any of the systems in the manufactured home are inspected by the local enforcement agency and they should be contacted for specific on-site structure requirements.

(b) Awnings and carports that are self-supported by a beam next to a manufactured (mobile) home are inspected by the local enforcement agency.

Note: The awning or carport may be flashed to the manufactured (mobile) home.

(2) Department of labor and industries jurisdiction.

(a) On-site structures that are not self-supporting or use one or more of the systems of the manufactured home require an inspection by the department and by the local enforcement agency.

(b) Awnings and carports that are attached to the manufactured (mobile) home without the benefit of a self-supported beam require approval and inspection by the department.

Note: This attachment must be designed and approved by an engineer or an architect licensed in Washington state. Furthermore, these stamped plans must be submitted to the department and approved before an inspection can be conducted.

(c) Attached garages:

(i) If the manufactured (mobile) home is built "garage ready" (one hour fire wall, dormer, etc.) at the factory and is installed by the manufacturer, an alteration inspection may not be required.

(ii) If the manufactured (mobile) home is not built "garage ready" at the factory, an alteration inspection is required for all changes made to it.

NEW SECTION

WAC 296-150I-0400 What happens if a dispute arises concerning an installation requirement? (1) If a dispute arises between any person, business, or local enforcement agency concerning an installation requirement of ANSI A225.1 or this chapter, the issue may be submitted to the factory assembled structures advisory (FAS) board.

(2) The board may provide an opinion on the requirement.

NEW SECTION

WAC 296-150I-0410 What are the requirements if a home is damaged during transit or during set-up? (1) Manufactured and mobile homes that are structurally damaged during transportation or when being set up on a new or secondary set-up and are repaired at a location other than the manufacturer's facility shall require a permit with labor and industries.

The repair and inspection shall be performed to either:

(a) Plans approved by the manufacturer's design approval primary inspection agency; or

(b) Plans approved by an engineer or architect licensed in Washington and have the plans approved by the FAS plan review section;

(2) An alteration insignia shall be placed upon the home after the repair has been approved.

(3) Electrical and plumbing alterations to the damaged manufactured/mobile home shall be performed by a Washington state licensed electrician and/or plumber.

EXCEPTIONS: Damaged home is taken back to the factory. Minor damage such as shingles, broken window(s), paint damage, minor siding damage, torn bottom paper etc., would not require a permit.

NEW SECTION

WAC 296-150I-3000 Penalties, fees, and refunds. Monetary penalties for an infraction shall be assessed for each violation of chapter 43.22A RCW in the amount of \$1,000.00:

The following fees are payable to the department in advance:

| | |
|--|----------|
| Training and certification | \$200.00 |
| Training only 8 hours | \$100.00 |
| Manufactured/mobile home installation inspector training | \$100.00 |
| Late application | \$20.00 |
| Refund | \$20.00 |

| | |
|----------------------------|----------|
| Certification renewal | \$100.00 |
| Continuing education class | \$40.00 |

Retake failed examination and training:

| | |
|--|---------|
| First retake | \$0.00 |
| Subsequent retakes | \$30.00 |
| Manufactured home installer certification manual | \$10.00 |
| Installer certification tag | \$7.00 |

(1) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

(2) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

(a) Change to another scheduled training and examination; or

(b) Request a refund.

(3) An applicant who fails the examination shall not be entitled to a refund.

**WSR 08-08-096
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed April 1, 2008, 5:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-107.

Title of Rule and Other Identifying Information: Chapter 296-150M WAC, Manufactured homes.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., S129, Tumwater, WA, on May 7, 2008, 9:00 a.m.; and at the Department of Labor and Industries, 15 West Yakima Avenue, Suite 100, Yakima, WA, on May 8, 2008, 10:00 a.m.

Date of Intended Adoption: May 20, 2008.

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 May 8, 2008.

Assistance for Persons with Disabilities: Contact Sally Elliott by April 15, 2008, (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 amend the manufactured home rules to make sure they are consistent with the statute. The amendment which amends "notice of infraction" to "notice of correction." This will correct the terminology in the rule for consistency between the statute and rules. The factory assembled structure program has already filed an expedited

rule-making package to correct terminology in WAC 296-150M-0815.

The rule making will also repeal sections of chapter 296-150M WAC that will be moved into the new mobile and manufactured home installation program, chapter 296-150I WAC. Additional housekeeping and clarifying changes will be made throughout the rule.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 43.22 RCW.

Statute Being Implemented: Chapter 43.22 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: Pete Schmidt, Tumwater, (360) 902-5571; Implementation and Enforcement: Patrick Woods, Tumwater, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined the proposed rules do not require a small business economic impact statement because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule based upon Washington state statutes and clarifying the rule for ease of use and understanding (see RCW 34.05.310 (4)(c) and (d)).

A cost-benefit analysis is not required under RCW 34.05.328. The department determined the proposed changes do not require a cost-benefit analysis because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule based upon Washington state statutes and clarifying the rule for ease of use and understanding (see RCW 19.85.025 referencing RCW 34.05.328 (5)(b)(iii) and (iv)).

April 1, 2008

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 03-12-044, filed 5/30/03, effective 5/30/03)

WAC 296-150M-0020 What definitions apply to this chapter? "Alteration" is the replacement, addition, modification, or removal of any equipment or installation that affects the construction, planning considerations, fire safety, or the plumbing, mechanical, and electrical systems of a manufactured home. The installation of whole-house water treatment equipment that requires cutting into the existing plumbing is considered an alteration and requires a permit, an inspection and an alteration insignia.

"Alteration insignia" is an insignia issued by the department of labor and industries to verify that an alteration to a manufactured home meets the requirements of federal law 24 CFR 3280 and this chapter.

"Anchoring system" is the means used to secure a mobile home to ground anchors or to other approved fastening devices. It may include straps, cables, turnbuckles, bolts, fasteners, and other components.

"ANSI" is the American National Standards Institute, Inc., and the institute's rules applicable to manufactured

homes, ANSI A225.1 Manufactured Homes Installation, 1994 edition, except section 3.5.2 - Ground Cover and section 4.1.3.3 - Clearance.

"Authority having jurisdiction" means that either the department of labor and industries or the local jurisdiction is responsible for establishing specific manufactured home standards. The authority for specific manufactured home standards is divided as follows:

- The department of labor and industries establishes standards for manufactured home installation and alterations and performs alteration inspections;
- The local jurisdiction establishes standards for manufactured homes governing the building site and performs installation inspections.

"Building site" is a tract, parcel, or subdivision of land on which a manufactured home is installed.

"DAPIA" is a Design Approval Primary Inspection Agency as approved by the United States Department of Housing and Urban Development.

"Department" is the department of labor and industries. The department may be referred to as "we" or "us" in this chapter. Note: You may contact us at: Department of Labor and Industries, Specialty Compliance, PO Box 44440, Olympia, WA 98504-4440.

"Design plan" is a design submitted to the department for approval of a manufactured home structural alteration. This also includes other types of work and installations (plumbing, electrical, etc.) that are incidental to the structural alteration.

"Equipment" means the appliances used in the alteration or installation of a manufactured home.

Examples of appliances that require an alteration inspection include:

- Furnace;
- Water heater;
- Air conditioner; and
- Heat pump.

Examples of appliances that do not require an alteration inspection include:

- Microwave oven;
- Washer;
- Dryer; and
- Dishwasher and range that are connected to their source of power by a plug-in cord.

"Equivalent air conditioning/heat pump components" is equipment that performs the same function and is compatible with the equipment of another manufacturer, sometimes referred to as mix and match.

"Footing" is the portion of a support system that transmits loads from the manufactured home to the ground.

"Foundation skirting" or **"skirting"** is the material that surrounds and encloses the space under the manufactured home.

"Homeowner" is an individual who owns a manufactured home. Dealers, distributors, and developers are not regarded as homeowners.

"HUD" is the United States Department of Housing and Urban Development with headquarters located in Washington, D.C.

"Indigent" means a person receiving an annual income, after taxes, of one hundred twenty-five percent or less of the most recently published federal poverty level.

"Installation" is the activity needed to prepare a building site and to set a manufactured home within that site. Site means a tract, parcel, or subdivision of land including a mobile home park.

"Installed manufactured or mobile home" is a manufactured or mobile home that has been placed on either private property or in a park and has been installed for occupancy. Installation includes the approval of the blocking of the home, and the connection of the home to all of the utilities, including water, sewer and electrical.

"IPIA" is a manufactured home production Inspection Primary Inspection Agency approved by the United States Department of Housing and Urban Development. The department of labor and industries is the IPIA for Washington state.

"Local enforcement agency" is an agency of city or county government with power to enforce local regulations governing the building site and installation of a manufactured home.

"Manufactured home" is a single-family dwelling built according to the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act, which is a national, preemptive building code. A manufactured home also:

- Includes plumbing, heating, air conditioning, and electrical systems;
- Is built on a permanent chassis; and
- Can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported; or when installed on the site is three hundred twenty square feet or greater (see RCW 46.04.302).

Note: Total square feet is based on exterior dimensions measured after installation using the longest horizontal projections. Dimensions may not include bay windows but may include projections containing interior space such as cabinets and expandable rooms.

Exception: A structure that meets the requirements of a manufactured home as set out in 24 CFR 3282.7(u), except the size requirements is considered a manufactured home, if the manufacturer files with the secretary of HUD a certificate noted in CFR 3282.13.

"Mobile home" is a factory-built dwelling built prior to June 15, 1976, to standards other than the HUD Code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the HUD Manufactured Home Construction and Safety Standards Act. For the purposes of this chapter references to manufactured homes include mobile homes.

"Park site" is the installation location of a manufactured home within a residential area for manufactured homes.

"Repair" is to restore an item to sound condition, to fix.

"Replacement" is the act or process of replacing, to substitute.

"SAA" the department of labor and industries shall perform all the consumer complaint and related functions of the state administrative agency that are required for purposes of

complying with the regulations established by the federal department of housing and urban development for manufactured housing including the preparation and submission of the state administrative plan.

"Structural alteration-custom design" is a design that can only be used once.

"Structural alteration-master design" is a design plan that can be used more than once. The master plan expires when there is a code change applicable to the design.

"System" is part of a manufactured home designed to serve a particular function such as structural, plumbing, mechanical, or electrical functions.

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150M-0300 What approval do I need to alter a manufactured home? If you alter a manufactured home in Washington state, you must ~~((obtain our approval))~~ purchase permits prior to making an alteration. This includes:

- (1) Alterations made by ~~((an owner, or))~~ a contractor working for a homeowner; ((and))
- (2) Alterations made by a homeowner to their own home; and
- (3) Alterations made by a dealer after a manufactured home is sold.

Note: The homeowner can't purchase a permit on behalf of the contractor.

AMENDATORY SECTION (Amending WSR 07-05-063, filed 2/20/07, effective 4/1/07)

WAC 296-150M-0306 What codes are used when altering a manufactured/mobile home? Alterations to a manufactured/mobile home must be in compliance with the Manufactured Home Construction and Safety Standards, 24 CFR Part 3280, as adopted by the Secretary for the Department of Housing and Urban Development (HUD) and the amendments to that federal standard adopted in this WAC chapter. The department will accept the following provisions, which supersede the applicable requirements in 24 CFR Part 3280.

- (1) Tested equivalent air conditioning/heat pump components that have been tested and listed for use with a particular furnace by a nationally recognized testing laboratory.
- (2) Water heaters that are listed by a nationally recognized testing laboratory and installed per the manufacturer's installation instructions.

Note: For installation of electrical furnaces and/or water heater in pre-HUD homes, the requirement of 24 CFR Part 3280.203 for flame spread limitations is waived as long as the installation meets the requirement of the installed appliance for distance from combustibles.

(3) Pellet stoves for installation that have been listed by a department approved nationally recognized testing laboratory. For a current list of approved laboratories, contact any department field office or the department at the address shown in WAC 296-150M-0020.

(4) All electrical alterations and additions to the manufactured/mobile home shall comply with the current edition of the National Electrical Code.

Electrical disconnects must be secured to a manufactured/mobile structural member (not the skirting) and have a 30" x 30" clearance for maintenance.

(5) The International Residential Code for structural alterations.

Note: The replacement of exterior siding is an alteration and requires the approval of the department and an alteration insignnia.

(6) The use of corrugated stainless steel tubing (CSST) is allowed when installed according to the manufactured installations instructions for mobile/manufactured homes by the following CSST manufacturers:

- (a) Gastite;
- (b) TracPipe;
- (c) Pro-Flex.

(7) Installation of gas room heaters in bedrooms must:

(a) Have direct vented (sealed combustion) and be listed as UL 307A for liquid fuel burning heater or ANSI Z21.88 and ANSI Z21.86 for vented gas fireplaces.

(b) Not be able to draw combustion air from the living space and must be designed so that it will become inoperative if any door, latch, or opening is not properly sealed.

(c) Have a smoke detector, listed to UL 217. The smoke detector can either be hardwired or battery powered and installed according to the manufacturer's installation requirements.

(d) Have a carbon dioxide (CO₂) detector, listed to UL 2034. The CO₂ detector must be installed according to the manufacturer's installation requirements.

(e) Have at least one means of egress.

AMENDATORY SECTION (Amending WSR 07-05-063, filed 2/20/07, effective 4/1/07)

WAC 296-150M-0410 What are the requirements for altering mobile/manufactured homes? (1) Roof over framing (dormer) additions to manufactured/mobile homes must meet the following requirements:

(a) Maintain a minimum twenty pound roof, live load, and provide documentation to the department.

(b) The dead load for the dormer must be the difference between the live load design of the roof and the roof design snow load of the manufactured/mobile home location (as per Snow Load Analysis for Washington, by Structural Engineers Association of Washington).

(c) Existing roofing material, other than the sheathing, must be completely removed under the dormer.

(d) An engineering analysis shall take into account the wind load on the structure, when the dormer extends above the original ridge line of the manufactured/mobile home.

(e) The engineer or architect of record must clarify in writing on the original stamped drawings that the design plans may be used on other manufactured/mobile homes of the same live load, for generic designs that are to be used more than one time.

(f) Submit all manufactured/mobile home alterations to the department to be reviewed by plan review for compliance.

(2) Reroofing of a manufactured/mobile home must be installed and vented according to the manufacturer's installation instructions.

(a) Existing asphalt roof will require removal of the original asphalt roofing material prior to the installation of new asphalt roofing.

(b) If the original asphalt roofing material is not removed and a second layer of asphalt roofing is added, an engineering analysis must be completed to ensure that the existing roof structure can support the additional load while maintaining a 20 psf live roof load.

(c) Metal roofing with or without insulation board applied after removing existing asphalt shingles must:

(i) Follow the roofing manufacturer's installation requirements.

(ii) Maintain minimum pitch of the roof as required by the roofing manufacturer's installation requirements.

(d) Metal roofing with or without insulation board over an existing metal roof must:

Allow the metal roof to be installed over another metal roof as required by the manufacturer's installation requirements.

(3) Replacing floor decking must meet the following requirements:

(a) Plan review is not required for the following:

(i) The floor decking being replaced is not (~~bigger~~) greater than forty-eight inches by ninety-six inches (~~(+)~~) of each section of home(~~(+)~~).

(ii) Two-by-six blocking is added to each floor joist and secured with 16d nails at six inches on center.

(iii) Two-by-six blocking is added at the ends of the cut such that one-half is under the existing decking and one-half is under the decking being replaced and is secured with 16d nails, two at each joint.

(iv) Adding floor decking that is the same thickness and grade as originally installed.

(v) Adding decking that is secured with construction adhesive bead and #8x1-3/4 inch screws at six inches on center.

(b) Plan review is required, but engineering will not be required under the following condition:

(i) The floor decking being replaced is greater than forty-eight inches by ninety-six inches.

(ii) The decking being replaced is no more than fifty percent of the floor length, each section of home.

(iii) The decking being replaced is no more than seventy-five percent of the floor width, each section of home.

(c) If the floor decking being replaced is (~~larger~~) greater than forty-eight inches by ninety-six inches, of (each section of home) both plan review and engineering will be required.

(d) On generic designs that are to be used more than once, an engineer or architect must clearly state in writing on the original stamped drawings that the design plans may be used on other manufactured/mobile homes of the same manufacturer.

(4) Additions (i.e., rooms, garages, carports, etc.) added to manufactured/mobile homes.

(a) Labor and industries factory assembled structures section is responsible for any alterations to the manufactured/mobile home. This includes:

- (i) Any opening that is added or changed.
- (ii) Electrical circuits added to the addition that come from the electrical panel in the manufactured/mobile home.
- (iii) Using the manufactured/mobile home for support of the addition.

(b) A plan review is required when adding an addition to a manufactured/mobile home for:

- (i) Openings not constructed per the department.
- (ii) Manufactured/mobile homes which use the structure for support of the addition.
- (iii) Adding a dormer on the home.

Note: An engineer or architect licensed in Washington state must design the plans and seal the plans and calculations. The department's FAS plan review section will perform a plan review.

(c) Labor and industries electrical section is responsible for any electrical circuits added to the manufactured/mobile home that come from the pedestal where the electrical section has electrical inspection authority. Some cities have electrical inspection authority and would make those electrical inspections in their jurisdiction.

(d) Local jurisdiction (city or county) is responsible for the inspection of the addition except as noted above.

(e) Items to pay particular attention to:

(i) If the addition is being served by a required egress door:

- The lock must be removed and nonlocking passage hardware installed or the door may be removed entirely leaving a passageway.
- An exit door equal in size to the one removed must be installed in the addition.

(ii) If the addition is being served by a 3rd door and the other doors meet the egress requirements outlined above, no changes to the exterior door are required.

(iii) Electrical circuits run from the manufactured/mobile home electrical panel must:

- Be in conduit if routed under the home; and
- Terminate at the edge of the home in a junction box.

(iv) The addition may be flashed to the manufactured/mobile home for purposes of sealing the exterior joint and may have trim installed on the interior for finishing.

(5) Attaching awnings and carports and garages.

(a) Self-supporting awnings and carports.

When awnings and carports are self-supporting they may be flashed to the manufactured/mobile home and no permit is required from L&I FAS section. Please check with your local jurisdiction building department for any permits required by them.

(b) Awnings and carports using the home for support.

Aluminum or wood awnings and carports that use the manufactured/mobile home for support will need to:

- Have the connections to the home designed and the additional load on the home analyzed by an engineer or architect licensed in Washington state. The engineer or architect will need to seal these designs and calculations;
- The installer must submit the designs to the FAS plan review section for a review; and

- The installer must have the installation inspected, after the plans are approved.

(c) Manufactured home comes from factory garage ready.

If the manufactured home comes from the factory garage ready, no inspection is required by L&I. Garage ready from the factory means:

- Dormers, if required, are installed by the factory;
- All gypsum board required on the home has been installed at the factory;
- Any door between the home and the garage meets the requirements for separation of a residence from a garage as required by the building code;
- All electrical installations meet the requirements of the National Electrical Code for one hour walls;
- The dryer outlet termination has been designed at the factory to not exhaust into the garage; and
- No other changes are required to the manufactured home at the installation site.

Note: If any changes are required to the manufactured home at the installation site, an alteration permit is required from the department.

(d) Manufactured/mobile home is not garage ready.

If the manufactured/mobile home is not garage ready when it leaves the factory, an alteration permit is required. Engineering analysis and plan review may also be required if additional loads are placed upon the home or openings are made or changed.

The following are some examples of when a plan review would be required:

- A dormer is added;
- An opening in the home is made or changed (Note: Openings constructed to the department's approved details would not require a plan review); and
- Gypsum board is added to the wall of the home.

Items to also be aware of:

When a garage is to be attached to a manufactured/mobile home, the following must also be considered:

- The means of egress through exterior doors is not compromised (two are required);
- The means of egress from the bedroom(s) is not compromised (one egress directly to the exterior from each); and/or endwalls are usually shearwalls and any additional openings in them will need an engineering analysis and plan review to substantiate.

(6) Decertification of a manufactured/mobile home.

(a) Can only be decertified if the jurisdiction having authority will allow the unit to remain on the property.

(b) All electrical components, including the electrical panel, receptacles, switches and light must be removed and wires cut to where they enter the device.

(c) All plumbing fixtures and exposed plumbing water, drain and waste lines must be cut off where they enter any wall, floor or ceiling.

(d) All mechanical components including water heaters, furnaces, and kitchen appliances must be removed from the home.

AMENDATORY SECTION (Amending WSR 05-24-020, filed 11/29/05, effective 1/1/06)

WAC 296-150M-0805 How does the department ensure that a contractor, firm, partnership, or corporation complies with the requirements of chapter 43.22 RCW? The department of labor and industries ensures that contractors, firms, partnerships, and corporations comply with the requirements of chapter 43.22 RCW and this chapter which requires ~~((a)) the contractor or homeowner to purchase the appropriate permits and ((inspection by the department of)) the department will inspect all~~ alterations to manufactured and mobile homes by:

- (1) Inspecting manufactured and mobile home job sites by the department's compliance inspectors; or
- (2) Auditing the records of contractors per WAC 296-150M-0715.

AMENDATORY SECTION (Amending WSR 03-12-044, filed 5/30/03, effective 5/30/03)

WAC 296-150M-0810 What violations of chapter 43.22 RCW can result in the issuance of a notice of infraction? (1) Under chapter 43.22 RCW, the department can issue a notice of infraction to a ~~((contractor))~~ firm, partnership, or corporation for:

- (a) Failure to obtain a permit before altering a manufactured or mobile home as required by chapter 296-150M WAC;
- (b) Failure to correct violations noted as a result of an inspection requested as a result of having purchased a permit.
- (2) Each worksite at which a violation occurs constitutes a separate infraction.
- (3) Each day on which a violation occurs constitutes a separate infraction.
- (4) See WAC 296-150M-0860 for the specific monetary penalties associated with each of the violations discussed in this section.

AMENDATORY SECTION (Amending WSR 03-12-044, filed 5/30/03, effective 5/30/03)

WAC 296-150M-0820 Who can be issued a notice of infraction? A contractor, firm, partnership, or corporation may be issued a notice of infraction for violations of chapter 43.22 RCW and this chapter.

The department must by certified mail send the written notice of ~~((civil))~~ infraction penalties imposed under chapter 43.22 RCW and this chapter to the last known address of the party named in the notice.

WSR 08-08-103
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed April 2, 2008, 8:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-142.

Title of Rule and Other Identifying Information: WAC 181-77-005 Types of career and technical education certificates and 181-77-068 Requirements for coordinator of work-based learning initial or continuing certificates.

Hearing Location(s): Coast Wenatchee Center Hotel, 201 North Wenatchee Avenue, Wenatchee, WA 98801, on May 21, 2008, at 8:30 a.m.

Date of Intended Adoption: May 21, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by May 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by May 10, 2008, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes references of "work-based" to "worksite" and "diversified occupations" to "career choices." It also combines the business endorsement and marketing endorsement to be business and marketing endorsement. These name changes better reflect school district language.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

March 27, 2008

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-77-005 Types of career and technical education certificates. The following types of certificates shall be issued:

(1) Teacher. The teacher certificate authorizes service as a teacher in the school district(s) or skills center(s) and shall be issued in one of the following categories and/or in a specific subcategory of the major category as approved by the professional educator standards board and/or its designee:

- (a) Agriculture education;
- (b) Business and marketing education;
- (c) ~~((Marketing education;~~

~~(d)~~) Family and consumer sciences education;
~~((e))~~ (d) Technology education;
~~((f))~~ (e) Trade and industrial;
~~((g))~~ (f) Health occupations;
~~((h) Diversified occupations;)~~ (g) Career choices;
~~((i))~~ (h) Coordinator for ~~((work-based))~~ worksite learning; or

~~((j))~~ (i) New and emerging fields;
 (2) Director. The director certificate authorizes service as a career and technical education director, as an assistant director, or as a career and technical education supervisor in the school district(s) or skills center(s);

(3) Counselor. The career and technical education counselor certificate authorizes service in the role of career and technical education guidance and counseling;

(4) Occupational information specialist. The occupational information specialist certificate authorizes service in the role as an occupational information specialist.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-77-068 Requirements for coordinator of ~~((work-based))~~ worksite learning initial or continuing certificates. To obtain a coordinator of ~~((work-based))~~ worksite learning certificate, a candidate must:

(1) Possess a valid initial or continuing career and technical education teaching certificate; and

(2) Successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program.

WSR 08-08-104
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed April 2, 2008, 8:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-152.

Title of Rule and Other Identifying Information: WAC 181-77A-180 Career and technical education teacher preparation specialty standards.

Hearing Location(s): Coast Wenatchee Center Hotel, 201 North Wenatchee Avenue, Wenatchee, WA 98801, on May 21, 2008, at 8:30 a.m.

Date of Intended Adoption: May 21, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by May 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by May 10, 2008, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes references of "work-based" to "worksite" and "diversified occupations" to "career choices." These name changes better reflect school district language.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 42736, Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

March 27, 2008

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-77A-180 Career and technical education teacher preparation specialty standards. In addition to the standards identified in WAC 182-82-332 or 181-77A-175, individuals obtaining certification in the areas of coordinator of ~~((work-based))~~ worksite learning or ~~((diversified occupations))~~ career choices must demonstrate competency in the following standards.

(1) **Coordinator of ~~((work-based))~~ worksite learning.**

(a) The ~~((work-based))~~ worksite learning coordinator demonstrates the knowledge and ability to develop, implement, manage, and evaluate a diversified ~~((work-based))~~ worksite learning program that utilizes local resources.

(b) The ~~((work-based))~~ worksite learning coordinator models ethical behavior and demonstrates the ability to facilitate, supervise, and evaluate student leadership activities.

(c) The ~~((work-based))~~ worksite learning coordinator demonstrates the ability to team with career and technical education teachers and prospective employers to relate ~~((work-based))~~ worksite learning with school-based learning and to measure student performance.

(d) The ~~((work-based))~~ worksite learning coordinator demonstrates a commitment to professional development.

(e) The ~~((work-based))~~ worksite learning coordinator demonstrates a current knowledge of the essential academic learning requirements and skills for entry level workers and uses a variety of methods to insure that students master the essential academic learning requirements.

(2) **~~((Diversified occupations;))~~ Career choices.**

(a) The ~~((diversified occupations))~~ career choices teacher demonstrates competency in the areas of career exploration, employment acquisition, job retention, resource management (personal, community, workplace technology, and consumerism), economic systems (entrepreneurship,

economics), basis skills development, and leadership development.

(b) The ((~~diversified occupations~~)) career choices teacher demonstrates the ability to link classroom learning with the world of work and coordinate ((~~work-based~~)) work-site learning which prepares students for the world of work.

WSR 08-08-105
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed April 2, 2008, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-145.

Title of Rule and Other Identifying Information: WAC 181-82-105 Assignment of classroom teachers within districts and 181-82-110 Exceptions to classroom teachers assignment policy.

Hearing Location(s): Coast Wenatchee Center Hotel, 201 North Wenatchee Avenue, Wenatchee, WA 98801, on May 21, 2008, at 8:30 a.m.

Date of Intended Adoption: May 21, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by May 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by May 10, 2008, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The professional educator standards board proposes language to create a conditional waiver for teachers assigned out-of-endorsement. The conditional waiver will ensure the most qualified teacher is assigned to a particular classroom for which no properly endorsed teacher can be found. It is similar to office of superintendent of public instruction's special education pre-endorsement waiver.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236,

phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

April 2, 2008

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-82-105 Assignment of classroom teachers within districts. In addition to holding teaching permits or certificates as required by WAC 180-16-220(2), the assignment of classroom teachers in the basic program of education shall comply with the following:

(1) Classroom teachers with standard or unendorsed continuing teacher certificates may be assigned to any grade or subject areas for which certification is required.

(2) Classroom teachers with initial, residency, endorsed continuing, or professional teacher certificates may be assigned only to the specified grades and specified subject areas stated as endorsements upon their respective certificates or permits.

(3) Classroom teachers with initial, residency, endorsed continuing, or professional teacher certificates who have an elementary education endorsement may be assigned to teach any subject in grades K-8.

(4) Any certificated teacher who has completed twenty-four quarter hours (sixteen semester hours) of academic study in a content area that will be offered in grades four through nine may be assigned to that course even if the teacher does not hold an endorsement in that area.

(5) Any certificated teacher may be assigned to a middle school or junior high school block program, which for the purpose of this section shall be defined as the same teacher assigned to teach two or more subject areas to the same group of students, if the teacher has an endorsement in one of the subject areas and has completed or will complete within one year nine quarter hours in each of the other subject areas.

(6) Upon determination by school districts that teachers have the competencies to be effective teachers in alternative settings, individuals with initial, residency, endorsed continuing, or professional teacher certificates may be assigned to teach in alternative schools.

(7) Any certificated teacher may be assigned to courses offered in basic education subject areas not included with the list of endorsements specified in WAC ((~~181-82-202~~)) 181-82A-202.

(8) Any certificated teacher may be assigned to serve as a substitute classroom teacher at any grade level or in any subject area for a period not to exceed thirty consecutive school days in any one assignment.

(9) Any certificated person holding a limited certificate as specified in WAC 181-79A-230 or a career and technical education certificate as specified in chapter 181-77 WAC may be assigned as per the provisions of such section or chapter.

(10) If a teacher is assigned to provide special education, then the district must also comply with WAC 392-172-200 and 392-172-202.

(11)(a) For the purpose of this section, the term "specified subject areas" shall mean courses or classes with the same subject area title as specified by the classroom teacher's endorsement and courses or classes which the board of directors of the district, using the endorsement-related assignment table published by the professional educator standards board as a nonbinding guideline, determines to substantially include the same subject area as the endorsement—e.g., a classroom teacher with a health endorsement may be assigned to any course, regardless of course title, which substantially includes health as the subject area.

(b) The endorsement-related assignment table published by the professional educator standards board may not be changed without prior professional educator standards board approval. Endorsement-related assigned classroom teachers must be evaluated annually specific to the assignment and achieve a satisfactory rating to continue in the assignment.

(12) Exceptions to the assignment requirements of subsection (1) of this section must comply with WAC 181-82-110.

(13) School district compliance with this section shall be subject to the state staff review process specified in WAC 180-16-195(2).

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-82-110 Exceptions to classroom teacher assignment policy. Exceptions to the classroom teacher assignment policy specified in WAC 181-82-105 shall be limited to the following:

(1) Upon determination by school districts that teachers have the competencies to be effective teachers in areas other than their endorsed areas, individuals with initial, residency, endorsed continuing, or professional teacher certificates who have completed provisional status with a school district under RCW 28A.405.220 may be assigned to classes other than in their areas of endorsement. If teachers are so assigned, the following shall apply:

(a) A designated representative of the district and any such teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(b) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(c) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned; and

(d) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board by the employing school district as required by WAC 180-16-195. Included in the report shall be the number of teachers in out-of-endorsement assignments and the specific assistance being given to the teachers.

(2) Teachers with initial, residency, endorsed continuing, or professional teacher certificates who have not completed provisional status with a school district under RCW

28A.405.220 may be assigned to one out-of-endorsement assignment for a maximum of two periods (not more than forty percent full-time equivalent) a day. Conditions described in subsection (1)(a) through (d) of this section shall apply to teachers so assigned.

(3) After August 31, 2000, a teacher who has completed twenty-four quarter credit hours (sixteen semester credit hours) of course work applicable to a special education endorsement shall be eligible for a waiver from the special education office which will allow that person to be employed as a special education teacher. All remaining requirements shall be completed within five years of service as a special education teacher. Teachers who hold certificates endorsed in special education or who have received waivers from the special education office prior to September 1, 2000, shall not be affected by the requirements of this subsection.

(4) After August 31, 2008, a teacher who has completed eighteen quarter credit hours (twelve semester credit hours) of coursework applicable to an endorsement, other than special education for which subsection (3) of this section addresses, shall be eligible for a conditional waiver from the professional educator standards board. Approved conditional waivers will allow a teacher to be employed in the subject matter area for which they do not hold the endorsement as long as they are enrolled in an endorsement program and attain the full endorsement within four years. Application for a conditional waiver shall be made to the professional educator standards board.

WSR 08-08-107

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed April 2, 2008, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-126.

Title of Rule and Other Identifying Information: WAC 181-79A-130 Fee for certification, 181-79A-131 Use of fee for certification, and 181-79A-221 Academic and experience requirements for certification—School counselors, school psychologists, and school social workers.

Hearing Location(s): Coast Wenatchee Center Hotel, 201 North Wenatchee Avenue, Wenatchee, WA 98801, on May 21, 2008, at 8:30 a.m.

Date of Intended Adoption: May 21, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by May 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by May 10, 2008, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Per legislation that passed this session, SB 6740, the professional educator standards board (PESB) would allow ESDs to use their portion of certification fees to operate their certification offices.

The PESB will also allow a school counselor holding a school counselor national board certificate to have met the professional certificate requirement.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 42736, Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

March 27, 2008

Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 08-03-100, filed 1/20/08, effective 2/20/08)

WAC 181-79A-130 Fee for certification. (1) In accordance with provisions of RCW 28A.410.060 and 28A.415.010, the fee for certificates which are valid for more than one year, issued by authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be as follows:

(a) The first issue of the residency certificate, five dollars for each year of validity;

(b) The continuing certificate, seventy dollars;

(c) The reinstatement, additional endorsement on the teaching certificate, duplicate certificates, substitute certificates, and certificates issued for the purpose of showing a name change, fifteen dollars;

(d) The first peoples' language, culture, and oral tribal traditions teacher certificate, twenty-five dollars; and

(e) Any other certificate or credential or any renewal thereof, five dollars for each year of validity;

(f) Provided, That the fee for all career and technical education certificates shall be one dollar:

(g) Provided, That a one-time late fee for a renewed initial or continuing certificate issued under the provisions of WAC 181-79A-123 (7), (8), or (9) for those whose initial certificate had already expired shall be one hundred dollars.

(2) The fee for any other certificate/credential, or for any renewal thereof, issued by the authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be five dollars.

(3) Officials authorized to collect certification fees are educational service district superintendents, local school district superintendents, deans and directors of education at colleges and universities, or their designees. Sovereign tribal

governments may collect certification fees for first peoples' language, culture, and oral tribal traditions certificates. The fee must accompany the application for a certificate and shall be transmitted by the receiving district, college or university, sovereign tribal government or program unit designee at least quarterly to the educational service district within which the application is filed for disposition in accordance with provisions of RCW 28A.410.060. The fee shall not be refunded unless the application is withdrawn before it is finally considered (i.e., the issuance of a certificate or a written communication denying such issuance) by the superintendent of public instruction or his or her designee. Fees not refunded shall apply as credit toward certificate fees if such applicant reapplies within twenty-four months of the date of denial. Moneys accrued from certification fees within the boundaries of an educational service district shall be divided in the following manner:

(a) Local school districts employing more than one hundred teachers and other professional staff and collecting certification fees may retain one dollar of each fee in order to hold a professional training institute. If such district does not hold an institute, all such moneys shall be placed to the credit of the educational service district.

(b) No less than fifty percent of the funds accruing within the boundaries of an educational service district shall be used to support program activities related to statewide pre-certification professional preparation and evaluation.

(c) The remaining funds shall be used to support professional in-service training programs (~~and evaluations thereof~~), program evaluation and/or provision of certification services by educational service districts.

(d) Use of certification fees described in this section shall be reported annually to the professional educator standards board pursuant to WAC 181-79A-131(~~(5)~~) (6).

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-131 Use of fee for certification. (1) Certification fees will be used solely for precertification preparation, program evaluation, professional in-service training programs, (~~teachers' institutes and/or workshops, and evaluations~~) and/or provision of certification services by educational service districts thereof in accordance with this chapter.

(2) Precertification preparation:

(a) The primary utilization shall be to support collaborative efforts essential to program development, program evaluation, and assessment of candidates' entry and exit competency.

(b) Funds set aside for precertification shall not supplant funds already available to any participating agency.

(c) A single educational service district shall be designated to administer the funds allocated for precertification programs. The designated educational service district shall be permitted to retain a percentage of the precertification fees at a rate to be negotiated by the superintendent of public instruction and the educational service district for costs related to administering these funds.

(d) Each quarter every educational service district shall forward the moneys designated for precertification programs to the educational service district designated to administer such programs.

(3) Professional in-service training programs and teachers' institutes and/or workshops:

(a) Each educational service district, or cooperative thereof as specified in (d) of this subsection, shall establish an in-service committee composed of an educational service district representative; at least one district superintendent; one principal; one educational staff associate; one elementary, one junior high and one senior high teacher; one representative from the elementary or secondary level of private schools within the educational service district; and one representative selected by the chief administrative officer responsible for professional education from a college/university having a professional educator standards board-approved teacher education program. Teacher representatives shall be selected by agreement among the presidents of the local education associations within the respective educational service district or cooperative thereof.

(b) The educational service district representative shall serve as chairperson of the in-service committee and provide liaison with the superintendent of public instruction and the professional educator standards board.

(c) The in-service committee will be responsible for coordinating in-service/staff development model programs within the educational service district and shall submit to the superintendent of public instruction and the professional educator standards board a plan for soliciting and selecting model programs which shall include procedures for conducting needs assessments, determining priorities and carrying out program evaluation.

(d) Cooperative agreements may be made among educational service districts to provide quality in-service education programs.

(e) Funds designated for in-service programs shall not supplant funds already available for such programs.

(4) Provision of certification services:

(a) The primary utilization shall be to support costs associated with operating educational service district certification offices to provide direct service to educators related to certification.

(b) Funds set aside for the provision of certification services shall not supplant funds already available to any educational service district.

(5) Allowable expenditures. Funds may be used to support costs related to training, such as the payment of professional contractual services, per diem, travel costs, materials, printing, or released time. Nonallowable costs are college/university tuition and fees.

~~((5))~~ (6) Annual reporting. No later than July 1, the superintendent of public instruction shall prepare and present to the professional educator standards board an annual report concerning the use of certification fees for (precertification and in-service activities) the previous fiscal year. The report shall include proposed budgets and a description of activities, in accordance with this chapter, for the upcoming fiscal year. Budgets and activities must be approved by the professional educator standards board on an annual basis.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-221 Academic and experience requirements for certification—School counselors, school psychologists, and school social workers. Candidates for school counselor, school psychologist and school social worker certification shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-226: Provided, That it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive written examination required in such master's degree program: Provided, That if any candidate has been awarded a master's degree without a comprehensive written examination, the candidate, as a condition for certification, shall arrange to take such an examination with any accredited college or university and provide the superintendent of public instruction with an affidavit from the chair of the department of such academic field that he or she has successfully completed the above noted comprehensive examination.

(1) School counselor.

(a) Initial.

(i) The candidate shall have completed all requirements for the master's degree (except special projects or thesis) with a major in counseling.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination of a regionally accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Certified Counselors (NBCC).

(b) Residency.

(i) The candidate shall hold a master's degree with a major in counseling.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored, written examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on the Praxis II guidance and counseling examination administered by Educational Testing Service (ETS).

(c) Continuing.

(i) The candidate shall hold a master's degree with a major in counseling.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledges and skills while employed in that role by passing a one-quarter or one-semester college or university course

that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

(d) Professional. The candidate shall have completed an approved professional certificate program, provided, that an individual who holds a school counseling certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirement for completion of a professional certificate program, in recognition that NBPTS certification is issued only to individuals who have demonstrated highly advanced skills as a school counselor.

(2) School psychologist.

(a) Initial.

(i) The candidate shall have completed all requirements for the master's degree (except special projects or thesis) with a major or specialization in school psychology.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination from a regionally accredited institution of higher education or the National Certification of School Psychologist (NCSP) examination.

(b) Residency.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored, written examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on the Praxis II school psychology examination administered by Educational Testing Service (ETS).

(c) Continuing.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledges and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

(d) Professional. The candidate shall have completed an approved professional certificate program.

(3) School social worker.

(a) Initial.

(i) The candidate shall have completed all requirements for a master's degree in social work except special projects or thesis.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree.

This examination shall be an examination from a regionally accredited institution of higher education, the social worker examination of the Academy of Certified Social Workers or the National Teacher Examination—School Social Worker Specialty Area examination required for certification as a school social worker by the National Association of Social Workers.

(b) Residency.

(i) The candidate shall hold a master's degree in social work.

(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored, written examination of a regionally accredited institution of higher education or the candidate may meet the requirement by receiving a passing score on the Praxis II school social work examination administered by Educational Testing Service (ETS).

(c) Continuing.

(i) The candidate shall hold a master's degree in social work.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledges and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

(d) Professional. The candidate shall have completed an approved professional certificate program.

WSR 08-08-114

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 2, 2008, 9:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-04-076.

Title of Rule and Other Identifying Information: The department is amending chapter 388-106 WAC, Long-term care services.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 6, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 7, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 6, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 29, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The medicare/medicaid integration project (MMIP) that has been available to dual eligible clients living in King or Pierce County will be phased out during 2008. This rule making amends and repeals sections in chapter 388-106 WAC to remove references to MMIP.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Karen Fitzharris, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2446.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed these rules and determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

March 28, 2008

Katherine D. Vasquez, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a Medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPEs)** is a Medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) **Medically needy residential waiver (MNRW)** is a Medicaid waiver program authorized under RCW 74.39.041.

Clients eligible for this program may receive personal care in a residential facility.

(4) **Medically needy in-home waiver (MNIW)** is a Medicaid waiver program authorized under RCW 74.09.700. Clients eligible for this program may receive personal care in their own home.

(5) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

(6) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

(7) **Program of all-inclusive care for the elderly (PACE)** is a Medicaid/Medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

(8) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

(9) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

(10) **GAU-funded residential care** is a state-funded program authorized under WAC 388-400-0025. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

(11) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

(12) **Private duty nursing** is a Medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

(13) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

(14) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

(15) **Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-853 WAC.

(16) **Nursing facility.**

(17) ~~((Medicare/Medicaid integration project (MMIP) is a DSHS prepaid managed care program, authorized under 42 CFR Part 438, that integrates medical and long-term care services for clients who are sixty-five years of age or older and eligible for Medicare (Parts A and B) and Medicaid.~~

~~(18))~~ **New Freedom consumer directed services (NFCDS)** is a Medicaid waiver program authorized under RCW 74.39A.030.

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

WAC 388-106-0070 Will I be assessed in CARE? You will be assessed in CARE if you are applying for or receiving DDD services, COPES, MNIW, MNRW, MPC, chore, respite, adult day health, GAU-funded residential care, PACE, private duty nursing, New Freedom or long-term care services within the ((MMIP or)) WMIP program((s)).

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|------------------|---|
| WAC 388-106-0720 | What services may I receive under MMIP? |
| WAC 388-106-0725 | Am I eligible for MMIP services? |
| WAC 388-106-0730 | How do I pay for MMIP services? |
| WAC 388-106-0735 | How do I disenroll from MMIP? |
| WAC 388-106-0740 | What is the fair hearing process for enrollee appeals of managed care organization actions? |

WSR 08-08-115

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 2, 2008, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-092.

Title of Rule and Other Identifying Information: The department is creating new WAC 388-502-0270 Review of department's provider dispute decision.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/tpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 6, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 7, 2008.

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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 6, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 29, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to provide a single process for those disputes reviewed by the DSHS/HRSA deputy assistant secretary.

Reasons Supporting Proposal: Current department rules permit providers to dispute certain department actions. These rules contain varying dispute procedures. This single process should reduce complexity for providers and the department and streamline the dispute process.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Brian Jensen, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1585.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendments and concludes that they do not impose a disproportionate cost impact on small businesses. As a result, the preparation of a 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 Brian Jensen, P.O. Box 45504, Health and Recovery Service Administration, Olympia, WA 98504-5504, phone (360) 725-1585, fax (360) 586-9727, e-mail jenseb@dshs.wa.gov.

March 28, 2008

Katherine D. Vasquez, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-502-0270 Review of department's provider dispute decision. (1) This section applies only when department rules allow review of a department dispute decision under this section. The deputy assistant secretary of the health and recovery services administration (HRSA) or designee conducts the review.

(2) Providers and former providers may request a review of a department dispute decision. The request must be in writing and sent to: HRSA, Attn: Deputy Assistant Secretary, PO Box 45504, Olympia, WA 98504-5504. The department must receive the written dispute review request within twenty-eight calendar days of the date on the department's written dispute decision.

(3) When the department receives a timely dispute review, the deputy or designee may schedule a dispute review conference. "Dispute review conference" means an informal conference for the purpose of resolving disagreements

between the department and a provider or former provider who is dissatisfied with a department decision. The dispute review conference is not governed by the administrative procedure act, chapter 34.05 RCW. If the deputy or designee chooses to schedule a dispute review conference, the deputy or designee will conduct the conference within ninety calendar days of the dispute review request unless the deputy or designee and the party requesting review agree to an extension.

(4) The deputy or designee will issue a dispute review decision to the provider or former provider requesting review within thirty calendar days of receiving the dispute review request or within thirty calendar days of the dispute review conference, whichever is later, unless both parties agree to an extension.

(5) The deputy review is the final level of department review for disputes to which this section applies.

WSR 08-08-116
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed April 2, 2008, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-065.

Title of Rule and Other Identifying Information: The department is amending WAC 388-515-1510 Division of developmental disabilities (DDD) waivers and outward bound residential alternatives (OBRA) and adding new sections to chapter 388-515 WAC, Alternate living—Institutional medical.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 6, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 7, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 6, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 29, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-515-1510 and adopting new rules to describe:

- General eligibility requirements under the four HCBS waivers;

- Financial requirements if you are eligible for medicaid under the noninstitutional categorically needy program (CN-P);
- Initial financial requirements if you are not eligible for medicaid under a categorically needy program (CN-P) listed in WAC;
- Post eligibility financial requirements if you are not eligible for medicaid under a categorically needy program listed in WAC;
- Instructions for community spouse income;
- Increases in the personal needs allowance to \$40.12 effective July 1, 2007, and \$41.44 effective July 1, 2008. Reasons Supporting Proposal: See above. Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530. Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, Washington state 2007-09 operating budget (SHB 1128).

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve Brink, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-3416.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

March 31, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-18-054, filed 8/27/04, effective 9/27/04)

WAC 388-515-1510 Division of developmental disabilities (DDD) home and community based services waivers ((and outward bound residential alternatives (OBRA))). ((This section describes the eligibility requirements for waiver services under the four DDD waivers and OBRA programs and the rules used to determine a client's participation in the cost of care.

(1) The four DDD waivers are:

- (a) Basic;
- (b) Basic Plus;
- (c) Core, and
- (d) Community protection.

(2) The requirements for services for DDD waivers are contained in chapter 388-845 WAC. The department establishes eligibility for DDD waivers and OBRA services for a client who:

- (a) Is both Medicaid eligible under the categorically needy (CN) program and meets the requirements for services provided by the division of developmental disabilities (DDD);

~~(b) Has attained institutional status as described in WAC 388-513-1320;~~

~~(c) Has been assessed as requiring the level of care provided in an intermediate care facility for the mentally retarded (ICF/MR);~~

~~(d) Has a department approved plan of care that includes support services to be provided in the community;~~

~~(e) Is able to reside in the community according to the plan of care and chooses to do so;~~

~~(f) Meets the income and resource requirements described in subsection (3); and~~

~~(g) For the OBRA program only, the client must be a medical facility resident at the time of application.~~

~~(3) The department allows a client to have nonexcluded resources in excess of the standard described in WAC 388-513-1350(1) during the month of either an application or eligibility review if, when excess resources are added to nonexcluded income, the combined total does not exceed the special income level (SIL). Refer to WAC 388-513-1315 for rules used to determine nonexcluded income and resources. During other months, financial requirements include the following:~~

~~(a) Nonexcluded income must be at or below the SIL; and~~

~~(b) Nonexcluded resources not allocated to participation in a prior month must be at or below the resource standard.~~

~~(4) A client who is eligible for supplemental security income (SSI) does not participate in the cost of care for DDD waivers or OBRA services.~~

~~(5) An SSI-related client retains a maintenance needs amount of up to the SIL, who is:~~

~~(a) Living at home; or~~

~~(b) Living in an alternate living facility described in WAC 388-513-1305(1).~~

~~(6) A client described in subsection (5)(b) retains the greater of:~~

~~(a) The SSI grant standard; or~~

~~(b) An amount equal to a total of the following:~~

~~(i) A personal needs allowance (PNA) of thirty-eight dollars and eighty four cents; plus~~

~~(ii) The facility's monthly rate for board and room, which the client pays to the facility; plus~~

~~(iii) The first twenty dollars of monthly earned or unearned income; and~~

~~(iv) The first sixty-five dollars plus one-half of the remaining earned income not previously excluded.~~

~~(7) If a client has a spouse in the home who is not receiving DDD waivers or OBRA services, the department allocates the client's income in excess of the amounts described in subsections (5) and (6) as an additional maintenance needs amount in the following order:~~

~~(a) One for the spouse, as described in WAC 388-513-1380(7)(b); and~~

~~(b) One for any other dependent family member in the home, as described in WAC 388-513-1380(7)(c).~~

~~(8) A client's participation in the cost of care for DDD waivers or OBRA services is the client's income:~~

~~(a) That exceeds the amounts described in subsections (5), (6), and (7); and~~

~~(b) Remains after deductions for medical expenses not subject to third-party payment for which the client remains liable, included in the following:~~

~~(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and~~

~~(ii) Necessary medical care recognized under state law but not covered by Medicaid.) The four sections that follow describe the general and financial eligibility requirements for the division of developmental disabilities (DDD) home and community based services (HCBS) waivers.~~

~~(1) WAC 388-515-1511 describes the general eligibility requirements under the four DDD HCBS waivers.~~

~~(2) WAC 388-515-1512 describes the financial requirements if you are eligible for Medicaid under the noninstitutional categorically needy program (CN-P).~~

~~(3) WAC 388-515-1513 describes the initial financial requirements if you are not eligible for Medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1).~~

~~(4) WAC 388-515-1514 describes the post eligibility financial requirements if you are not eligible for Medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1).~~

NEW SECTION

WAC 388-515-1511 What are the general eligibility requirements for waiver services under the four division of developmental disabilities (DDD) home and community based services (HCBS) waivers? This section describes the general eligibility requirements for waiver services under the four DDD home and community based services (HCBS) waivers.

(1) The four DDD HCBS waivers are:

(a) Basic;

(b) Basic plus;

(c) Core; and

(d) Community protection.

(2) The requirements for services for DDD HCBS waivers are described in chapter 388-845 WAC. The department establishes eligibility for DDD HCBS waivers. To be eligible, you must:

(a) Be an eligible client of the division of developmental disabilities (DDD);

(b) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 388-475-0050;

(c) Require the level of care provided in an intermediate care facility for the mentally retarded (ICF/MR);

(d) Have attained institutional status as described in WAC 388-513-1320;

(e) Be able to reside in the community and choose to do so as an alternative to living in an ICF/MR;

(f) Need waiver services as determined by your plan of care or individual support plan, and:

(i) Be able to live at home with waiver services; or

(ii) Live in a department contracted facility, which includes:

(A) A group home;

(B) Group training home;

- (C) Child foster home, group home or staffed residential facility;
- (D) Adult family home (AFH); or
- (E) Adult residential care (ARC) facility.
- (iii) Live in your own home with supported living services from a certified residential provider; or
- (iv) Live in the home of a contracted companion home provider; and
- (g) Be both Medicaid eligible under the categorically needy program (CN-P) and be approved for services by the division of developmental disabilities.

NEW SECTION

WAC 388-515-1512 What are the financial requirements if I am eligible for Medicaid under the noninstitutional categorically needy program (CN-P). (1) You automatically meet income and resource eligibility for DDD waiver services if you are eligible for Medicaid under a categorically needy program (CN-P) under one of the following programs:

- (a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status. These clients have Medicaid eligibility determined and maintained by the Social Security Administration;
- (b) Healthcare for workers with disabilities (HWD) described in WAC 388-475-1000 through 388-475-1250;
- (c) SSI-related CN-P Medicaid described in WAC 388-475-0100 (2)(a) and (b) or meets the requirements in WAC 388-475-0880 and remains CN-P eligible after the income disregards have been applied;
- (d) CN-P Medicaid for a child as described in WAC 388-505-0210 (1), (2), (7) or (8); or
- (e) General assistance expedited Medicaid disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6).

(2) If you are eligible for a CN-P Medicaid program listed in subsection (1) above, you do not have to pay (participate) toward the cost of your personal care and/or habilitation services.

(3) If you are eligible for a CN-P Medicaid program listed in subsection (1) above, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR).

(4) If you are eligible for a CN-P Medicaid program listed in subsection (1), you pay up to the ADSA room and board standard described in WAC 388-515-1505. Room and board and long-term care standards are located at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTerm-Care/LTCstandardspna.shtml>.

(a) If you live in an ARC, AFH or DDD group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ADSA room and board standard. The PNA from July 1, 2007 through June 30, 2008 is forty dollars and twelve cents. Effective July 1, 2008 the PNA increases to forty-one dollars and forty-four cents.

(b) If you receive nonSSI income, you may keep up to an additional twenty dollars.

(5) If you are eligible for a premium based Medicaid program such as healthcare for workers with disabilities (HWD), you must continue to pay the Medicaid premium to remain eligible for that CN-P program.

NEW SECTION

WAC 388-515-1513 How does the department determine if I am financially eligible for medical coverage if I am not eligible for Medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1)? If you are not eligible for Medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1), we must determine your eligibility using institutional Medicaid rules. This section explains how you may qualify under this program. You may be required to pay towards the cost of your care if you are eligible under this program. The rules explaining how much you have to pay are listed in WAC 388-515-1514. To qualify, you must meet both the resource and income requirements.

(1) If you have resources which are higher than the standard allowed under WAC 388-515-1350, we may reduce the amount we are required to count if you have unpaid medical expenses.

(a) We will reduce your resources in an amount equal to the unpaid medical expenses you verify. The anticipated cost of your waiver services cannot be used as a medical expense to qualify for this deduction.

(b) If your remaining resources, after the deduction in section (1)(a) are still over the standard, you are ineligible until your resources are below the standard.

(c) You are not subject to a transfer of asset penalty described in WAC 388-513-1363 through 388-513-1366.

(d) Equity in your home is five hundred thousand dollars or less as described in WAC 388-513-1350.

(2) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit level. The department follows the rules in WAC 388-515-1325, 388-513-1330 and 388-513-1340 to determine available income and income exclusions.

NEW SECTION

WAC 388-515-1514 How does the department determine how much of my income I must pay towards the cost of my care if I am not eligible for Medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1)? If you are not eligible for Medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1), the department determines how much you must pay based upon the following:

(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA).

(2) If you are an SSI-related client and you live in an ARC, AFH or DDD group home, you:

(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. The PNA from July 1, 2007 through June 30, 2008 is forty dollars and twelve cents.

Effective July 1, 2008 the PNA increases to forty-one dollars and forty-four cents.

(b) May keep up to an additional twenty dollars from your nonSSI income; and

(c) Pay for your room and board up to the ADSA room and board rate described in <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(3) Income that remains after the allocation described in (2) above, is reduced by allowable deductions in the following order:

(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished from your income or withheld according to a child support order in the month of the garnishment if it is for the current month. If we allow this as deduction from your income, we will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative minus;

(V) The food assistance standard utility allowance (for long term care services this is set at the standard utility allowance (SUA) for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(VII) Is reduced by your community spouse's gross countable income.

(iii) May be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of your community or institutionalized spouse. The amount we allow is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, the amount is equal to one-third of the community spouse allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowances in subsection (1) for in home or subsection (2)(a) in a residential setting; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (3)(a); and

(iii) Guardianship fees and administrative costs in subsection (3)(b).

(5) If you are eligible for general assistance expedited Medicaid disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6), you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the general assistance program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and general assistance grant to the facility for the cost of room and board up to the ADSA room and board standard described in <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; or

(c) When you live in an ARC or DDD group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents which you keep for your PNA.

(6) The combination of the room and board amount and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or DDD group home provider.

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 08-08-117
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 2, 2008, 9:49 a.m.]

Supplemental Notice to WSR 07-22-037.

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

Title of Rule and Other Identifying Information: The department is amending WAC 388-455-0005 How lump sum payments affect benefits, 388-455-0010 How the department treats lump sum payments as a resource for cash assistance and TANF/SFA-related medical assistance, and 388-455-0015 How the department treats lump sum payments as income for cash assistance and TANF/SFA-related medical assistance. This filing is a supplemental rule filing packet to the CR-102 previously filed as WSR 07-22-037.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 6, 2008, at 10:00 a.m.

Date of Intended Adoption: No earlier than May 7, 2008.

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 schilse@dshs.wa.gov, fax (360) 664-6185, on May 6, 2008, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 29, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current rules describe the department's policy on how a lump sum payment impacts a person's eligibility for cash, medical, and food assistance benefits.

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

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

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

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by setting eligibility rules related to

how a lump sum payment impacts eligibility for cash, medical, and food assistance programs.

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

March 31, 2008

Stephanie E. Schiller
Rules Coordinator

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

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

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

(a) ~~((The department counts payments))~~ As a resource, under WAC 388-455-0010, if it was awarded for wrongful death, personal injury, damage, or loss of property ((as resources as described in WAC 388-455-0010)).

(b) ~~((We count all other lump sum payments as income as described in WAC 388-455-0015))~~ As income, under WAC 388-455-0015, if it was received for any other reason.

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

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

WAC 388-455-0010 ((How)) When and how does the department treat((s)) lump sum payments as a resource for cash assistance and ((TANF/SFA-related)) family medical ((assistance-)) programs? ~~((This section applies to cash assistance and TANF/SFA-related medical assistance-))~~

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

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

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

- (a) ~~Repair or replacement of damaged or lost property; or~~

(b) Medical bills)) If some of your lump sum payment is designated for medical bills or to repair or replace damaged property, we do not count the designated amount as a resource for sixty days starting the month after you received the payment. After the sixty day period, we count all of the lump sum payment that remains as a resource.

(3) ((We do not count the portion described in subsection (2) of this section for sixty days following the month the payment is received. At the end of the sixty-day period, we count any amount that remains as a resource)) For family medical programs, we do not count an increase in your resources if you are continuously eligible as described under WAC 388-470-0026 (1) and (2).

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

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

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

(a) First, we subtract the value of your existing resources from the resource limit as described in WAC 388-470-0005;

(b) Then, we subtract the difference in (1)(a) from the total amount of the lump sum; and

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

(2) For cash assistance, ((the amount of the lump sum that is countable may change if any or all of the lump sum becomes unavailable for reasons beyond your control. See WAC 388-450-0005. When the countable amount of the lump sum is:

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

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

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

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

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

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

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

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

(c) The amount left over is what we count as income, as specified in WAC 388-450-0025 and 388-450-0030.

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

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

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

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

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

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

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

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

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

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

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

(b) If you cannot access some or all of your lump sum payment for reasons beyond your control, will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.

(c) We ((consider)) count any money that remains on the first of the next month as a resource except for recipients as described in WAC 388-470-0026 (1) and (2).

WSR 08-08-120
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed April 2, 2008, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-152.

Title of Rule and Other Identifying Information: Chapter 196-12 WAC, Registered professional engineers.

Hearing Location(s): LaQuinta Inn, Board Room, 1427 East 27th, Tacoma, WA 98421, on May 7, 2008, at 3:00 p.m.

Date of Intended Adoption: May 7, 2008.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by May 2, 2008.

Assistance for Persons with Disabilities: Contact Kim King by May 2, 2008, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As a result of SSB 5984, chapter 193, Laws of 2007, these rules are needed to establish a waiver of structural licensure for a limited period of time.

Reasons Supporting Proposal: SSB 5984, chapter 193, Laws of 2007, established that only structural engineers can perform engineering work on significant structures. The rules are needed to reflect the changes made to chapter 18.43 RCW that impact those professional engineers that perform structural work.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

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

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

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

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

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

April 2, 2008
George A. Twiss
Executive Director

NEW SECTION

WAC 196-12-100 Limited waiver of the requirement for licensure in structural engineering to design "significant structures." The board may grant a waiver of the licensing requirement in structural engineering for qualified candidates. Said waiver is available July 1, 2008. All waivers issued by the board are not renewable and will expire

12:00 a.m. December 31, 2010. Individuals being issued the waiver are not permitted to represent themselves as being licensed in structural engineering or otherwise using any title or advertisement tending to convey the impression he or she is licensed in structural engineering.

NEW SECTION

WAC 196-12-103 Application requirements for waiver of structural license for designing "significant structures." The board will consider applications for a waiver to the requirement for licensure in structural engineering to design "significant structures" beginning May 1, 2008. Applicants must:

(1) Be licensed as a professional engineer in Washington state as of January 1, 2007;

(2) Submit an application for waiver that is postmarked on or before January 1, 2009. Said application to include:

(a) The names of at least three references who are licensed professional engineers with experience in seismic analysis and designs and who have direct knowledge and familiarity of the applicant's competency;

(b) Verification of at least six years of progressive structural engineering experience performing seismic analysis and design, since the date of original licensure as a PE; and

(c) Verification that qualifying experience was gained under the direct supervision of a professional engineer(s).

NEW SECTION

WAC 196-12-105 Ineligibility for licensing waiver.

An applicant for a waiver of the structural engineering licensure requirement is not eligible if he or she has a record of disciplinary action against his or her professional engineer's license in any jurisdiction with findings of gross negligence or incompetence.

NEW SECTION

WAC 196-12-107 Board review of applications for structural licensing waiver. The board may use any one or more of the following procedures in determining if an applicant is eligible for the structural licensing waiver:

(1) Detailed review and evaluation of application;

(2) Interviews with named references;

(3) Review of examples of candidate's work product;

(4) Oral interview with candidate.

WSR 08-08-121

PROPOSED RULES

BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed April 2, 2008, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-18-069.

Title of Rule and Other Identifying Information: Chapter 196-12 WAC, Registered professional engineers.

Hearing Location(s): LaQuinta Inn, Board Room, 1427 East 27th, Tacoma, WA 98421, on May 7, 2008, at 4:00 p.m.

Date of Intended Adoption: May 7, 2008.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by May 2, 2008.

Assistance for Persons with Disabilities: Contact Kim King by May 2, 2008, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to this chapter are necessary to provide guidance to applicants with regard to the experience, education, and application requirements to become licensed as a professional engineer. It also better organizes existing rules, and amend/ repeal language that no longer applies to professional engineers.

Reasons Supporting Proposal: Amendments to these rules are necessary to reorganize the rules to make them easier to follow and comply with. It also eliminates old language that no longer applies due to procedural changes.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

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

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

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

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

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

April 2, 2008
George A. Twiss
Executive Director

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-010 ((Eligibility and applications.))
Registration requirements. The ((law requires)) requirements to become licensed as a professional engineer are:

(1) Eight years of experience in engineering work of a character satisfactory to the board ((and passing the fundamentals of engineering examination to be eligible for the second stage (PE) engineer examination.));

(a) These eight years must be of broad based, progressive experience to include gaining knowledge and comprehension of engineering subjects and applying engineering principles. ((The eight years of experience must be completed sixty days prior to the date of the examination.

A professional engineer (PE) applicant must have passed the first stage examination (the fundamentals of engineering

(FE) examination) and be enrolled as an engineer-in-training (EIT), or qualify to waive the FE examination in accordance with WAC 196-12-050, before he or she can take the second stage (PE) examination. If the applicant has at least eight years of qualifying engineering experience, the PE examination may be applied for at the same time that he or she applies for the FE examination. The PE application may also be submitted before the results of the FE examination have been received, provided the application is submitted at least four months before the second stage examination date.

All applications must be completed on forms provided by the board and filed with the executive director at the board's address. The deadline for properly completed applications accompanied by the appropriate fee as listed in WAC 196-26A-025 is four months prior to the date of the examination. Late applications will be considered for a later examination. Supporting documents such as college transcripts and experience verification forms must be received by the board three months prior to the date of the examination in order for the board to determine eligibility prior to examination deadlines. Failure to have the supporting documents sent to the board by the defined deadline will result in the applicant being delayed until a later examination.

To reschedule the taking of an examination, a written request accompanied by the applicable fee as listed in WAC 196-26A-025 is required at least three months prior to the examination date. Once an application has been approved, no further application is required.)) (b) The eight years of experience may be a combination of education and practical work experience. Under selected circumstances a maximum of five years of education (baccalaureate and masters degrees) can be granted toward the eight-year requirement.

(2) Obtaining a passing score on the fundamentals-of-engineering (FE) examination or be granted a waiver of the examination;

The FE examination can be taken only after gaining an equivalent of four years of qualifying experience of a character satisfactory to the board or be certified by the university that the applicant has achieved senior standing in an approved engineering program;

(3) Obtaining a passing score on the principles and practice of engineering examination;

(4) Obtaining a passing score on the board's law and ethics examination;

(5) Be of good character and reputation; and

(6) Payment of applicable fees.

NEW SECTION

WAC 196-12-011 Application requirements. All applications for the professional engineer (PE) examinations must:

(1) Be received at the board's address with the applicable fee by:

(a) January 15 for the April exam administrations;

(b) July 31 for the October exam administrations.

(2) Be completed and submitted on forms provided by the department.

(3) Include the names and addresses of five references, three of which must be licensed engineers having personal knowledge of the applicant's character and reputation.

(4) Be supported by documents such as:

(a) Official college transcripts, showing all grades and degrees;

(b) Completed experience verifications; and

(c) Any applicable verifications of licensing and/or examination records from other licensing jurisdictions.

NEW SECTION

WAC 196-12-012 Reexamination requirements. All applicants who fail to pass an examination or do not appear at the scheduled examination time may request, in writing, an opportunity for reexamination. The request must be received in the office of the board with applicable fee by January 15th for the April exam administrations or July 31st for the October exam administrations.

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-020 Work experience records. ~~((The board shall evaluate all experience, which includes education, on a case-by-case basis and approve such experience as appropriate.))~~ The ~~((board will use the))~~ following criteria will be used in evaluating an applicant's experience record:

(1) ~~((Education experience will be based on transcripts. Therefore, any transcripts not previously sent to the board's office should be submitted for maximum experience credit. Education may be approved as experience based on the following:))~~

~~((a) Graduation with a baccalaureate degree in engineering approved by the engineer accreditation commission (EAC) of the accreditation board for engineering and technology (ABET, Inc.) shall be equivalent to four years of required experience. Satisfactory completion of each year of such an approved engineering curriculum is equivalent to one year of experience.~~

~~((b) Graduation with a baccalaureate degree in a program in engineering technology approved by the technology accreditation commission (TAC) of the accreditation board for engineering and technology (ABET, Inc.) is equivalent to three years of required experience. Satisfactory completion of each year of such an approved program is equivalent to three-fourths of one year of experience.~~

~~((c) Graduation in an approved four year non-ABET, Inc. accredited engineering curriculum will be given a maximum of three years of experience.~~

~~((d) A maximum of one year may be granted for post-graduate engineering courses approved by the board for those applicants having earned degrees in accordance with (a), (b) or (c) of this subsection.~~

~~((e) A nonengineering bachelor of science program can be given a maximum of two years of experience. If the degree is followed by a master of science in engineering from a school that has an ABET, Inc. accredited undergraduate program in the same discipline as the master's degree, a maximum of four years of experience may be granted for this combination of education.~~

~~((f) Graduation with an associate degree in engineering from an approved curriculum may be equivalent of up to two years of required experience.~~

~~((g) Education gained in a piecemeal fashion over time where no degree is conferred will be granted up to a maximum of two years of experience. For the purpose of this subsection, education in a "piecemeal fashion" means: One or two classes taken at a time, often at different schools; seminars; workshops; and classes taken through industry and the military. In order to determine the appropriate amount of experience, this type of education will be compared to college coursework in a baccalaureate of engineering technology degree program.~~

~~((h) The board may approve engineering degree programs from other countries.~~

~~((i) A number of foreign degree programs are included in mutual recognition agreements entered into by ABET, Inc. with other accrediting authorities. Applicants with a degree from one of these programs will be evaluated in accordance with (a) and (b) of this subsection. A list of those approved mutual recognition degree programs is maintained in the board office.~~

~~((ii) Applicants having engineering degrees from programs in countries that are not on the mutual recognition list will be required to have their transcripts evaluated by a transcript evaluation service approved by the board. This evaluation will be performed at the applicant's expense, and the applicant will be responsible for submitting all necessary information to the evaluation service. The board will use the evaluation to determine if the foreign degree is equivalent to an ABET, Inc. accredited degree. If the board determines that the degree is equivalent, experience will be granted in accordance with (a) or (b) of this subsection. If the board determines that the foreign degree is not equivalent to an ABET, Inc. accredited degree, then a maximum of three years of experience may be granted in accordance with (c) of this subsection.~~

~~((iii) An applicant with an undergraduate foreign degree from a program that is not on the mutual recognition list, can waive the requirement for a degree evaluation if they have a master of science in engineering from a school that has an ABET, Inc. accredited undergraduate engineering degree program in the same discipline as the master's degree. A maximum of four years of experience can be granted for this combination of education.~~

~~((i) Any other education will be taken into account and evaluated on its merits.~~

~~((j) Work experience gained between semesters or quarters or during summers while enrolled in an approved curriculum will be considered as part of the educational process. The board grants one year of experience for a year of approved education including any associated work experience within that year.~~

~~((2)) Work experience will be approved based on a demonstration of competency and progressive responsibility in the analysis, synthesis and evaluation of engineering concepts and data, under the direct supervision of a person authorized by chapter 18.43 RCW or other applicable statute to practice engineering. Under the general guidance and direct supervision of an authorized professional, the applicant must~~

be in a position of making independent judgments and decisions in the following experience areas:

- (a) Formulating conclusions and recommendations;
- (b) Identifying design and/or project objectives;
- (c) Identifying possible alternative methods and concepts;
- (d) Defining performance specifications and functional requirements;
- (e) Solving engineering problems;
- (f) Interacting with professionals from other areas of practice;
- (g) Effectively communicating recommendations and conclusions;
- (h) Demonstrating an understanding and concern for energy/environmental considerations, socioeconomic impact, and sustainability of resources.

~~((3))~~ (2) The branch of structural engineering requires specialized work experience to protect the public safety. To be eligible to take the structural license examination, an applicant must have at least two years of progressive responsibility in structural engineering experience. These two years of structural experience are in addition to the eight years of engineering experience required to be registered as a professional engineer and must be documented in the application in accordance with subsection ~~((2))~~ (1) of this section. The structural engineering experience must be supervised by a licensed professional engineer in the branch of structural engineering or a licensed professional engineer with ~~((significant))~~ substantial structural engineering work experience.

~~((4))~~ (3) Engineering teaching ~~((character))~~ may be considered satisfactory experience up to a maximum of two years.

~~((5))~~ (4) Applied research is considered satisfactory experience when it meets the following conditions:

(a) The research must be conducted under the guidance or supervision of a licensed engineer. For the purposes of this subsection, guidance or supervision means being cognizant of all applicable aspects of the work and a reviewer of all applicable reporting documentation.

(b) The ~~((principle))~~ principal result(s) of the research are in a published report or a recognized engineering journal article in which the applicant is the first author or the work is adequately documented and available to the board upon request.

~~((6))~~ (5) For military engineering experience to be considered acceptable, it should be similar to engineering experience that would be gained in a nonmilitary environment as defined in subsection ~~((2))~~ (1) of this section, and such experience must be verified.

~~((7))~~ (6) Any work experience gained without the supervision of a professional engineer authorized to practice under chapter 18.43 RCW or an individual authorized by another statute to practice engineering, or any work experience gained in any other situation which violates the provisions of chapters 18.43 and 18.235 RCW or Title 196 WAC will not be counted toward the statutory experience requirement.

NEW SECTION

WAC 196-12-021 Education experience records.

Official transcripts must be sent to the board's office for full education experience credit.

(1) A baccalaureate degree in engineering in a program approved by the engineering accreditation commission (EAC) of the accreditation board for engineering and technology (ABET, Inc.) is equivalent to four years of required experience. Satisfactory completion of each year of such an approved program is equivalent to one year of experience.

(2) A baccalaureate degree in an engineering technology program approved by the technology accreditation commission (TAC) of the ABET, Inc., is equivalent to three years of required experience. Satisfactory completion of each year of such an approved program is equivalent to three-fourths of one year of experience.

(3) An approved four years in an ABET, Inc., accredited engineering program will be given a maximum of three years of experience.

(4) No more than one year may be granted for postgraduate engineering courses for those applicants having earned degrees in accordance with subsections (1), (2), or (3) of this section.

(5) A baccalaureate degree in a nonengineering program will be given a maximum of two years of experience.

If the degree is followed by a graduate degree in engineering from a school that has an ABET, Inc., accredited undergraduate program in the same discipline as the graduate degree, a maximum of four years of experience may be granted for this combination of education.

(6) An associate degree in engineering from an approved program may be equivalent for up to two years of experience.

(7) Education gained over time where no degree is conferred will be granted no more than two years of experience. For the purpose of this subsection, education over time means: One or two classes taken at a time, often at different schools; seminars; workshops; and classes taken through industry and the military. In order to determine the appropriate amount of experience, this type of education will be compared to college coursework in a baccalaureate of engineering technology degree program.

(8) The board may approve engineering degree programs from other countries.

(a) A number of foreign degree programs are included in mutual recognition agreements entered into by ABET, Inc., with other accrediting authorities. Applicants with a degree from one of these programs will be evaluated in accordance with subsections (1) and (2) of this section. A list of those approved mutual recognition degree programs is maintained in the board office.

(b) Applicants having engineering degrees from programs in countries that are not on the mutual recognition list will be required to have their transcripts evaluated by a transcript evaluation service approved by the board. This evaluation will be performed at the applicant's expense, and the applicant will be responsible for submitting all necessary information to the evaluation service. The board will use the evaluation to determine if the foreign degree is equivalent to an ABET, Inc., accredited degree. If the board determines that the degree is equivalent, experience will be granted in

accordance with subsection (1) or (2) of this section. If the board determines that the foreign degree is not equivalent to an ABET, Inc., accredited degree, then a maximum of three years of experience will be granted in accordance with subsection (3) of this section.

(c) An applicant with an undergraduate degree from a foreign program that is not on the mutual recognition list, can waive the requirement for a degree evaluation if they have a graduate degree in engineering from a school that has an ABET, Inc., accredited undergraduate engineering degree program in the same discipline as the graduate degree. No more than four years of experience will be granted for this combination of education.

(9) Any other education will be taken into account and evaluated on its merits.

(10) Work experience gained between semesters or quarters or during summers while enrolled in an approved curriculum will be considered part of the educational process. No more than one year of experience will be granted for one calendar year.

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-030 Examinations. ~~((1) Except as provided in WAC 196-12-050, to become licensed as a professional engineer the candidate must pass two stages of examination. The first stage is the fundamentals of engineering examination. The second stage examination consists of multiple parts including the principles and practice (branch) examination and law and ethics examination. The law and ethics exam is a take-home examination covering chapters 18.43 and 18.235 RCW and Title 196 WAC. The fundamentals of engineering examination must be passed, or waived in accordance with WAC 196-12-050, before taking the second stage examination.~~

~~Examinations are given at times and places designated by the board. Refer to the respective internet websites of the National Council of Examiners for Engineering and Surveying (NCEES), and the board for future examination schedules and syllabi. Examinees will not be allowed to view any examination material prior to taking the examination other than syllabi available to the public or sample examination booklets published by the National Council of Examiners for Engineering and Surveying. If one examination part is failed, only that examination part must be retaken.~~

~~(2) If a professional engineer holding a current registration in the state of Washington wants to become licensed in multiple branches of engineering, an additional principle and practice examination must be taken in each branch.~~

~~(3) The branch of structural engineering requires a series of examinations, as determined by the board, to protect the public safety. To become licensed as a professional engineer in the branch of structural engineering, the candidate must pass: The stage 1 fundamentals of engineering examination; the stage 2 principles and practice of engineering (PE) and the take-home law and ethics examinations; and the stage 3 examination comprised of examinations in the principles and practice of structural engineering and structural engineering issues important to Washington state.)~~ Examinations admin-

istered by the board, or on their behalf, will be written or oral or both to enable the board to evaluate an applicant's knowledge in the fundamentals of engineering; principles and practice of engineering; and law and ethics.

If a professional engineer holding a current registration in the state of Washington wants to become licensed in an additional branch of engineering, they must pass the principles and practice examination for each branch.

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-045 Comity registration of applicants qualified in other jurisdictions. ~~((1)) Licenses will be issued by comity only in the branches of engineering offered by the board. Applicants for registration as a professional engineer by comity must ((meet the following criteria)):~~

~~((a) The applicant must)) (1) Complete an application on forms provided by the board and ((filed with the executive director at the board's address)) be accompanied by the appropriate fee ((pursuant to WAC 196-26A-035)).~~

~~((b) The applicant's qualifications must meet the requirements of chapter 18.43 RCW and this chapter.~~

~~(e) The applicant is in good standing with the licensing agency)) (2) Hold a currently valid license in a board recognized licensing jurisdiction in a state, territory, possession, district, or foreign country. ((Good standing shall be defined as a currently valid license in the jurisdiction of original registration or the jurisdiction of most recent practice if different from the jurisdiction of original registration.~~

~~(d) The applicant has)) (3) Have been qualified ((by written examinations)) to meet minimum requirements for licensure as determined by the board ((to)) that adequately ((test)) measures the fundamentals and principles and practice of engineering.~~

~~((2) The applicant will be required to pass the law and ethics examination and may be required to take and pass state specific examinations to demonstrate competency in issues specific to Washington.~~

~~(3) The original application for comity may be for multiple branches of engineering provided that the applicant has passed an examination in each branch equivalent to the examination given in the state of Washington. Licenses will be issued only in the branches of engineering offered by the board. Additional branches may be added at a later time; however, this will require submitting a new application and fee.)~~

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-050 Waiving the fundamentals of engineering examination. ~~((An applicant who has at least twelve years of experience satisfactory to the board as identified in WAC 196-12-020(2) after obtaining a baccalaureate degree in an approved engineering curriculum as defined in WAC 196-12-020 (1)(a), (c) and (h)(i) and (ii), may request that the stage 1 fundamentals of engineering (FE) examination be waived and that permission be granted to take the stage 2 examination (principles and practice and law and ethics)~~

only: ~~Provided, That the applicant has not failed the FE examination within the last ten years.~~

The opportunity to waive the stage 1 examination is based on the premise that the demonstration of a solid experience record is a better measure of engineering competency than the passage of the stage 1 examination at this point in the applicant's career. It is the board's discretion, based on information provided in the application, as to whether to grant a waiver.

Teaching experience is not limited to two years for the purposes of qualifying for this waiver.

The applicant should take note that a license granted based on waiving the fundamentals exam may not be accepted by other licensing jurisdictions. Applicants requesting a waiver of the fundamentals of engineering examination must:

- (1) Have a baccalaureate or masters degree in an approved engineering program;
- (2) Have completed a minimum of twelve years of board approved engineering experience after graduation; and
- (3) Not have failed the NCEES fundamentals of engineering examination within the last ten years.

Applicants with a PhD from a program approved by the board may request a waiver of the fundamentals of engineering exam.

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-055 Permit for temporary (~~permits— information required of nonresidents intending to practice thirty days or less in a calendar year~~) practice. ((Every)) Any nonresident engineer who intends to ((conduct professional)) practice ((under the exemption of RCW 18.43.130(2), shall furnish)) engineering in the state of Washington must provide the board((, a minimum of three months prior to the commencement of such work with the following information)) with the following before starting any work:

- (1) A ((properly)) completed application ((as prescribed by the board)) with applicable fees.
- (2) ((Jurisdiction where currently registered.
- (3) Imprint of professional seal.
- (4)) Dates work is to be started ((and terminated in the state of Washington. If the time differential between the starting and terminating date is in excess of thirty days in any calendar year, applicant must specify the days (totaling no more than thirty) on which the practice of engineering is to be performed in Washington)).
- ((5)) (3) Name and address of client.
- ((6)) (4) Description and location (address) of project ((and regulating authority (if applicable))).
- ((7) Application fee as determined by the director of the department of licensing.

Upon approval of the information submitted, the board shall issue a permit to the nonresident engineer for the temporary practice of engineering in Washington.)) (5) Name and contact information for local permitting authority.

Plans, specifications, and reports prepared by the nonresident engineer ((shall)) must be signed, dated, and stamped

with their professional seal. A copy of the permit issued by this board shall be attached to the engineering documents submitted for approval or building permit.

((The exemption contained in RCW 18.43.130(2) shall only apply to individuals. Corporations and partnerships shall not practice in Washington unless authorized to do so under RCW 18.43.130 (8) and (9).))

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-12-065 Retired status (~~certificate of registration~~). ((In accordance with RCW 18.43.075, any individual who has been issued a certificate of registration, in accordance with chapter 18.43 RCW, as)) A professional engineer having reached ((at least)) the age of sixty-five and having discontinued active practice as ((an)) a professional engineer may be eligible ((to obtain a "retired certificate of registration." If granted, further certificate of registration renewal fees are waived. For the purpose of this provision, "active") for retired status. "Active practice" is defined as exercising direct supervision and control over ((the development and production of an engineering document as provided in RCW 18.43.070 and/or any related activities pertaining to the offer of and/or the providing of)) any professional engineering ((services)) activity as defined in RCW 18.43.020(5).

(1) ((Applications. Those persons wishing to obtain the status of a retired registration shall complete an application on a form as provided by the board. Applications shall be sent to the executive director at the address of the board. Upon receipt of said application and, if deemed eligible by the board, the retired status would become effective on the first scheduled renewal date of the certificate of registration that occurs on or after the applicant reaches the age of sixty-five. It shall not be necessary that an expired certificate of registration be renewed to be eligible for this status. The board will not provide refund of renewal fees if the application for "retired" status is made and granted before the date of expiration of the certificate of registration.)) Request for retired status. Upon approval, a request for retired status will be granted effective the next scheduled renewal date.

(2) ((Privileges. In addition to the waiver of the renewal fee, a retired registrant is permitted to)) A licensee on retired status may:

- (a) Retain the board issued wall certificate of registration;
- (b) Use the title retired professional engineer ((PE), provided that it is supplemented by the term retired, or the abbreviation "ret"));
- (c) Work as an engineer in a volunteer capacity, provided that the retired ((registrant)) licensee does not create an engineering document((, and does not)) or use their seal((, except as provided for in (d) of this subsection));

(d) Provide experience verifications and references for persons seeking registration ((under chapter 18.43 RCW. If using their professional seal the retired registrant may place the word "retired" in the space designated for the date of expiration));

(e) Serve ((in)) as an ((instructional capacity on engineering topics)) instructor;

(f) Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to engineering work performed by the ~~((registrant before they were granted a retired registration))~~ licensee;

(g) Serve in a function that supports the principles of registration and/or promotes the profession of engineering, such as members of commissions, boards or committees;

(h) Serve in an engineering capacity as a "good samaritan(~~("as set forth in~~)." The state laws governing such activity are RCW 38.52.195 and 38.52.1951(~~(, provided said work is otherwise performed in accordance with~~)) and chapter 18.43 RCW.

~~(3) ((Restrictions. A retired registrant is not permitted to))~~ A licensee on retired status must not:

(a) Perform any engineering activity, as provided for in RCW 18.43.020~~(5)~~, unless ~~((said))~~ the activity is under the direct supervision of a ((Washington state)) licensed professional engineer ((who has a valid/)) with an active registration in ((the records of the board)) Washington;

(b) Act as the designated engineer ~~((or the engineer in responsible charge))~~ for a ~~((Washington engineering))~~ corporation or ~~((Washington engineering))~~ limited liability company;

(c) Apply their professional engineers seal(~~(, as provided for in RCW 18.43.070,))~~ to any plan, specification, plat or report(~~(, except as provided for in subsection (2)(d) of this section))~~).

(4) Certificate of registration reinstatement. A retired ~~((registrant, upon written request to the board and payment of the current renewal fee,))~~ licensee may resume active engineering practice with payment of the current renewal fee. ((At that time the retired registrant shall be removed from retired status and placed on valid/active status in the records of the board. All rights and responsibilities of a valid/active registration will be in effect. At the date of expiration of the reinstated certificate of registration, the registrant may elect to either continue active registration or may again apply for retired registration in accordance with the provisions of this chapter.))

(5) Exemptions. ~~((Under no circumstances shall a registrant be eligible for a retired registration if their certificate of registration has been revoked, surrendered or in any way permanently terminated by the board under RCW 18.43.110. Registrants who are suspended from practice and/or who are subject to terms of a board order at the time they reach age sixty five shall not be eligible for a retired registration until such time that the board has removed the restricting conditions.~~

~~(6) Penalties for noncompliance. Any violations of this section shall be considered "misconduct and/or malpractice" as defined in RCW 18.43.105. Such violations are subject to penalties as provided for in RCW 18.235.110 and 18.43.120.))~~ A licensee is not eligible for retired status if their license to practice is under board ordered sanction. This exemption exists until the sanctions have been lifted or satisfied by the board.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-12-035

Examination review and request for rescore of examination questions.

WSR 08-08-123 PROPOSED RULES HIGHER EDUCATION COORDINATING BOARD

[Filed April 2, 2008, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-015.

Title of Rule and Other Identifying Information: Chapter 250-20 WAC, State need grant (SNG).

Hearing Location(s): Higher Education Coordinating Board, 917 Lakeridge Way, Olympia, WA 98502, on May 22, 2008, at 1 p.m.

Date of Intended Adoption: July 22, 2008.

Submit Written Comments to: Julie Japhet, 917 Lakeridge Way, P.O. Box 43430, e-mail juliej@hecb.wa.gov, fax (360) 704-6240, by May 19, 2008.

Assistance for Persons with Disabilities: Contact Kristin Ritter by May 15, 2008, (360) 753-7850.

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

- Incorporate revised repayment policy.
- Extend time frame for less-than-halftime pilot study.
- Make minor technical changes and corrections.

Reasons Supporting Proposal: To comply with legislative changes and incorporate policy changes.

Statutory Authority for Adoption: Chapter 28B.92 RCW.

Statute Being Implemented: Chapter 28B.92 RCW.

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

Name of Proponent: Higher education coordinating board, public.

Name of Agency Personnel Responsible for Drafting: Julie Japhet, 917 Lakeridge Way, Olympia, WA 98502, (360) 753-7840; Implementation and Enforcement: John Klacik, 917 Lakeridge Way, Olympia, WA 98502, (360) 753-7850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not affect small business in Washington.

A cost-benefit analysis is not required under RCW 34.05.328. The higher education coordinating board is not named in the RCW.

April 2, 2008

Julie Japhet

Assistant Director

Student Financial Assistance

AMENDATORY SECTION (Amending WSR 06-17-046, filed 8/8/06, effective 9/8/06)

WAC 250-20-011 Student eligibility. For a student to be eligible for a state need grant he or she must:

(1) Be a "needy student" as determined by the higher education coordinating board in accordance with RCW 28B.10.802. These students must also meet the "income cut-off," be a "former foster youth" or be a "disadvantaged student."

(2) Be a resident of the state of Washington in accordance with RCW 28B.15.012 (2)(a) through (d).

(3) Be enrolled or accepted for enrollment as an undergraduate student at a participating postsecondary institution ~~((or be a student under an established program designed to qualify him or her for enrollment as a full-time student at a postsecondary institution in the state of Washington)).~~

(a) For purposes of need grant eligibility, the student must be enrolled, at time of disbursement, in a course load of at least six credits per quarter or semester ~~((or, in the case of institutions which do not use credit hours, in a program of at least six hundred clock hours requiring at least twelve clock hours of instruction per week))~~ (except as specified in WAC 250-20-021 less-than-half-time pilot project).

(b) A student enrolled less than half time may not receive this grant for the term in question (except as specified in WAC 250-20-021 less-than-half-time pilot project), but is eligible for reinstatement or reapplication for a grant upon return to at least a half-time status. Correspondence courses may not comprise more than one-half of the student's minimum credit load for which aid is being considered.

(c) Have a high school diploma or its equivalent. Equivalent standards include a general education development certificate~~((;))~~ or a certificate of completion of a home study program recognized by the student's home state. For a student without a high school diploma or its equivalent, ~~((he or she must pass))~~ a school may accept a ((federally)) recognized ability-to-benefit test as ((is required for the receipt of federal student aid)) defined by federal financial aid regulations.

(4) Maintain satisfactory progress as defined in WAC 250-20-021(19).

(5) Not be pursuing a degree in theology.

(6) Not have received a state need grant for more than the equivalent of ten full-time semesters or fifteen full-time quarters or equivalent combination of these two, nor exceed one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree or certificate program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. A student shall be deemed to have received an associate degree as a state need grant recipient if the student received state need grant payments in more than three quarters, two semesters, or equivalent clock hours while pursuing an associate degree. Upon receipt of a bachelor's degree or its foreign equivalent, a student is no longer eligible.

(7) Have submitted the Free Application for Federal Student Aid to receive consideration for a Pell grant (except as specified in WAC 250-20-021 less-than-half-time pilot project).

(8) Certify that he or she does not owe a refund or repayment on a state ~~((need))~~ or federal grant, ((a Federal Pell Grant or a Federal Supplemental Educational Opportunity Grant,)) and is not in default on a loan made, insured, or guaranteed under the Federal Family Education Loan Program, the Federal Perkins Loan Program, or the Federal Direct Student Loan Program.

AMENDATORY SECTION (Amending WSR 07-15-038, filed 7/12/07, effective 8/12/07)

WAC 250-20-013 Institutional eligibility. (1) For an otherwise eligible student to receive a state need grant, ~~((he or she))~~ the student must be enrolled in an eligible program at a postsecondary institution approved by the higher education coordinating board for participation in the state need grant program. To be eligible to participate, a postsecondary institution must:

(a) Be a postsecondary institution as defined in WAC 250-20-021(3).

(b) Participate in the federal Title IV student financial aid programs, including, at a minimum, the Federal Pell Grant program.

(2) In addition, a proprietary institution must demonstrate to the satisfaction of the board:

(a) That it is certified for participation in the federal Title IV student financial aid programs. Institutions which have been limited or suspended from Title IV programs are not eligible to participate in the state need grant program. A proprietary institution that is provisionally certified due to its failure to meet standards of administrative capability or financial responsibility may have its eligibility limited or denied. Institutions will be evaluated on a case-by-case basis and may be allowed to participate in a probationary status with conditions including a letter of credit, or other limitations.

(b) That it is capable of properly administering the state need grant program. In making this determination, the board will consider such factors as the institution's:

(i) Adequacy of staffing levels.

(ii) Staff training and experience in administering student financial aid programs and turnover in key personnel.

(iii) Compliance with the standards of administrative capability specified for purposes of federal Title IV program eligibility.

(iv) Pending legal regulatory issues.

(v) Written student complaints.

(vi) Compliance with state aid program regulations and guidelines.

(vii) Ability to maintain electronic systems to support state aid program tracking, payment requests and reporting obligations.

(c) That it is maintaining acceptable performance levels. In making this determination the board will consider such factors as the institution's:

(i) Student completion rate.

(ii) Student placement rate.

(iii) Student loan cohort default rate.

In evaluating completion and placement standards, the board will rely on the standards of the institution's accrediting agency or the standard established between the board and the

institution at the time the participation agreement is signed. Multiple year averages will be considered in evaluating these standards. Each participating institution will submit its annual accreditation report to the board.

(d) That it is financially stable and has adequate financial resources to provide the services described in its official publications and statements. Institutions must meet the administrative and financial standards for participation in the federal Title IV programs. In making this determination, the board will consider such factors as:

(i) The school's annual financial statements. The board will not retain copies of confidential financial statements that cannot be exempted from the Public Disclosure Act, chapter 42.56 RCW.

(ii) The Department of Education's composite financial score.

(iii) Federal program review findings.

(iv) State reauthorization or relicensing reports.

(v) Accrediting agency show cause or other findings.

(vi) Enrollments by program and intent to terminate an existing program.

(vii) Enrollment trends.

(e) If evaluation of an institution's administrative capability, performance level, or financial strength results in concerns about the institution's participation in the state aid programs, the board may:

(i) Request additional information as well as give the school the opportunity to provide additional clarifying information.

(ii) Place an institution in a probationary status and specify the corrective actions which need to occur.

(iii) Require a letter of credit or bond.

(iv) Limit, suspend, or terminate an institution's participation in accordance with WAC 250-20-081.

(3) "Probation" indicates the board has determined that the school has one or more significant deficiencies for which corrective action is required within a specified time period.

(4) The school must renew its eligibility each year under these standards or as requested by the board. A school that has lost eligibility to participate must complete a new application for reconsideration.

(5) Nothing in this section shall prevent the board, in the exercise of its sound discretion, from denying eligibility or terminating the participation of an institution which the board determines is unable to properly administer the program or provide advertised services to its students.

(6) If an institution disagrees with actions taken by the board, the institution can appeal the action per the procedure outlined in WAC 250-20-081.

AMENDATORY SECTION (Amending WSR 95-17-045, filed 8/11/95, effective 9/11/95)

WAC 250-20-015 Application and agreement to participate. A postsecondary institution which wishes to participate in the state need grant program must apply and be approved each year. As a part of the application process, the institution must provide all requested information, in the format specified by the board. Such information will include, but may not be limited to, the following: Name and address

of school (including central office and all campus sites), name and address of owner(s), or if a corporation the name and addresses of stockholders holding more than twenty-five percent of the stock and percentage of stock held, the date on which the school officially began instruction if in the last five years, type and date of last accreditation, enrollment information (unless reported to the state of Washington or in the integrated postsecondary education data system), evidence of certification and participation in the Federal Pell Grant program and any other information upon request of the board as needed to determine the institution's eligibility. The institutions must also submit each year, for approval, a copy of its refund/repayment policy, student budgets, gift equity packaging policy and its satisfactory progress policy for state need grant recipients and such other information as may be required to assure proper administration of the program and financial stability. In addition the "agreement to participate" will also indicate the institution's agreement to abide by all program rules, regulations, and guidelines, to maintain and provide all pertinent information, records, and reports requested by the board, and to notify the board within thirty days of any change (~~((other than student enrollment)))~~) to information reported on the agreement form.

AMENDATORY SECTION (Amending WSR 06-17-046, filed 8/8/06, effective 9/8/06)

WAC 250-20-021 Program definitions. (1) The term "needy student" shall mean a post-high school student of an institution of postsecondary education who demonstrates to the higher education coordinating board the financial inability, either parental, familial, or personal, to bear the total cost of education for any semester or quarter. The determination of need shall be made in accordance with federal needs analysis formulas and provisions as recognized and modified by the board.

(2) The term "disadvantaged student" shall mean a student who by reasons of adverse cultural, educational, environmental, experiential, or familial circumstance is unlikely to aspire to, or enroll in, higher education. Generally, this shall mean a dependent student whose parents have not attained a college education and/or whose family income is substantially below the state's median or has participated in a means tested early awareness program designed to qualify him or her for enrollment as a full-time student at a postsecondary institution in the state of Washington.

(3) The term "postsecondary institution" shall mean:

(a) Any public university, college, community college, or vocational-technical institute operated by the state of Washington political subdivision thereof, or any other university, college, school or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an approved accrediting association.

(b) If such institution agrees to participate in the program in accordance with all applicable rules and regulations.

(c) Any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of an approved accrediting association.

(d) The separate accreditation requirement is waived for branch campuses of out-of-state institutions if the branch campus:

(i) Is eligible to participate in federal student aid programs; and

(ii) Has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington; and

(iii) Has an annual enrollment of at least seven hundred full-time equivalent students.

(4) The term "approved accrediting association" shall mean the following organizations:

(a) Northwest (~~Association of Schools and~~) Commission on Colleges and Universities;

(b) Middle States Association of Colleges and Schools, Commission on Higher Education;

(c) New England Association of Schools and Colleges;

(d) North Central Association of Colleges and Schools;

(e) Southern Association of Colleges and Schools;

(f) Western Association of Schools and Colleges;

(g) Accrediting Bureau of Health Education Schools;

(h) Accrediting Council for Continuing Education and Training;

(i) Accrediting Commission of Career Schools and Colleges of Technology;

(j) Accrediting Council for Independent Colleges and Schools;

(k) National Accrediting Commission of Cosmetology Arts and Sciences.

(5) "Washington resident" shall be defined as an individual who satisfies the requirements of RCW 28B.15.012 (2)(a) through (d) and board-adopted rules and regulations pertaining to the determination of residency.

(6) "Dependent student" shall mean any post-high school student who does not qualify as an independent student in accordance with WAC 250-20-021(~~(6))~~ (7).

(7) "Independent student" shall mean any student who qualifies as an independent student for the receipt of federal aid. These qualifications include a student who has either:

(a) Reached his or her twenty-fourth birthday before January 1st of the aid year; or

(b) Is a veteran of the U.S. Armed Forces; or

(c) Is an orphan or ward of the court; or

(d) Has legal dependents other than a spouse; or

(e) Is a married student or a graduate/professional student; or

(f) Is determined to be independent for the receipt of federal aid on the basis of the professional judgment of the aid administrator.

(8) Definitions of "undergraduate students" will be in accord with definitions adopted for institutional use by the board.

(9) "Student budgets" are determined by institutions and approved by the board. The student budget consists of that amount required to support an individual as a student for nine months and may take into consideration cost factors for maintaining the student's dependents. This should be the amount used to calculate the student's total need for all state and federal funds.

(10) "State need grant cost-of-attendance" is the standard student cost per sector, as developed by the board.

(a) The costs-of-attendance for each sector are calculated by adding together a standard maintenance allowance for books, room, board, transportation and personal items, for all undergraduate students statewide as developed by the Washington Financial Aid Association, and the sector's regular tuition and fees for full-time, resident, undergraduate students.

(b) In no case may the costs-of-attendance exceed the statutory ceiling established by RCW 28B.92.060(4). The ceiling is calculated by adding together the same standard maintenance allowance used in determining the state need grant cost-of-attendance, plus the regular tuition and fees charged for a full-time resident undergraduate student at a research university, plus the current average state appropriation per student for operating expenses in all public institutions.

(c) For example, in the 1992-93 academic year, the value of the statutory ceiling is \$13,783. This value is composed of the Washington Financial Aid Association's maintenance budget of \$6,964, plus the regular tuition and fees charged for a resident undergraduate student at a research university of \$2,274, plus the current average state appropriation per student for operating expenses in all public institutions of \$4,545.

(d) The value of each element used in the construction of the statutory ceiling will be updated annually.

(e) The higher education coordinating board will consult with appropriate advisory committees and the representative association of student financial aid administrators, to annually review and adjust the costs-of-attendance. The costs-of-attendance for each sector will be published concurrent with annual guidelines for program administration.

(11) "Family income" is the student's family income for the calendar year prior to the academic year for which aid is being requested.

(a) Income means adjusted gross income and nontaxable income as reported on the federally prescribed application for federal student aid.

(b) For the dependent student family income means parental income.

(c) For the independent student family income means the income of the student and any other adult, if any, reported as part of the student's family.

(d) The institutional aid administrator may adjust the family's income up or down to more accurately reflect the family's financial situation during the academic year. When such adjustments are made they shall be consistent with guidelines for making changes to determine federal student aid eligibility.

(12) "Income cutoff" means the amount of family income below which a student is determined to be eligible for the state need grant.

(a) The cutoff shall be expressed as a percent of the state's median family income. The exact point of cutoff shall be determined each year by the board based on available funding.

(b) The board will endeavor to award students, in order, from the lowest income to the highest income, within the limits of available funding.

(c) At the discretion of the institution's aid administrator, a student who is eligible for a state need grant in a given academic year may be deemed eligible for the ensuing academic year if his or her family income increases by no more than three percent, even if the stated median family income cutoff for grant eligibility is lower than that amount.

(13) "Median family income" is the median income for Washington state, adjusted by family size and reported annually in the federal register.

(14) "Base grant" is the state need grant award for each sector before the addition of a dependent care allowance. The base grant per student will be no less than the published base grant in 1998-1999. The base grant may be further adjusted according to the student's family income level and rate of enrollment as described in WAC 250-20-041.

For certain students who have completed board-approved early awareness and preparation programs such as, GEAR-UP or a Trio program, the base grant will be an amount fixed annually by the board. Generally the base grant, in these cases, will be no less than the current value of the federal PELL grant program.

(15) "Dependent care allowance" is a flat grant amount, to be determined by the board, which is in addition to the eligible student's base grant.

(a) The allowance is awarded to those students who have dependents in need of care. The dependent must be someone (other than a spouse) living with the student.

(b) Care must be that assistance provided to the dependent by someone outside of the student's household and not paid by another agency.

(c) Eligible grant recipients must document their need for the dependent care allowance.

(16) "State need grant award" is the base grant adjusted according to level of family income, plus a dependent care allowance, if applicable.

(17) "Academic year" is that period of time between July 1 and the following June 30 during which a full-time student would normally be expected to complete the equivalent of two semesters or three quarters of instruction.

(18) "Clock hours" means a period of time which is the equivalent of either:

(a) A 50 to 60 minute class, lecture, or recitation; or

(b) A 50 to 60 minute period of faculty-supervised laboratory shop training or internship.

(19) "Gift equity packaging policy" is the institution's policy for assigning gift aid to all needy, eligible students.

(20) "Satisfactory progress" is the student's successful completion of a minimum number of credit or clock hours for each term in which the grant was received. Each school's policy for measuring progress of state need grant recipients must define satisfactory as the student's completion of the minimum number of credit or clock hours for which the aid was disbursed.

(a) The minimum satisfactory progress standard for full-time students is twelve credits per term or 300 clock hours per term. Satisfactory progress for three-quarter time students is nine credits per term or 225 clock hours per term. Satisfac-

tory progress for half-time students is six credits per term or 150 clock hours per term.

(b) Each school's policy must deny further disbursements of the need grant at the conclusion of any term in which he or she fails to complete at least one-half of the minimum number of credits or clock hours for which the aid was disbursed or otherwise fails to fulfill the conditions of the institution's satisfactory progress policy.

(c) The school may make disbursements to a student who is in a probationary status. "Probation" is defined as completion of at least one-half, but less than all of the minimum number of credits for which the aid was calculated and disbursed. The school must have a probation policy, approved by the board, which limits the number of terms in which a student may receive the need grant while in a probationary status.

(d) The school's aid administrator may at any time, using professional judgment exercised on a case-by-case basis, reinstate a student back into a satisfactory progress status, in response to an individual student's extenuating circumstances.

(21) The term "full institutional accreditation" shall mean the status of public recognition that an accrediting agency recognized by the U.S. Department of Education grants to an educational institution that meets the agency's established standards and requirements. Institutional accreditation applies to the entire institution, indicating that each of an institution's parts is contributing to the achievement of the institution's objectives.

(22) The term "eligible program" for a public or private nonprofit educational institution, shall mean ~~((an))~~ a certificate, associate or baccalaureate degree program; at least a two-year program that is acceptable for full credit toward a bachelor's degree, or ~~((at least a one-year educational program))~~ a program that provides at least a 15-week undergraduate program of 600 clock hours, 16 semester hours, or 24 quarter hours that leads to a degree or certificate and prepares the student for gainful employment in a recognized occupation. ~~((The term "eligible program" for a for-profit or a postsecondary vocational institution shall mean a program which provides at least a 15-week undergraduate program of 600 clock hours, 16 semester hours, or 24 quarter hours. The program may admit students without an associate degree or equivalent. The term "eligible program" for a for-profit or a postsecondary vocational institution may also be a program that provides at least a 10-week program of 300 clock hours, 8 semester hours, or 12 quarter hours. A program in this category must be an undergraduate program that admits only students with an associate degree or equivalent.))~~ To be an "eligible program," a program must be encompassed within the institution's accreditation and be an eligible program for purposes of the federal Title IV student financial aid programs.

(23) The three "public sectors of higher education" are the research universities, comprehensive universities, and the community and technical colleges.

(24) A "for-profit institution" is a postsecondary educational institution other than a public or private nonprofit institution which provides training for gainful employment in a recognized profession.

(25) A "postsecondary vocational institution" is a public or private nonprofit institution which provides training for gainful employment in a recognized profession.

(26) The "less-than-half-time pilot project" is defined as follows:

(a) The pilot project is authorized for ~~((2005-2007))~~ 2007-2011 in chapter ~~((299))~~ 404, Laws of ~~((2005))~~ 2007 and is meant to test the feasibility of providing state need grant awards to students who enroll in three, four or five credits.

~~((The board shall select up to ten schools to participate in the pilot project.~~

~~((e))~~ All rules and guidelines that govern student and school participation in the state need grant program shall apply to pilot project except the following:

(i) The student may enroll for three, four or five credits per term.

(ii) The grant award is equal to one-quarter of the regular base grant amount.

(iii) Students otherwise enrolled in credit bearing coursework may receive the grant for up to one academic year before being accepted into a program that leads to a degree or certificate.

(27) The term "former foster youth" means a person who is at least eighteen years of age, but no more than twenty-four years of age, who was a dependent of the department of social and health services at the time he or she attained the age of eighteen.

AMENDATORY SECTION (Amending WSR 99-16-015, filed 7/23/99, effective 8/23/99)

WAC 250-20-031 Student application procedure. (1) Application for a state grant must be made each year.

(2) All applications will be ranked anew each year.

(3) Application for a state need grant is accomplished through a student's application for admission to, and financial aid from, the institution of his or her choice.

(4) Financial data must be generated in accordance with the method set forth by the higher education coordinating board to assure that information will be consistent on a state-wide basis.

The board shall annually specify the student data elements essential for determining state need grant eligibility and shall authorize the forms and processes for collecting and analyzing such data.

(5) The burden of proof of a grant recipient's eligibility is with the institution. At a minimum:

(a) The institution must be able, on request of the board, to reconstruct the calculations and rationale for the student's grant eligibility and award amounts.

(b) The financial aid form or comparable financial status documents, with the resulting financial need analysis must be on record in the financial aid office for all grant recipients.

(c) The institution must also have on record justification for reawarding a need grant to any student who failed to make satisfactory progress.

(6) The board shall establish annual criteria by which the eligible student is to be identified, ranked, and awarded. ~~((That))~~ Those criteria shall include the maximum award for each sector and the income cutoff level.

(7) The institution shall examine the student's aid application to determine overall need and specific state need grant eligibility and the appropriate award, using the board-approved criteria.

(8) The board will make available to all participating institutions, a list of all students who owe state need grant repayments or have otherwise exhausted their state need grant eligibility. It is the institution's responsibility to ensure that no ineligible student receives a state need grant.

(9) The financial aid administrator at each institution will be required to sign a statement attesting to the fact that all eligible financial aid applicants within state need grant parameters will be identified and served to the extent funds are available and that financial information will be determined in strict adherence to program guidelines.

(10) No group of students, such as single parents or part-time students, may be advantaged or disadvantaged in its access to the state need grant by any institutional awarding policy.

AMENDATORY SECTION (Amending WSR 90-04-067, filed 2/5/90, effective 7/1/90)

WAC 250-20-037 Reserve of funds. (1) The board shall annually reserve funds for the body of students at each institution. The percentage of state need grant funds to be reserved equals the proportion of grant dollars needed to fund the eligible students who are enrolled, as reported on the ~~((omit record))~~ interim/reconciliation report, at each school compared to the dollars needed to fund all state need grant eligible students enrolled in all participating schools.

(2) The board shall establish methods to reserve state need grant funds for:

(a) Former foster youth;

(b) Transfer students; and

(c) New institutions.

AMENDATORY SECTION (Amending WSR 07-15-038, filed 7/12/07, effective 8/12/07)

WAC 250-20-041 Award procedure. (1) The institution will offer grants to eligible students from funds reserved by the board. It is the institution's responsibility to ensure that the reserve is not over expended within each academic year.

(2) The state need grant award for an individual student shall be the base grant, appropriate for the sector attended and a dependent care allowance, if applicable, adjusted for the student's family income and rate of enrollment. Each eligible student receiving a grant must receive the maximum grant award for which he or she is eligible, unless such award should exceed the student's overall need or the institution's approved gift equity packaging policy.

(3) The grant amount for students shall be established as follows:

(a) The award shall be based on the representative average tuition, service, and activity fees charged within each public sector of higher education. The average is to be determined annually by the higher education coordinating board. The award for students enrolled in the applied baccalaureate pilot program authorized in RCW 28B.50.810 shall be based

on the representative tuition and fees used for the comprehensive universities.

(b) Except for the 2003-04 and 2004-05 academic years, the base grant award shall not exceed the actual tuition and fees charged to the eligible student. During the 2003-04 and 2004-05 years the grant award may exceed the tuition charged to the eligible student by fifty dollars.

(c) The base grant award for students attending independent four-year institutions shall be equal to that authorized for students attending the public four-year research institutions. The base grant for students attending private vocational institutions shall be equal to that authorized for students attending the public community and technical colleges.

(4) The total state need grant award shall be reduced for students with family incomes greater than fifty percent of the state's median and for less than full-time enrollment.

(a) Students whose incomes are equal to fifty-one percent to seventy-five percent of the state's median family income shall receive seventy-five percent of the maximum award. Students whose incomes are equal to seventy-six percent to one hundred percent of the state's median family income shall receive fifty percent of the maximum award. Students whose incomes are equal to one hundred one percent to one hundred twenty-five percent of the state's median family income shall receive twenty-five percent of the maximum award.

(b) Eligible students shall receive a prorated portion of their state need grant for any academic period in which they are enrolled at least half-time, as long as funds are available. Students enrolled at a three-quarter time rate, at the time of disbursement, will receive seventy-five percent of their grant. Students enrolled half-time at the time of disbursement will receive fifty percent of their grant.

(5) Depending on the availability of funds, students may receive the need grant for summer session attendance.

(6) The institution will be expected, insofar as possible, to match the state need grant with other funds sufficient to meet the student's need. Matching moneys may consist of student financial aid funds and/or student self-help.

(7) All financial resources available to a state need grant recipient, when combined, may not exceed the amount computed as necessary for the student to attend a postsecondary institution. The student will not be considered over-awarded if he or she receives additional funds after the institution awards aid, and the total resources exceed his or her financial need by \$200 or less by the end of the academic year.

(8) The institution shall ensure that the recipient's need grant award, in combination with grant aid from all sources, not exceed seventy-five percent of the student's cost-of-attendance. In counting self-help sources of aid, the aid administrator shall include all loans, employment, work-study, scholarships, grants not based on need, family contribution, and unmet need.

(9) The institution will notify the student of receipt of the state need grant.

(10) Any student who has received at least one disbursement and chooses to transfer to another participating institution within the same academic year may request that the receiving institution apply to the board for funds to continue receipt of the grant (~~(at the receiving institution)~~).

AMENDATORY SECTION (Amending WSR 93-08-010, filed 3/25/93, effective 4/25/93)

WAC 250-20-051 Grants disbursement and repayment. (1) At intervals designated by the executive director, financial aid administrators from participating independent colleges and proprietary institutions will submit the appropriate ~~((warrant order))~~ cash request or reimbursement form to the higher education coordinating board for each state need grant recipient certifying enrollment and grant eligibility.

(a) Upon receipt of the ~~((warrant order))~~ cash request or reimbursement forms, the higher education coordinating board will forward ~~((warrants))~~ payments to the appropriate institution for each recipient or directly to the school as reimbursement.

(b) At private and proprietary schools, as long as the student remains eligible for the grant, the ~~((warrant))~~ payment must be given directly to the student without the institution placing any other condition ((being placed)) on receipt of the ~~((warrant by the institution))~~ payment. Institutions which participate in the electronic funds transfer reimbursement program, must follow the requirements of the student directives. The student directive is a board-approved document used to direct the schools in the student's choice of payment method, either a direct deposit or school issued warrant.

(c) All signed receipts and student directives for state need grants are to be retained by the institution. They must be made available for inspection upon request of the board. All unclaimed ~~((warrants))~~ payments must be returned to the board on or before the date specified by the board each term.

(d) A student-by-student reconciliation must be completed by the institution at the end of each term.

(2) All other institutions may request funds as necessary to make disbursements to students.

(a) Interim progress reports must be filed with the board as requested.

(b) A student-by-student reconciliation must be filed with the board at the end of each academic year.

(3) No institution may disburse nor claim more funds than that amount reserved by the board for the body of students at each institution.

(4) Should a student recipient withdraw ~~((from classes))~~ prior to or on fifty percent of the term or prior to completing fifty percent of the scheduled clock hours during the term in which he or she received a state need grant, ~~((he or she))~~ the student shall be required to repay ~~((the appropriate amount))~~ a portion of the grant amount according to the ~~((institution's))~~ board-approved repayment policy. This policy is separate and distinct from the federal repayment policy and computation. Beginning in 2009-2010 the board-approved repayment policy shall incorporate the following repayment principles.

(a) The repayment calculation is based on the portion of the term not completed or the percent of scheduled clock hours not completed.

(b) A fifty percent reduction is applied to the final repayment calculation for relief of irretrievable costs of attendance. This adjustment is only available to students who officially or unofficially withdraw when the last date of attendance is known.

(c) If the last known date of attendance occurs after fifty percent of the term, the state need grant award is considered one hundred percent earned and no repayment is due.

(d) If a state need grant recipient attends a portion of a term and withdraws with no verified last date of attendance, the repayment will be fifty percent of the grant amount with no additional adjustments.

(e) If a state need grant recipient never attends courses in the term for which they received a state need grant award, the repayment is one hundred percent of the grant amount.

The institution shall advise the student and the board of amounts to be repaid.

(5) The board reserves the right, if funds are available, to pay to public institutions an administrative expense allowance for the shared responsibility of administering the program on the board's behalf. The allowance shall be calculated annually as a percentage of the need grant funds disbursed by the institution.

(6) Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until disbursed, except that eligible former foster youth shall be assured receipt of a grant.

AMENDATORY SECTION (Amending WSR 90-04-067, filed 2/5/90, effective 7/1/90)

WAC 250-20-071 Appeal process. Should a student question his or her state need grant eligibility or award, the following procedures should be followed:

(1) The student should direct questions and appeals to the financial aid officer at the institution he or she attends.

(2) If the student is not satisfied with the response of the institution, he or she should assemble all relevant academic, financial, and personal data and forward it to the higher education coordinating board for review.

(3) The board's division of student financial aid will review all material submitted and, if possible, will resolve the problem, advising the student of his or her eligibility and generating an award or, if the student is not eligible for a state need grant, advising the student of the reason for denial.

(4) The higher education coordinating board will convene its review committee to consider the situation of any student whose state need grant eligibility is questionable, or upon the request of the student. If the committee finds the student eligible for state need grant receipt, it will advise the financial aid administrator at the institution the student attends and will recommend to the school that the student's state need grant award be processed immediately. If the review committee finds the student not eligible for state need grant receipt, it will advise the student of the reason for denial.

(5) If the student is not satisfied with the ~~((resolve by))~~ decision of the review committee, the student's final recourse is submission of his or her case to the executive director of the higher education coordinating board.

WSR 08-08-124

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 2, 2008, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-091.

Title of Rule and Other Identifying Information: The department is amending WAC 388-502-0010 Payment—Eligible providers defined, 388-531-0100 Scope of coverage for physician-related services, 388-531-0250 Who can provide and bill for physician-related services, and 388-531-1400 Psychiatric physician-related services.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6097), on May 6, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 7, 2008.

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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 6, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 29, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 359, Laws of 2007 (2SHB 1088) requires the department to improve access to mental health services for children who do not meet regional support network access to care standards. Specifically, the department is revising its rules effective July 1, 2008, to allow children up to twenty hours of outpatient therapy per year, including family therapy visits. In addition, licensed mental health professionals will be allowed to provide the therapy. Currently, children are allowed up to twelve hours of outpatient therapy per year provided by a psychiatrist.

Reasons Supporting Proposal: More children will receive mental health care and the outcomes should be improved with the increase in hours of treatment per year.

Statutory Authority for Adoption: RCW 74.09.521.

Statute Being Implemented: RCW 74.09.521.

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: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: Dan Dowler, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1567.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The content of the rule is dictated by state law which makes it exempt from the small

business economic impact statement requirement per RCW 19.85.025(4).

A cost-benefit analysis is not required under RCW 34.05.328. The content of the rule is dictated by state law which makes it exempt per RCW 34.05.328 (5)(b)(v).

March 31, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-14-106, filed 6/30/03, effective 7/31/03)

WAC 388-502-0010 Payment—Eligible providers defined. The department (~~(reimburses)~~) pays enrolled providers for covered (~~(medical)~~) healthcare services, equipment and supplies they provide to eligible clients.

(1) To be eligible for enrollment, a provider must:

(a) Be licensed, certified, accredited, or registered according to Washington state laws and rules; and

(b) Meet the conditions in this chapter and chapters regulating the specific type of provider, program, and/or service.

(2) To enroll, an eligible provider must sign a core provider agreement (~~(or a contract)~~) with the department and receive a unique provider number; a provider may also sign a contract to enroll. (Note: Section 13 of the core provider agreement, DSHS 09-048 (REV. 06/2002), is hereby rescinded. The department and each provider signing a core provider agreement will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of the agreement.)

(3) Eligible providers listed in this subsection may request enrollment. Out-of-state providers listed in this subsection are subject to conditions in (~~(WAC 388-502-0120)~~) chapter 388-502 WAC.

(a) Professionals:

(i) Advanced registered nurse practitioners;

(ii) Anesthesiologists;

(iii) Audiologists;

(iv) Chiropractors;

(v) Dentists;

(vi) Dental hygienists;

(vii) Denturists;

(viii) Dietitians or nutritionists;

(ix) Marriage and family therapists, only as provided in

WAC 388-531-1400:

(x) Maternity case managers;

(~~(x)~~) (xi) Mental health counselors, only as provided in

WAC 388-531-1400:

(xii) Midwives;

(~~(xi)~~) (xiii) Occupational therapists;

(~~(xii)~~) (xiv) Ophthalmologists;

(~~(xiii)~~) (xv) Opticians;

(~~(xiv)~~) (xvi) Optometrists;

(~~(xv)~~) (xvii) Orthodontists;

(~~(xvi)~~) (xviii) Osteopathic physicians;

(~~(xvii)~~) (xix) Podiatric physicians;

(~~(xviii)~~) (xx) Pharmacists;

(~~(xix)~~) (xxi) Physicians;

(~~(xx)~~) (xxii) Physical therapists;

(~~(xxi)~~) (xxiii) Psychiatrists;

(~~(xxii)~~) (xxiv) Psychologists;

(~~(xxiii)~~) (xxv) Registered nurse delegators;

(~~(xxiv)~~) (xxvi) Registered nurse first assistants;

(~~(xxv)~~) (xxvii) Respiratory therapists;

(~~(xxvi)~~) (xxviii) Social workers, only as provided in

WAC 388-531-1400:

(xxix) Speech/language pathologists;

(~~(xxvii)~~) (xxx) Radiologists; and

(~~(xxviii)~~) (xxxi) Radiology technicians (technical only);

(b) Agencies, centers and facilities:

(i) Adult day health centers;

(ii) Ambulance services (ground and air);

(iii) Ambulatory surgery centers (Medicare-certified);

(iv) Birthing centers (licensed by the department of health);

(v) Blood banks;

(vi) Chemical dependency treatment facilities certified by the department of social and health services (DSHS), division of alcohol and substance abuse (DASA), and contracted through either:

(A) A county under chapter 388-810 WAC; or

(B) DASA to provide chemical dependency treatment services;

(vii) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DASA);

(viii) Community AIDS services alternative agencies;

(ix) Community mental health centers;

(x) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;

(xi) Family planning clinics;

(xii) Federally qualified health (~~(care)~~) centers (FQHC) (designated by the (~~(Federal Health Care Financing Administration)~~) Centers for Medicare and Medicaid);

(xiii) Genetic counseling agencies;

(xiv) Health departments;

(xv) HIV/AIDS case management;

(xvi) Home health agencies;

(xvii) Hospice agencies;

(xviii) Hospitals;

(xix) Indian Health Service;

(xx) Tribal or urban Indian clinics;

(xxi) Inpatient psychiatric facilities;

(xxii) Intermediate care facilities for the mentally retarded (ICF-MR);

(xxiii) Kidney centers;

(xxiv) Laboratories (CLIA certified);

(xxv) Maternity support services agencies;

(xxvi) Neuromuscular and neurodevelopmental centers;

(xxvii) Nursing facilities (approved by DSHS Aging and Adult Services);

(xxviii) Pharmacies;

(xxix) Private duty nursing agencies;

(xxx) Rural health clinics (Medicare-certified);

(xxxi) Tribal mental health services (contracted through the DSHS mental health division); and

(xxxii) Washington state school districts and educational service districts.

(c) Suppliers of:

(i) Durable and nondurable medical equipment and supplies;

- (ii) Infusion therapy equipment and supplies;
- (iii) Prosthetics/orthotics;
- (iv) Hearing aids; and
- (v) Oxygen equipment and supplies;
- (d) Contractors of:
 - (i) Transportation brokers;
 - (ii) Interpreter services agencies; and
 - (iii) Eyeglass and contact lens providers.

(4) Nothing in this chapter precludes the department from entering into other forms of written agreements to provide services to eligible clients.

(5) The department does not enroll licensed or unlicensed practitioners who are not specifically addressed in subsection (3) of this section (~~(- including -)~~). Ineligible providers include but are not limited to:

- (a) Acupuncturists;
- (b) Counselors, except as provided in WAC 388-531-1400;
- (c) Sanipractors;
- (d) Naturopaths;
- (e) Homeopaths;
- (f) Herbalists;
- (g) Massage therapists;
- (h) Social workers, except as provided in WAC 388-531-1400; or
- (i) Christian Science practitioners or theological healers.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-531-0100 Scope of coverage for physician-related services—General and administrative. (1) The department covers (~~(medical)~~) healthcare services, equipment, and supplies listed in this chapter, according to department rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's medical assistance program. Refer to WAC 388-501-0060 and 388-501-0065; and

(b) Medically necessary as defined in WAC 388-500-0005.

(2) The department evaluates a request for a service that is in a covered category under the provisions of WAC 388-501-0165.

(3) The department evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 388-501-0169.

(4) The department covers the following physician-related services, subject to the conditions in subsections (1), (2), and (3) of this section:

- (a) Allergen immunotherapy services;
- (b) Anesthesia services;
- (c) Dialysis and end stage renal disease services (refer to chapter 388-540 WAC);
- (d) Emergency physician services;
- (e) ENT (ear, nose, and throat) related services;
- (f) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 388-534-0100);

(g) Family planning services (refer to chapter 388-532 WAC);

(h) Hospital inpatient services (refer to chapter 388-550 WAC);

(i) Maternity care, delivery, and newborn care services (refer to chapter 388-533 WAC);

(j) Office visits;

(k) Vision-related services, refer to chapter 388-544 WAC;

(l) Osteopathic treatment services;

(m) Pathology and laboratory services;

(n) Psychiatry and other rehabilitation services (refer to chapter 388-550 WAC);

(o) Podiatry services;

(p) Primary care services;

(q) Psychiatric services, provided by a psychiatrist;

(r) Psychotherapy services for children as provided in WAC 388-531-1400;

(s) Pulmonary and respiratory services;

~~((s))~~ (t) Radiology services;

~~((t))~~ (u) Surgical services;

~~((u))~~ (v) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects from birth, illness, or physical trauma, or for mastectomy reconstruction for post cancer treatment; and

~~((v))~~ (w) Other outpatient physician services.

(5) The department covers physical examinations for medical assistance clients only when the physical examination is one or more of the following:

(a) A screening exam covered by the EPSDT program (see WAC 388-534-0100);

(b) An annual exam for clients of the division of developmental disabilities; or

(c) A screening pap smear, mammogram, or prostate exam.

(6) By providing covered services to a client eligible for a medical assistance program, a provider who has signed an agreement with the department accepts the department's rules and fees as outlined in the agreement, which includes federal and state law and regulations, billing instructions, and department issuances.

AMENDATORY SECTION (Amending WSR 05-12-022, filed 5/20/05, effective 6/20/05)

WAC 388-531-0250 Who can provide and bill for physician-related services. (1) The following enrolled providers are eligible to provide and bill for physician-related medical services which they provide to eligible clients:

(a) Advanced registered nurse practitioners (ARNP);

(b) Federally qualified health centers (FQHCs);

(c) Health departments;

(d) Hospitals currently licensed by the department of health;

(e) Independent (outside) laboratories CLIA certified to perform tests. See WAC 388-531-0800;

(f) Licensed marriage and family therapists, only as provided in WAC 388-531-1400;

(g) Licensed mental health counselors, only as provided in WAC 388-531-1400;

(h) Licensed radiology facilities;
~~((g))~~ (i) Licensed social workers, only as provided in WAC 388-531-1400;
 (j) Medicare-certified ambulatory surgery centers;
~~((h))~~ (k) Medicare-certified rural health clinics;
~~((i))~~ (l) Providers who have a signed agreement with ~~((MAA))~~ the department to provide screening services to eligible persons in the EPSDT program;
~~((j))~~ (m) Registered nurse first assistants (RNFA); and
~~((k))~~ (n) Persons currently licensed by the state of Washington department of health to practice any of the following:

- (i) Dentistry (refer to chapter 388-535 WAC);
- (ii) Medicine and osteopathy;
- (iii) Nursing;
- (iv) Optometry; or
- (v) Podiatry.

(2) ~~((MAA))~~ The department does not reimburse for services performed by any of the following practitioners:

- (a) Acupuncturists;
- (b) Christian Science practitioners or theological healers;
- (c) Counselors, except as provided in WAC 388-531-1400;
- (d) Herbalists;
- (e) Homeopaths;
- (f) Massage therapists as licensed by the Washington state department of health;
- (g) Naturopaths;
- (h) Sanipractors;
- (i) Social workers, except those who have a master's degree in social work (MSW), ~~((except those))~~ and:
 - (i) Are employed by an FQHC ~~((or who))~~;
 - (ii) Who have prior authorization to evaluate a client for bariatric surgery; or
 - (iii) As provided in WAC 388-531-1400.
- (j) Any other licensed or unlicensed practitioners not otherwise specifically provided for in WAC 388-502-0010; or

(k) Any other licensed practitioners providing services which the practitioner is not:

- (i) Licensed to provide; and
- (ii) Trained to provide.

(3) ~~((MAA reimburses))~~ The department pays practitioners listed in subsection (2) of this section for physician-related services if those services are mandated by, and provided to, clients who are eligible for one of the following:

- (a) The EPSDT program;
- (b) A Medicaid program for qualified Medicare beneficiaries (QMB); or
- (c) A waiver program.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1400 Psychiatric physician-related services. (1) ~~((MAA limits psychotherapy to one hour per day, per client, up to a total of twelve hours per calendar year. This includes family or group psychotherapy. Psychotherapy must be provided by a psychiatrist in the office, in the client's~~

~~home, or in a nursing facility))~~ The department covers outpatient mental health services with the following limitations:

(a) For clients eighteen years of age and younger:

(i) The department pays for only one hour per day, per client, up to a total of twenty hours per calendar year, including the psychiatric diagnostic evaluation and family therapy visits that are medically necessary to the client's treatment;

(ii) The department limits medication management services to one per day, but this service may be billed by psychiatrists and psychiatric advanced registered nurse practitioners (ARNP) in conjunction with the diagnostic interview examination, or when a psychiatrist or psychiatric ARNP performs medication management services on the same day as a different licensed mental health practitioner renders another billable mental health service; and

(iii) The mental health services must be provided in an outpatient setting by a psychiatrist, psychologist, psychiatric ARNP, social worker, marriage and family therapist, or mental health counselor who must:

(A) Be licensed, in good standing and without restriction, by the department of health under their appropriate licensure; and

(B) Have a minimum of two years experience in the diagnosis and treatment of clients eighteen years of age and younger and their families, including a minimum one year under the supervision of a mental health professional trained in child and family mental health. A licensed psychiatrist may provide these services and bill the department without meeting this requirement.

(b) For clients nineteen years of age and older:

(i) The department pays for only one hour per day, per client, up to a total of twelve hours per calendar year, including family or group therapy visits;

(ii) The department limits medication management services to one per day, but this service may be billed by psychiatrists and psychiatric ARNPs in conjunction with the diagnostic interview examination, or when a psychiatrist or psychiatric ARNP performs medication management services on the same day as a different licensed mental health practitioner renders another billable mental health service; and

(iii) The mental health services must be provided by a psychiatrist in an outpatient setting.

(2) ~~((MAA reimburses only one hospital call for direct psychiatric client care, per client, per day. Psychiatrists must bill the total time spent on direct psychiatric client care during each visit. Making rounds is considered direct client care and includes any one of the following))~~ The department covers inpatient mental health services with the following limitations:

(a) ~~((Brief (up to one hour), individual psychotherapy))~~ Must be provided by a psychiatrist;

(b) ~~((Family/group therapy))~~ Only the total time spent on direct psychiatric client care during each visit; and

(c) ~~((Electroconvulsive therapy; or~~

~~(d) Pharmacologic management))~~ One hospital call per day for direct psychiatric client care, including making rounds. Making rounds is considered direct client care and includes any one of the following:

(i) Individual psychotherapy up to one hour;

(ii) Family/group therapy; or

(iii) Electroconvulsive therapy.

~~(3) ((MAA reimburses psychiatrists for either hospital care or psychotherapy, but not for both on the same day))~~ With the exception of medication management, the department covers, with limitations, mental health services of one service per client, per day regardless of location or provider type.

~~(4) ((MAA reimburses))~~ The department pays psychiatrists ~~((for))~~ when the client receives a medical physical examination in the hospital in addition to a psychiatric diagnostic or evaluation interview examination.

~~(5) ((MAA reimburses only one))~~ The department covers psychiatric diagnostic interview ~~((examination in a))~~ evaluations at the limit of one per provider, per calendar year unless a significant change in the client's circumstances renders an additional evaluation medically necessary and is authorized by the department.

~~(6) ((MAA requires psychiatrists to use hospital E&M codes when billing for daily rounds.~~

~~(7) MAA))~~ The department does not cover ~~((for))~~ psychiatric sleep therapy.

~~((8) Medication adjustment is the only psychiatric service for which MAA reimburses psychiatric ARNPs))~~ (7) The department covers electroconvulsive therapy and narco-synthesis only when performed by a psychiatrist.

~~((9) MAA reimburses for one))~~ (8) The department pays psychiatric ARNPs only for mental health medication management and diagnostic interview evaluations provided to clients nineteen years of age and older.

(9) The department covers interactive ~~((or insight oriented call)),~~ face-to-face visits at the limit of one per client, per day, in an ~~((office or))~~ outpatient setting. ~~((Individual psychotherapy, interactive services))~~ Interactive, face-to-face visits may be billed only for clients age twenty and younger.

(10) The client or licensed healthcare provider may request a limitation extension only when the client exceeds the total hour limit described in subsection (1) of this section, and for no other limitation of service in this section. The department will evaluate these requests in accordance with WAC 388-501-0169.

(11) DSHS providers must comply with chapter ~~((s 275-55 and 275-57))~~ 388-865 WAC for hospital inpatient psychiatric admissions, and must follow rules adopted by the ~~((division of))~~ mental health division or the appropriate regional support network (RSN). ~~((MAA does not reimburse for those psychiatric services that are eligible for reimbursement under those agencies.))~~

(12) Accepting payment under more than one contract or agreement with the department for the same service for the same client constitutes duplication of payment. If a client is provided services under multiple contracts or agreements, each provider must maintain documentation identifying the type of service provided and the contract or agreement under which it is provided to ensure it is not a duplication of service.

WSR 08-08-126**PROPOSED RULES****HIGHER EDUCATION
COORDINATING BOARD**

[Filed April 2, 2008, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-23-036.

Title of Rule and Other Identifying Information: Passport to college promise pilot program.

Purpose:

- To implement the newly established scholarship for former foster care youth.
- Provides administrative direction for college incentive grants.

Hearing Location(s): Higher Education Coordinating Board, 919 Lakeridge Way, 2nd Floor Conference Room, Olympia, WA 98504-3430, on May 22, 2008, at 9:00 a.m. - 12:00 p.m.

Date of Intended Adoption: July 22, 2008.

Submit Written Comments to: Dawn McAferty, 917 Lakeridge Way, P.O. Box 43430, Olympia, WA 98504-3430, e-mail dawnc@hecb.wa.gov, fax (360) 704-6246, by May 19, 2008.

Assistance for Persons with Disabilities: Contact Kristin Ritter by May 15, 2008, TTY (360) 753-7809 or (360) 753-7850.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To incorporate administrative procedures developed with the assistance of an advisory committee.

Reasons Supporting Proposal: ESHB 1131 enacted in 2007. Rules are needed to expand on and fill in administrative and operational details in original statute that was established in the 2007 legislative session.

Statutory Authority for Adoption: RCW 28B.76.500.

Statute Being Implemented: Chapter 28B.117 RCW.

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

Name of Proponent: Higher education coordinating board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Rachelle Sharpe, 917 Lakeridge Way, Olympia, WA 98504-3430, (360) 753-7872; and Enforcement: John Klacik, 917 Lakeridge Way, Olympia, WA 98504-3430, (360) 753-7851.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not affect business in Washington.

A cost-benefit analysis is not required under RCW 34.05.328. The higher education coordinating board is not named in the referenced RCW.

April 2, 2008

Rachelle Sharpe
Associate Director

Chapter 250-83 WAC

PASSPORT TO COLLEGE PROMISE PROGRAM

NEW SECTION

WAC 250-83-010 Purpose. Recognizing the low college going rates of foster youth emancipating from care in Washington state, the legislature has created the passport to college promise program. The program's purpose is:

(1) To encourage current and former foster care youth to prepare for, attend, and successfully complete higher education; and

(2) To provide current and former foster care youth with the educational planning, information, institutional support and direct financial resources necessary for them to succeed in higher education.

NEW SECTION

WAC 250-83-020 Institutional eligibility. An eligible institution is one that:

(1) Meets the requirements for state need grant eligibility defined in RCW 28B.92.030 and WAC 250-20-013 and 250-20-021;

(2) Agrees to abide by all program rules adopted by the board;

(3) Completes an agreement to participate in state aid programs;

(4) Provides the eligible student all available need-based and merit-based grant and scholarship aid for which the student qualifies; and

(5) If participating in the incentive grant authorized in WAC 250-83-060, completes a separate board approved passport to college promise program addendum to the agreement to participate.

NEW SECTION

WAC 250-83-030 Identification of eligible foster youth. The program requires early and accurate identification of current and former foster care youth so they can be linked to the financial assistance and other services that will help them succeed in college. The sharing of information to identify eligible foster youth is facilitated by chapter 28B.117 RCW.

(1) The board will seek verification from the department of social and health services that applicants meet the passport student eligibility definition when:

(a) The board has a signed passport to college promise program consent form from the student. The consent is a form that has been developed and approved by the department of social and health services; or

(b) The student has completed the free application for federal student aid giving the board and the institutions permission to verify information supplied on that application; and

(c) The board, acting on behalf of the department of social and health services, has contracted to receive information for the purpose of conducting outreach to foster youth.

(2) The board will confirm the eligibility of foster youth to eligible institutions of higher education.

(3) The board and the institutions will protect personally identifiable information in accordance with the Family Educational Rights and Privacy Act (34 CFR Part 99) and other applicable privacy standards.

(4) The board will maintain the consent and verification information for the period of the youth's passport eligibility. Thereafter, records will be maintained according to the record retention schedule in RCW 40.14.060.

NEW SECTION

WAC 250-83-040 Student eligibility for passport scholarship. To the extent that sufficient funds have been appropriated for this purpose, a student is eligible for the passport scholarship, which functions similar to a grant program, if he or she:

(1) Has, or is expected to have, emancipated from foster care in Washington state on or after January 1, 2007, after having spent at least one year in foster care subsequent to his or her sixteenth birthday;

(2) Is a Washington state resident student as defined in RCW 28B.15.012(2);

(3) Is admitted to, or enrolled in, an eligible degree or certificate program.

To recognize cases where a lack of college preparation exists, the aid administrator may, for up to one academic year, consider the otherwise eligible student for the passport scholarship based upon an institutionally documented educational pathway that leads to an eligible degree or certificate.

For example, a documented pathway can include prerequisites that must be met before admission to a degree or certificate program, or a short term course that connects to a degree or longer certificate program.

(4) Is enrolled with or will enroll on at least a half-time basis with an eligible institution before age twenty-two;

(5) Enrolls each term on at least a half-time basis;

(6) Demonstrates financial need according to federal methodology;

(7) Has not earned a bachelor's or professional degree;

(8) Is not pursuing a degree in theology;

(9) Is making satisfactory progress as defined by the institution;

(10) Has not received a passport scholarship for more than ten semesters, or fifteen full-time quarters, or an equivalent combination of the two;

(11) Is not twenty-seven years of age or older.

(12) Does not owe a refund or repayment on other state aid programs, a Federal Pell Grant or a Federal Supplemental Educational Opportunity Grant, and is not in default on a loan made, insured, or guaranteed under the Federal Family Education Loan Program, the Federal Perkins Loan Program, or the Federal Direct Student Loan Program.

NEW SECTION

WAC 250-83-050 Determining the amount of the passport student scholarship. (1) Eligible students may receive the passport scholarship.

(2) The scholarship shall not exceed the student's financial need, less a reasonable self-help amount. A reasonable self-help amount is equivalent to what a student can earn by working ten hours per week at minimum wage per term of enrollment.

The scholarship amount cannot be more than an amount equivalent to resident undergraduate tuition and fees at the highest-priced public institution of higher education in the state.

(3) In calculating need, initially based on an established cost of attendance, the institution is encouraged to further examine the student's costs on a case-by-case basis to identify any extenuating circumstances, so actual costs borne by the individual former foster care youth are recognized.

NEW SECTION

WAC 250-83-060 Institutional incentive grant to provide student support services. Institutional incentive grants are grant payments based upon satisfactory student performance. The payment is available only to institutions agreeing to provide specified student support services.

Institution participation in the passport incentive grant viable plan is voluntary. An otherwise eligible student can receive a passport scholarship to attend an eligible college even if the institution does not participate in the incentive grant option.

For the 2008-09 academic year, and to the extent that funds are appropriated for this purpose, the amount of each incentive grant payment will be equal to five hundred dollars per quarter or seven hundred fifty dollars per semester. The payment amounts in succeeding years will be determined annually.

Participating institutions will meet the following criteria:

(1) Include on their applications for admission or on their registration materials a question asking whether the applicant has been in foster care in Washington state for at least one year since his or her sixteenth birthday. All other institutions of higher education, whether participating in the incentive grant or not, are strongly encouraged to include this question on their admission application.

(2) Have a viable plan. The scope of a viable plan is one that generally:

(a) Identifies those students eligible for assistance under this program;

(b) Tracks and enhances academic progress of eligible students;

(c) Addresses their unique needs for assistance during school vacation and academic interims; and

(d) Links eligible students to appropriate sources of assistance in their transition to adulthood.

At a minimum, each institution's viable plan will:

(i) Designate campus support staff;

(ii) Provide a full financial aid package;

(iii) Build a lasting institutional commitment to serve current and former foster youth; and

(iv) As appropriate, communicate with social services and independent living providers.

(3) Institutions choosing to participate will sign an addendum. The addendum to the state student financial aid

participation agreement specifies the services that are to be provided through the institution's viable plan.

(4) Institutions may receive incentive grants for the:

(a) Student's initial enrollment at the institution.

(b) Student's enrollment in subsequent terms providing satisfactory progress was maintained for the previous term.

NEW SECTION

WAC 250-83-070 Reserve of funds and payment of student scholarship and institutional incentive grant. (1)

Reserve of funds. The board will establish a reserve of funds for student scholarships to be used at each institution. The reserve is intended to provide an equitable opportunity for eligible students across the state and provide an efficient allocation method for institutions packaging aid. This method will be reviewed periodically.

(2) Payment of scholarship funds. All passport student scholarships will be paid by the institution. After the institution pays the passport scholarship amount, it will request reimbursement from the board from its reserve. The board will reimburse the institution in a timely manner.

(3) Payment of institutional incentive grant funds.

(a) The institution may claim a one-time incentive grant payment for each student that coincides with the student's first term of enrollment.

(b) The institution may claim subsequent incentive grant payments after it can determine the student maintained satisfactory progress for the prior term.

(c) Incentive grant payments may be claimed at the same time as reimbursements for student scholarship payments.

NEW SECTION

WAC 250-83-080 Board's responsibilities. (1)

Administering agency. The higher education coordinating board shall administer the passport to college promise program.

(2) The board will ensure colleges are packaging all available need-based and merit-based grant and scholarship aid for which the student qualifies. The board may request or collect additional information from the institution to verify students received such aid.

(3) Reports. The board will obtain reports from institutions necessary to the administration and evaluation of the passport to college promise program.

(4) Oversight. If an institution fails to maintain its eligibility for the program, or if the board determines that an institution has failed to comply with program rules and regulations or guidelines, the board may suspend, terminate, or place conditions upon the institution's participation in the program.

(5) Appeals. Any appeal will first be heard by the board's executive director or his or her designee.

Applicants may request in writing a review of decisions affecting their scholarship eligibility.

NEW SECTION

WAC 250-83-090 Definitions. (1) "Academic year" means a nine-month period consisting of two semesters or

three quarters of academic work. Summer term is additional to the academic year.

(2) "Board" means the Washington state higher education coordinating board. When a duty or responsibility of the board is referenced in these regulations, the authority needed to discharge that responsibility lies with the executive director or his or her designee.

(3) "Emancipated from foster care" for the purpose of creating timely offers of financial aid, means the student has spent at least one year in foster care subsequent to his or her sixteenth birthday and who either has emancipated from care or who is, at the time of verification, expected to emancipate from care by their eighteenth birthday.

(4) "Financial need" means the difference between a student's cost of attendance and the student's total family contribution as determined by federal methodology.

(5) "Program" means the passport to college promise program created in this chapter.

(6) "Satisfactory progress" means a student making progress according to the institutionally determined student financial aid satisfactory policy.

(7) "Verification" means that a student's eligibility for passport has been documented by the department of social and health services.