

WSR 06-01-014
PROPOSED RULES
ENERGY FACILITY SITE
EVALUATION COUNCIL
 [Filed December 9, 2005, 3:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-01-181.

Title of Rule and Other Identifying Information: Chapter 463-78 WAC, General and operating permit regulations for air pollution sources.

Hearing Location(s): Energy Facility Site Evaluation Council, 925 Plum Street S.E., Building 4, Conference Room 308, Olympia, WA 98504-3172, on February 14, 2006, at 1:30 p.m.

Date of Intended Adoption: February 14, 2006.

Submit Written Comments to: Allen J. Fiksdal, EFSEC Manager, P.O. Box 43172, Olympia, WA 98504-3172, e-mail efsec@cted.wa.gov, fax (360) 956-2158, by February 7, 2006, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Irina Makarow by February 7, 2006, (360) 956-2047.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update energy facility site evaluation council's (EFSEC's) air rules (chapter 463-78 WAC) to make them consistent with the federal prevention of significant deterioration (PSD) and ecology's new source review (NSR) programs, and to clarify procedures for appeals of air permits and source registration. The following changes are being made: WAC 463-78-005, update adoption by reference of ecology regulations; WAC 463-78-030, make consistent with current ecology rules; WAC 463-78-100, clarify registration requirements with text that can be approved into the state implementation plan; WAC 463-78-115, update adoption by reference of federal regulations; and WAC 463-78-140, clarify permit appeals procedures and make consistent with state statute.

Reasons Supporting Proposal: In February 2005, ecology finalized revision of its rules relating to air emission regulation (in particular chapter 173-400 WAC), to incorporate new federal requirements under the PSD program that became effective in 2003, and to reorganize and simplify their rules. In order to implement its own air emission rules, EFSEC adopts ecology and federal rules for air emissions. EFSEC has been delegated authority to issue federal air emission permits by the United States Environmental Protection Agency (US EPA). EFSEC must adopt the proposed rules to maintain consistency with federal requirements. Consistency is necessary for EFSEC to retain and exercise its delegated authority from the US EPA to implement federal Clean Air Act programs and regulations for facilities under EFSEC jurisdiction. Updating the rules will also make the review and control of air emissions consistent with current state requirements.

Statutory Authority for Adoption: RCW 80.50.040 (1) and (12).

Statute Being Implemented: Chapter 80.50 RCW.

Rule is necessary because of federal law, Federal Clean Air Act.

Name of Proponent: Energy facility site evaluation council, governmental.

Name of Agency Personnel Responsible for Drafting: Irina Makarow, Olympia, (360) 956-2047; Implementation: Allen J. Fiksdal, Olympia, (360) 956-2152; and Enforcement: Mike Mills, Olympia, (360) 956-2151.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes to chapter 463-78 WAC are exempt from the requirements to prepare a small business economic impact statement because they are adopting federal requirements without material change, adopting rules of another Washington state agency without material change, and clarifying language of a rule without changing its effect. See RCW 19.85.025(3) and 34.05.310 (4)(c) and (d).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes to chapter 463-78 WAC are exempt from the requirements of RCW 34.05.328 because they are adopting federal requirements without material change, adopting rules of another Washington state agency without material change, and clarifying language of a rule without changing its effect. See RCW 34.05.328 (5)(b) (iii) and (iv).

December 9, 2005

Allen J. Fiksdal
 EFSEC Manager

Chapter 463-78 WAC

GENERAL AND OPERATING PERMIT REGULATIONS FOR AIR POLLUTION SOURCES

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-005 Adoption by reference. (1) The energy facility site evaluation council adopts the following provisions of chapter 173-400 WAC, in effect on ~~((July))~~ March 1, 200((3)), by reference. WAC 173-400-110(8) and 173-400-730(4) are not adopted by reference.

WAC 173-400-030:	Definitions.
WAC 173-400-035:	Portable and temporary sources.
WAC 173-400-040:	General standards for maximum emissions.
WAC 173-400-050:	Emission standards for combustion and incineration units.
WAC 173-400-060:	Emission standards for general process units.
WAC 173-400-075:	Emission standards for sources emitting hazardous air pollutants.
WAC 173-400-081:	Startup and shutdown.
WAC 173-400-091:	Voluntary limits on emissions.
WAC 173-400-105:	Records, monitoring, and reporting.
WAC 173-400-107:	Excess emissions.
WAC 173-400-110:	New source review (NSR).

WAC 173-400-112:	Requirements for new sources in nonattainment areas.	WAC 173-401-531:	Thresholds for hazardous air pollutants.
WAC 173-400-113:	Requirements for new sources in attainment or unclassifiable areas.	WAC 173-401-532:	Categorically exempt insignificant emission units.
WAC 173-400-114:	Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.	WAC 173-401-533:	Units and activities defined as insignificant on the basis of size or production rate.
WAC 173-400-117:	Special protection requirements for federal Class I areas.	WAC 173-401-600:	Permit content.
WAC 173-400-120:	Bubble rules.	WAC 173-401-605:	Emission standards and limitations.
WAC 173-400-131:	Issuance of emission reduction credits.	WAC 173-401-610:	Permit duration.
WAC 173-400-136:	Use of emission reduction credits.	WAC 173-401-615:	Monitoring and related recordkeeping and reporting requirements.
(WAC 173-400-141:)	((Prevention of significant deterioration (PSD).))	WAC 173-401-620:	Standard terms and conditions. Except (2)(i).
WAC 173-400-151:	Retrofit requirements for visibility protection.	WAC 173-401-625:	Federally enforceable requirements.
WAC 173-400-161:	Compliance schedules.	WAC 173-401-630:	Compliance requirements.
WAC 173-400-171:	Public involvement.	WAC 173-401-635:	Temporary sources.
<u>WAC 173-400-175</u>	<u>Public information</u>	WAC 173-401-640:	Permit shield.
WAC 173-400-180:	Variance.	WAC 173-401-645:	Emergency provision.
WAC 173-400-190:	Requirements for nonattainment areas.	WAC 173-401-650:	Operational flexibility.
WAC 173-400-200:	Creditable stack height and dispersion techniques.	WAC 173-401-700:	Action on application.
WAC 173-400-205:	Adjustment for atmospheric conditions.	WAC 173-401-705:	Requirement for a permit.
<u>WAC 173-400-700:</u>	<u>Review of major stationary sources of pollution.</u>	WAC 173-401-710:	Permit renewal, revocation and expiration.
<u>WAC 173-400-710:</u>	<u>Definitions</u>	WAC 173-401-720:	Administrative permit amendments.
<u>WAC 173-400-720:</u>	<u>Prevention of significant deterioration (PSD).</u>	WAC 173-401-722:	Changes not requiring permit revisions.
<u>WAC 173-400-730:</u>	<u>Prevention of significant deterioration application processing procedures.</u>	WAC 173-401-725:	Permit modifications.
<u>WAC 173-400-740:</u>	<u>PSD permitting public involvement requirements.</u>	WAC 173-401-730:	Reopening for cause.
<u>WAC 173-400-750:</u>	<u>Revisions to PSD permits.</u>	WAC 173-401-750:	General permits.
		WAC 173-401-800:	Public involvement.
		WAC 173-401-810:	EPA Review.
		WAC 173-401-820:	Review by affected states.
			(3) The energy facility site evaluation council adopts the following provisions of chapter 173-406 WAC, in effect on ((July)) <u>March 1, 200</u> ((3)) <u>5</u> , by reference.
			Part I - GENERAL PROVISIONS
		WAC 173-406-100:	Acid rain program general provisions.
		WAC 173-406-101:	Definitions.
		WAC 173-406-102:	Measurements, abbreviations, and acronyms.
		WAC 173-406-103:	Applicability.
		WAC 173-406-104:	New units exemption.
		WAC 173-406-105:	Retired units exemption.
		WAC 173-406-106:	Standard requirements.
			Part II - DESIGNATED REPRESENTATIVE
		WAC 173-406-200:	Designated representative.
		WAC 173-406-201:	Submissions.

(2) The energy facility site evaluation council adopts the following provisions of chapter 173-401 WAC, in effect on ~~((July))~~ March 1, 200~~((3))~~5, by reference.

WAC 173-401-100:	Program overview.
WAC 173-401-200:	Definitions.
WAC 173-401-300:	Applicability.
WAC 173-401-500:	Permit applications.
WAC 173-401-510:	Permit application form.
WAC 173-401-520:	Certification.
WAC 173-401-530:	Insignificant emission units.

Part II - DESIGNATED REPRESENTATIVE

WAC 173-406-202: Objections.

Part III - APPLICATIONS

WAC 173-406-300: Acid rain permit applications.
 WAC 173-406-301: Requirement to apply.
 WAC 173-406-302: Information requirements for acid rain permit applications.
 WAC 173-406-303: Permit application shield and binding effect of permit application.

Part IV - COMPLIANCE PLAN

WAC 173-406-400: Acid rain compliance plan and compliance options.
 WAC 173-406-401: General.
 WAC 173-406-402: Repowering extensions.

Part V - PERMIT CONTENTS

WAC 173-406-500: Acid rain permit.
 WAC 173-406-501: Contents.
 WAC 173-406-502: Permit shield.

Part VI - PERMIT ISSUANCE

WAC 173-406-600: Acid rain permit issuance procedures.
 WAC 173-406-601: General.
 WAC 173-406-602: Completeness.
 WAC 173-406-603: Statement of basis.
 WAC 173-406-604: Issuance of acid rain permits.
~~(WAC 173-406-605: (Acid rain permit appeal procedures)).~~

Part VII - PERMIT REVISIONS

WAC 173-406-700: Permit revisions.
 WAC 173-406-701: General.
 WAC 173-406-702: Permit modifications.
 WAC 173-406-703: Fast-track modifications.
 WAC 173-406-704: Administrative permit amendment.
 WAC 173-406-705: Automatic permit amendment.
 WAC 173-406-706: Permit reopenings.

Part VIII - COMPLIANCE CERTIFICATION

WAC 173-406-800: Compliance certification.
 WAC 173-406-801: Annual compliance certification report.
 WAC 173-406-802: Units with repowering extension plans.

Part IX - NITROGEN OXIDES

WAC 173-406-900: Nitrogen oxides emission reduction program.

Part X - SULFUR DIOXIDE OPT-IN

WAC 173-406-950: Sulfur dioxide opt-ins.

(4) The energy facility site evaluation council adopts the following provisions of chapter 173-460 WAC, in effect on ~~(July)~~ March 1, 200~~(3)~~5, by reference.

WAC 173-460-010: Purpose.
 WAC 173-460-020: Definitions.
 WAC 173-460-030: Requirements, applicability and exemptions.
 WAC 173-460-040: New source review.
 WAC 173-460-050: Requirement to quantify emissions.
 WAC 173-460-060: Control technology requirements.
 WAC 173-460-070: Ambient impact requirement.
 WAC 173-460-080: Demonstrating ambient impact compliance.
 WAC 173-460-090: Second tier analysis.
 WAC 173-460-100: Request for risk management decision.
 WAC 173-460-110: Acceptable source impact levels.
 WAC 173-460-120: Scientific review and amendment of acceptable source impact levels and lists.
 WAC 173-460-130: Fees.
 WAC 173-460-140: Remedies.
 WAC 173-460-150: Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels.
 WAC 173-460-160: Class B toxic air pollutants and acceptable source impact levels.

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

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-030 Additional definitions. (1) "Council" means the energy facility site evaluation council.

(2) In addition to the definitions contained in WAC 173-400-030, 173-400-710, 173-401-200, 173-406-101, "ecology," "authority," and "permitting ~~(agency)~~ authority" shall be synonymous with the energy facility site evaluation council unless a different meaning is plainly required by context.

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-100 Registration. (1) Purpose. The registration program is used by the council to develop and maintain a current and accurate record of air contaminant sources subject to chapter 80.50 RCW. Information collected through the registration program is used to evaluate the effectiveness of air pollution strategies in collaboration with the department of ecology, and to verify source compliance with applicable air pollution requirements.

(2) Requirement to register. ((The)) Except as provided in subsection (3) below, the owner or operator of each ((stationary)) source subject to chapter 80.50 RCW shall register the source with the council. ((Stationary-s)) Sources subject to the Operating Permit Regulation in chapter 173-401 WAC are not required to comply with these registration requirements.

(3) The following sources are exempt from registration:

(i) A Source that emits pollutants below the following emission rates:

<u>Pollutant</u>	<u>Tons/Year</u>
<u>Carbon Monoxide</u>	<u>5.0</u>
<u>Nitrogen oxides</u>	<u>2.0</u>
<u>Sulfur dioxide</u>	<u>2.0</u>
<u>Particulate Matter (PM)</u>	<u>1.25</u>
<u>Fine Particulate (PM10)</u>	<u>0.75</u>
<u>Volatile organic compounds (VOC)</u>	<u>2.0</u>
<u>Lead</u>	<u>0.005</u>

: and

(ii) A source or emission unit that does not emit measurable amounts of Class A or Class B toxic air pollutants specified in WAC 173-460-150 and 173-460-160.

(4) Initial registration. The owner or operator of a source that exists on the effective date of this rule must register the source with the council by no later than one year after the effective date of this rule. The owner or operator of a new source must register with the council within 90 days after beginning operation.

(5) Annual re-registration. After initial registration, the owner or operator of a source must re-register with the council by February 15 of each year. The re-registration must include all of the information required in the initial registration and must be updated to reflect any changes to such information since the previous registration. For information that has not changed since the previous registration, the owner or operator may reaffirm in writing the correctness and current status of the information previously furnished to the council.

(6) ((Registration shall be on forms which have been adopted for use by the department of ecology within the time specified thereon.)) Registration format. Registration shall be in a format approved by the council. Each registration submittal shall include the following information:

(i) Name of the source and the nature of the business.

(ii) Street address, telephone number, facsimile number, and e-mail address of the source.

(iii) Name, mailing address, telephone number, facsimile number and e-mail address of the owner or operator.

(iv) Name, mailing address, telephone number, facsimile number and e-mail address of the local individual responsible for compliance with this rule.

(v) Name, mailing address, telephone number, facsimile number and e-mail address of the individual authorized to receive requests for data and information.

(vi) A description of the production processes and a related flow chart.

(vii) Identification of emission units and air pollutant generating activities.

(viii) A plot plan showing the location and height of all emission units and air pollutant generating activities. The plot plan must also show the property lines of the air pollution source and indicate the distance to and direction of the nearest residential or commercial property.

(ix) Type and quantity of fuels, including the sulfur content of fuels, used on a daily and annual basis.

(x) Type and quantity of raw materials used on a daily and annual basis.

(xi) Estimates of the total actual emissions for the air pollution source of the following air pollutants: particulate matter emissions, PM10 emissions, sulfur dioxide (SO2), nitrogen oxides (NOX), carbon monoxide (CO), volatile organic compounds (VOC), lead (Pb), fluorides, sulfuric acid mist, hydrogen sulfide (H2S), total reduced sulfur (TRS), and reduced sulfur compounds.

(xii) Calculations used to determine the estimated emissions in subsection (xi) above.

(xiii) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions.

(xiii) Any other information specifically requested by the council.

(7) Procedure for estimating emissions. The registration submittal must include an estimate of actual emissions taking into account equipment, operating conditions, and air pollution control measures. The emission estimates must be based upon actual test data, or in the absence of such data, upon procedures acceptable to the council. Any emission estimates submitted to the council must be verifiable using currently accepted engineering criteria. The following procedures are generally acceptable for estimating emissions from air pollution sources:

(i) Source-specific emission tests;

(ii) Mass balance calculations;

(iii) Published, verifiable emission factors that are applicable to the source;

(iv) Other engineering calculations; or

(v) Other procedures to estimate emissions specifically approved by the council.

(8) Other reports required.

(a) A report of closure shall be filed with the council within ninety days after operations producing emissions permanently ceased at any source within the council's jurisdiction.

(b) A report of relocation of the source shall be filed with the council no later than 90 days prior to the relocation of the source. Submitting a report of relocation does not relieve the owner or operator of other Site Certification Agreement amendment requirements pursuant to chapter 463-66 WAC, nor does it relieve the owner or operator from the requirement to obtain a permit or approval to construct if the relocation of the air pollution source would be a new source or modification subject to any Federal or state permit to construct rule.

(c) A report of change of owner or operator shall be reported to the council within 90 days after the change in ownership is effective. Submitting the report of change of ownership does not relieve the owner or operator of other Site Certification Agreement amendment requirements pursuant to chapter 463-66 WAC.

(9) Certification of truth and accuracy. All registrations and reports must include a certification by the owner or operator as to the truth, accuracy, and completeness of the information. This certification must state that, based on information and belief formed after reasonable inquiry, the statements and information are true, accurate, and complete.

~~((2))10~~ The council shall ensure that the following, as it pertains to sources covered under this rule, is passed on to ecology in a timely manner for inclusion in its permit register:

- (a) Public meetings or hearings on draft operating permits;
- (b) Receipt of complete applications;
- (c) Permit appeals;
- (d) Issuance or denial of final permit, permit modifications, or renewals;
- (e) Authorization for a source to operate without an operating permit by limiting its potential to emit to levels below those that would require the source to obtain an operating permit;
- (f) Periodic summaries of enforcement order and changes made without revising the permit pursuant to WAC 173-401-722.

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 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-115 Standards of performance for new stationary sources. (1) Title 40, Code of Federal Regulations, Part 60 (standards of performance for new stationary sources), in effect on July 1, 200~~(3)~~4, as applicable to new stationary sources subject to chapter 80.50. RCW is by this reference adopted and incorporated herein with the exception listed in subsection (2) of this section. For the purpose of state administration of the federal regulations adopted by reference hereby, the term "administrator" as used therein shall refer to the council. The following list is provided for informational purposes only:

- Subpart A General Provisions, except CFR 60.5 and 60.6
- Subpart D Fossil fuel fired steam generators for which construction commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 350 megawatts
- Subpart Da Electric utility steam generating units for which construction commenced after September 18, 1978, which have greater than 73 megawatts but not greater than 350 megawatts

- Subpart J Petroleum refineries which produce less than 25,000 barrels per day of refined products
- Subpart K Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40,000 gallons
- Subpart Ka Storage vessels for petroleum liquids constructed after May 18, 1978, which have a capacity greater than 40,000 gallons
- Subpart Kb Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984
- Subpart Y Standards for Performance for Coal Preparation Plants
- Subpart GG Stationary gas turbines
- Subpart XX Bulk gasoline terminals
- Subpart GGG Petroleum refineries – compressors and fugitive emission sources
- Subpart KKK Equipment leaks of VOC from onshore natural gas processing plants
- Subpart LLL Onshore natural gas processing; SO₂ emissions
- Subpart NNN VOC emissions from SOCM distillation operations
- Subpart QQQ VOC emissions from petroleum refinery wastewater emissions
- Appendix A Test Methods
- Appendix B Performance Specifications
- Appendix C Determination of Emission Rate Change
- Appendix D Required Emission Inventory Information
- Appendix F Quality Assurance Procedures

(2) The following sections of ((Exceptions to adopting)) 40 CFR Part 60 are not adopted by reference((-):

(a) Sections 60.5 (Determination of Construction or Modification) and 60.6 ((are not incorporated herein because they provide for preconstruction review of new stationary sources only on request. By virtue of WAC 173-400-110, such review under the state program is mandatory and an order of approval is required before the construction, installation or establishment of a new stationary sourcee may commence-)) (Review of Plans):

(b) 40 CFR Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities, and subparts C, Cb, Cc, Cd, Ce, BBBB, and DDDD (emission guidelines); and

(c) 40 CFR Part 60, Appendix G, provision for an Alternative method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company.

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

AMENDATORY SECTION (Amending WSR 04-21-013, filed 10/11/04, effective 11/11/04)

WAC 463-78-140 Appeals procedure. (1) Appeal of Permits issued pursuant to WAC 173-400-110.

(a) Any conditions contained in an order of approval, or the denial of a notice of construction application issued by the council pursuant to the requirements of WAC 173-400-110 may be appealed as provided in chapter 34.05 RCW; provided that any order, permit, conditions or denial issued pursuant to WAC 173-400-110 which becomes effective upon action of the governor shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall promptly mail copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the notice of construction application, along with a notice advising parties of their rights of appeal.

(2) Appeal of prevention of significant deterioration permits issued pursuant to WAC 173-400-730.

(a) A PSD permit, any conditions contained in a PSD permit, or the denial of PSD permit by the council may be appealed as provided in chapter 34.05 RCW; provided that a PSD permit, any conditions contained in a PSD permit, or the denial of PSD permit which becomes effective upon action of the governor shall be subject to judicial review only pursuant to RCW 80.50.140. Such an appeal, however, does not stay the effective date of the permit as a matter of federal law.

(b) A PSD permit issued under the terms of a delegation agreement between the EPA and the council can be appealed to the EPA's environmental appeals board as provided in 40 CFR 124.13 and 40 CFR 124.19.

(3) Appeal of operating permits issued pursuant to WAC 173-401.

(a) A decision to issue or to deny a final permit, or the terms or conditions of such a permit issued by the council pursuant to WAC 173-401, may be appealed as provided in chapter 34.05 RCW, provided that a decision to issue or to deny a final permit, or the terms or conditions of such a permit issued pursuant to WAC 173-401 which becomes effective upon action of the governor, shall be subject to judicial review only pursuant to RCW 80.50.140.

(b) The council shall identify any appealable decision or determination as such and shall notify the recipient that the decision may be appealed by filing an appeal pursuant to chapter 34.05 RCW.

(c) The provision for appeal in this section is separate from and additional to any federal rights to petition and review under section 505(b) of the federal Clean Air Act, including petitions filed pursuant to 40 CFR 70.8(c) and 70.8(d).

(d) Appealing parties. Parties that may file the appeal referenced in subsection (4)(a) of this section include any person who submitted comment in the public participation process pursuant to WAC 173-401-800.

(e) As provided in RCW 34.05.570, a person may seek a writ of mandamus in the event that the council fails to take final action on an application for a permit, permit renewal, or permit revision within the deadlines specified by WAC 173-401-700 through 173-401-725.

(4) Appeal of acid rain permits issued pursuant to WAC 173-406.

(a) Terms used in this subsection have the definitions given in WAC 173-406-101.

(b) Appeals of the acid rain portion of an operating permit issued by the council that do not challenge or involve decisions or actions of the administrator under 40 CFR part 72, 73, 75, 77 and 78 and sections 407 and 410 of the act and regulations implementing sections 407 and 410 shall be conducted according to the procedures in chapter 34.05 RCW; provided that appeals of the acid rain portion of an operating permit issued by the council which becomes effective upon action of the governor shall be subject to judicial review only pursuant to RCW 80.50.140.

(c) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR part 78 and section 307 of the act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(d) No administrative appeal or judicial appeal of the acid rain portion of an operating permit shall be allowed more than thirty days following respectively issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(e) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

(f) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

(i) The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

(ii) Any standard requirement under WAC 173-406-106;

(iii) The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR part 75;

(iv) Uncontested provisions of the decision on appeal; and

(v) The terms of a certificate of representation submitted by a designated representative under subpart B of 40 CFR part 72.

(g) The council will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within thirty days of the filing of the appeal.

(h) The council will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with WAC 173-401-810 and 173-401-820.

(5) Appeals from notices of violation issued by the council will be handled via the council's appellate review procedure as provided in WAC 463-((54))70-070 (4)(c).

WSR 06-02-037
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed December 28, 2005, 4:08 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Hearings conducted under RCW 46.20.308 and 46.25.120.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on February 7, 2006, at 3:00 p.m.

Date of Intended Adoption: February 8, 2006.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by February 6, 2006.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by February 6, 2006, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 308-103-020 to delete redundant definition of "sworn report"; WAC 308-103-030 to conform computation of time with statutory requirements; WAC 308-103-040 to provide for on-line hearing requests, update mailing address, and clarify existing language; WAC 308-103-050 to clarify procedures for scheduling a hearing; WAC 308-103-070 to clarify language and provide for the continuance of a hearing when a witness who has been subpoenaed fails to appear; WAC 308-103-080 to clarify procedures when a petitioner is seeking a stay of license sanctions due to intent to seek deferred prosecution; WAC 308-103-090 to clarify procedures for requesting a subpoena and for serving a subpoena; WAC 308-103-100 to clarify existing language; WAC 308-103-110 to permit video evidence to be presented in various formats; WAC 308-103-120 to incorporate additional rules of evidence; WAC 308-103-150 to permit a hearing officer to obtain, examine, and admit official records of the department and public records into evidence; WAC 308-103-170 to delete provisions inconsistent with the changes to WAC 308-103-080; WAC 308-103-180 to delete a redundant provision; and WAC 308-103-190 to clarify provisions regarding requests for reconsideration. Creates a new section in chapter 308-100 WAC providing for the continuance of a hearing contesting a commercial driver's license disqualification when a witness who has been subpoenaed fails to appear.

Reasons Supporting Proposal: Clarifies procedures for requesting and conducting hearings before the department.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.308, 46.25.120.

Statute Being Implemented: RCW 46.20.308 and 46.25.120.

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

Name of Proponent: [Department of licensing], governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforce-

ment: Becky Loomis, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

December 27, 2005

Becky Loomis

Assistant Director

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-020 Definitions. As used in this chapter, unless the context requires otherwise, the term:

- (1) "Department" refers to the department of licensing;
- (2) "Hearing" means a formal hearing as authorized and conducted pursuant to RCW 46.20.308(8);
- (3) "Hearing office" refers to the physical location from which a hearing officer conducts hearings under RCW 46.20.308. Where appropriate, the term "hearing office" also refers to the staff assigned to a hearing office;
- (4) "Hearing officer" means a person who is appointed by the director of the department to conduct hearings under RCW 46.20.308;
- (5) "Legal representative" means an attorney licensed and authorized to practice law in the state of Washington;
- (6) "Petitioner" refers to a driver subject to the provisions of RCW 46.20.308 who has requested a hearing;
- ~~(7) "Sworn report" means the document completed and filed with the department by the arresting officer in accordance with RCW 46.20.308 (6)(e), and which confers jurisdiction upon the department).~~

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-030 Computation of time. In computing any period of time prescribed or allowed by any applicable statute or rule, ~~((the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. Nothing contained herein is intended to extend the statutory requirement that a hearing be held within sixty days of a petitioner's arrest))~~ RCW 1.12.040 shall apply, except in the service of subpoenas as provided in WAC 308-103-090.

AMENDATORY SECTION (Amending WSR 04-20-013, filed 9/24/04)

WAC 308-103-040 Requests for hearings. The request for a hearing shall be in compliance with the following requirements:

(1) The petitioner must ~~((he))~~ submit his or her formal request for hearing:

(a) Within thirty days of the date notice is given under RCW 46.20.308(6) if the petitioner submitted to a breath test;

(b) Within thirty days of the date notice is given under RCW 46.20.308(6) if the petitioner is alleged to have refused the breath or blood test; or

(c) Within thirty days of the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test;

(2) If a request for a hearing is mailed, it must be received by the department within seven days of the date the request was postmarked in order to be considered timely under this section. This provision may be waived if the request is received by the department within thirty days of the date of arrest, or within thirty days of the date notice is given in the event notice is given by the department following a blood test, or if the petitioner and the department agree to a waiver of the sixty-day hearing requirement;

(3) The request for a hearing shall be in writing. The petitioner may use the form provided by the department for this purpose or any other writing. The petitioner may request a hearing on-line if the petitioner meets the qualifications described on the web site at www.dol.wa.gov;

(4) The hearing request form provided by the department shall include a statement that if the parties or witness(es) are hearing or speech impaired and/or non-English speaking, a qualified interpreter will be appointed at no cost to the parties or witnesses. The form shall include a section where the petitioner may request an interpreter and where he or she may identify the language and/or nature of the interpretive services needed;

(5) The request for hearing shall include the following information with respect to the petitioner:

(a) Full name;

(b) Mailing address;

(c) Daytime telephone number, including area code;

(d) Date of birth; and

(e) Driver's license number;

(6) If petitioner will have legal representation at the administrative hearing, the request shall also include the legal representative's name, mailing address, and daytime telephone number, including area code;

(7) The request for a hearing shall be submitted to the Department of Licensing, Driver Services Division, Hearings & Interviews, P.O. Box 9048, Olympia, Washington 98507-9048. If the petitioner is entitled to a waiver of the filing fee because of indigence, the request must be submitted to the Department of Licensing, Driver Services Division, Hearings & Interviews, P.O. Box 9031, Olympia, Washington 98507-9031;

(8) The written request for hearing shall be accompanied by ~~((a))~~ the applicable filing fee ~~((of one hundred dollars))~~, unless the petitioner is entitled to a waiver of the filing fee

because of indigence, in which case a request and justification for the fee waiver shall accompany the hearing request;

(9) A petitioner who has been denied a court-appointed attorney on the underlying related criminal charge because he or she is deemed "not indigent" is not eligible for a fee waiver;

(10) Indigence may be established as follows:

(a) Written verification of court-appointed legal counsel on the associated underlying criminal charge;

(b) Written verification of current involuntary commitment to a public mental health facility;

(c) Verification of current receipt of general assistance, temporary assistance for needy families, refugee resettlement benefits, food stamps, supplemental security income, or Medicaid; or

(d) Submission and approval of the department's "Application for Waiver of Hearing Fee" form;

(11) Failure to timely submit a hearing request and/or failure to include the filing fee or application for waiver with the hearing request shall be deemed a waiver of the petitioner's right to a hearing; and

(12) If a request for hearing is denied, the department shall notify the petitioner and the petitioner's legal representative, if any, stating the reason(s) for denial.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-050 Scheduling—Notice of hearing.

(1) Upon receipt of a timely request for a hearing, the department shall schedule a telephone hearing ~~((to be held within sixty days following arrest, or sixty days following the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test))~~.

(2) The petitioner or petitioner's legal representative may state a preferred range of hearing dates or unavailable dates. To the extent that such requests can be accommodated within the applicable time limits and hearing officer availability, the department will attempt to do so.

(3) The department shall ~~((provide ten days written notice to the petitioner or petitioner's legal representative of the scheduled date and time))~~ mail a hearing notice to the petitioner or petitioner's legal representative at least ten days prior to the date of the hearing.

(4) The department's scheduling notice or brochure will include the assigned hearing ~~((office's))~~ officer's name, ~~((address, and))~~ a phone number ~~((; a statement of the issues; the procedure for requesting subpoena(s); the policy on continuances;))~~ at which he or she may be contacted, and other information concerning the administrative hearing. The department's notice will also include a telephone number and a TDD number that any party or witness may call to request special accommodations.

(5) The petitioner or petitioner's legal representative may request that all or part of the hearing be conducted "in person." Such request ~~((should))~~ must be in writing stating the reasons therefore and directed to the assigned hearing ~~((office's))~~ officer immediately upon receipt of the schedul-

ing notice. The hearing (~~((office(r)))~~) officer will have the sole discretion to grant or deny this request, and may require a waiver of the sixty-day hearing requirement as a condition to granting the request. ~~((Considerations will include whether the hearing officer can be available in the petitioner's county of arrest on the scheduled date of the hearing, the number and location of witnesses, and the basis of this request.))~~

(6) Each party shall ensure that his or her address and telephone number on file is correct and shall immediately notify the department and/or hearing officer of any change of address or telephone number that occurs during the course of the proceeding.

(7) The administrative hearing may be reassigned to a different hearing officer without notice to the parties ~~((because of scheduling conflicts, illness, injuries, unavailability, or emergencies)).~~

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-070 Continuances. (1) After a hearing has been scheduled, it may be continued, rescheduled, or adjourned only at the discretion of the hearing officer.

(2) Requests for a continuance, reschedule, or adjournment must be made in writing, to the assigned hearing officer, and shall include the basis for the request.

(3) Except in the case of an emergency, the hearing officer must receive the continuance request at least two business days before the scheduled hearing. Absent an emergency, requests made with less than two business days' notice may be summarily denied.

(4) The hearing officer may ~~((grant a continuance, adjournment))~~ continue, adjourn, or reschedule at any time, including on the date of the administrative hearing.

(5) Hearings that are continued, rescheduled, or adjourned may be reset to a date within sixty days of the driver's arrest, or within sixty days of the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test, unless a written waiver of the sixty-day hearing requirement of RCW 46.20.308 accompanies the written continuance request, or unless the petitioner is deemed to have "waived" the statutory time frame.

(6) A petitioner is deemed to have waived the statutory requirement that the hearing be held within sixty days if petitioner requests an action that cannot be accommodated within the sixty-day period.

(7) A party shall not consider a hearing continued, rescheduled, or adjourned until notified by the hearing officer ~~((that the request has been granted)).~~

(8) The hearing officer may require the party who requests a continuance, reschedule, or adjournment to submit documentary evidence that substantiates the reason for the request.

(9) A second request for a continuance, reschedule, or adjournment will only be granted in the event of an extreme emergency.

(10) Notwithstanding any provisions of this section to the contrary, a hearing officer may continue a hearing in the

event a law enforcement officer who has been subpoenaed as a witness fails to appear. The hearing officer must continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear and the petitioner is a holder of a commercial driver's license or was operating a commercial motor vehicle at the time of the driver's arrest. A hearing continued under this subsection must be adjourned until such time as the subpoena may be enforced under RCW 7.21.060. Action taken by the hearing officer to enforce a subpoena issued on the petitioner's behalf is considered to be at the request of the petitioner.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-080 Deferred prosecutions—Withdrawals. (1) In the event a petitioner elects to seek a deferred prosecution ~~((and is eligible for a stay of the administrative suspension)),~~ the petitioner shall notify the assigned hearing officer and file a notice of Intent to Seek Deferred Prosecution, on a form provided by the department, with the hearing officer or the department. ~~((Upon doing so, the hearing officer will make a determination whether any hearing scheduled in the matter should be canceled and the petitioner's temporary license, if eligible, should be extended as provided by WAC 308-103-170. If, for any reason, the petitioner does not obtain an order of deferred prosecution from the court, the department will set a new hearing date only if the petitioner requests a hearing by contacting the original hearing officer no later than one hundred thirty days from the date of the arrest, and prior to the expiration of the temporary license. In the absence of such a timely request, the petitioner waives his or her right to a hearing and the department will issue the previously stayed order of suspension or revocation))~~ To be eligible for a stay, the petitioner must not have previously entered a deferred prosecution program, must have taken the breath or blood test, and must indicate that he or she intends to seek a deferred prosecution. If the petitioner is eligible, a stay of the administrative action shall be entered on the driver's record pursuant to RCW 46.20.308(10). If the petitioner is not eligible, he or she will be so notified by the department and the administrative proceedings will continue.

(2) If a stay is entered under subsection (1) of this section, the hearing will proceed and the results will be sent to the petitioner. As provided by RCW 46.20.308(10), the stay of the action shall continue but any appeal of the Findings and Conclusion must be undertaken within thirty days of service of the results.

(3) If the petitioner elects to withdraw his or her request for a hearing, he or she ~~((shall))~~ must notify the department in writing of his or her intent to do so. Upon receiving such a request for a withdrawal, the department shall proceed with the administrative action against the petitioner's driving ~~((license))~~ privilege, unless a stay has been entered on the driver's record due to the filing of a notice of Intent to Seek a Deferred Prosecution.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-090 Subpoenas. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 46.20.308(8). All subpoenas shall direct the witness to appear by telephone unless otherwise agreed to by the hearing officer.

(2) Every subpoena shall be submitted on a form approved by the department and must be signed and issued by a hearing officer ~~((and shall identify the party requesting the issuance of the subpoena and shall state the name of the agency and the title of the proceeding and shall command the person to whom it is directed to appear in person or telephonically and give testimony or produce designated books, documents, or things under his or her control))~~. An approved form may be obtained from the department.

(a) A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for hearing, or another reasonably convenient time and place in advance of the hearing.

(3) A subpoena ~~((may))~~ must be personally served by ~~((any))~~ a suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. ~~((When service is made by any person other than an officer authorized to serve process,))~~ Proof of service shall be made by affidavit or declaration under penalty of perjury. ~~((Service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.))~~

(4) The hearing officer may condition issuance of the subpoena upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) A subpoena must be properly served ten days prior to the date of the hearing, excluding weekends and holidays, in order to have full force and effect.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-100 Evidence—Exhibits. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of these rules.

(2) When only portions ~~((only))~~ of a document are to be relied upon, the offering party shall identify the pertinent excerpts and state the purpose for which such materials will be offered. Only the excerpts, in the form of copies, shall be received in the record. However, the whole of the original documents, except any portions containing confidential material protected by law, shall be made available for examination and for use by all parties.

(3) The refusal of a witness to answer any question which has been ruled to be proper shall, in the discretion of the hearing officer, be ground for striking all testimony previously given by such witness on related matter.

(4) Evidence is admissible if received prior to, or during, the hearing.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-110 Video evidence~~((—Video tapes))~~. ~~((1) If a video tape is submitted by a law enforcement officer, the officer shall submit two copies.~~

~~((2))~~ If the petitioner wishes to submit ~~((a))~~ video ~~((tape as))~~ evidence, the petitioner shall be responsible for the costs of preparing a copy to be admitted as evidence. Video ~~((tapes))~~ evidence shall be submitted sufficiently in advance of the hearing to allow the hearing officer the opportunity to review ~~((the tape))~~ it prior to the hearing. The hearing officer may require a time waiver from the petitioner in order to reschedule the hearing and satisfy this provision when needed.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-120 Evidence. (1) The hearing officer shall rule on the admissibility and weight to be accorded to all evidence submitted at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The hearing officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious. The admissibility of evidence shall be liberally construed to effect the intent and purpose of the hearings covered by these rules.

(2) Law enforcement officers or other persons with knowledge relevant to the hearing may appear and testify without notice. Such testimony shall not preclude the admissibility of any documents submitted.

(3) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(4) Official notice may be taken of (a) any judicially cognizable facts, (b) technical or scientific facts within the agency's specialized knowledge, and (c) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during the hearing of the material so noticed and the sources thereof and they shall be afforded an opportunity to contest the facts and materials so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-150 Conduct of hearings. Hearings are open to public observation. To the extent that a hearing is conducted by telephone or other electronic means, the availability of public observation is satisfied by giving members of the public an opportunity to hear or inspect the agency's record. The hearing officer's authority includes, but shall not be limited to, the authority to:

(1) Determine the order of presentation of evidence;

- (2) Administer oaths and affirmations;
- (3) Issue subpoenas pursuant to RCW 46.20.308(8);
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on offers of proof and receive relevant evidence;
- (6) Order the exclusion of witnesses upon a showing of good cause;
- (7) Afford the petitioner the opportunity to respond, present evidence, conduct cross-examination, and submit rebuttal evidence. The hearing officer may question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;
- (8) Call additional witnesses and request and/or obtain additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by the petitioner;
- (9) Examine and admit the official records of the department, subject to full opportunity to cross-examination and rebuttal by the petitioner;

(10) The hearing officer may examine and admit public records, including but not limited to maps, policy and procedure manuals, breath testing equipment manuals and the Washington state patrol breath test section web site at any time before and during the hearing, subject to full opportunity for cross-examination and rebuttal by the petitioner;

~~((10))~~ (11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

~~((11))~~ (12) Permit or require oral argument or briefs and determine the time limits for submission thereof;

~~((12))~~ (13) Issue an order of default;

~~((13))~~ (14) Recess the hearing to a later time to accommodate scheduling conflicts. Hearings are ordinarily scheduled to be one hour in length;

~~((14))~~ (15) Take any other action necessary and authorized by any applicable statute or rule; and

~~((15))~~ (16) Waive any requirement of these rules unless petitioner shows that he or she would be prejudiced by such a waiver.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-170 Temporary license. A temporary license issued by a law enforcement officer pursuant to RCW 46.20.308 may be extended when:

(1) A hearing is conducted and a decision on the outcome of the hearing is taken under advisement by the hearing officer; or

(2) A hearing is continued or rescheduled outside of the initial sixty-day effective period of the temporary license;~~(; or~~

~~(3) Petitioner is seeking a deferred prosecution and requests an extension of the temporary license.~~

~~Extensions may be made to a maximum of one hundred fifty days from the date of arrest. Nothing contained herein shall effect the validity of any other action taken against the petitioner's driving privilege by the department, or authorize a petitioner to drive if his or her driving privilege has been suspended or revoked for other reasons).~~

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-180 Final order. Every decision and order shall:

(1) Be correctly captioned as to the name of the department of licensing and name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Contain a final order disposing of all contested issues ~~((and setting the effective date for the order));~~ and

(4) Contain a statement describing the right to appeal.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02)

WAC 308-103-190 Reconsideration and appeals. (1) The petitioner's rights to appeal are provided in RCW 46.20.308(9), and nothing herein is intended to detract from that statute.

(2) Grounds for a petition for reconsideration are limited to evidence or legal argument which are material to the petitioner and ~~((that by the exercise of reasonable diligence the petitioner or petitioner's legal representative did not and could))~~ were not ~~((have))~~ produced at the time of the hearing, or for other good and sufficient reason as determined by the hearing officer.

(3) The petition must state with particularity any new evidence or new legal argument that is proposed and why it ~~((was not available at the time of))~~ could not have been discovered using due diligence prior to the hearing. The petition must specify with particularity the portions of the initial order to which the petition applies.

(4) A petition for reconsideration of a final order shall be filed with the hearing officer who signed that final order, within ten days of the date ~~((that the hearing officer signed it))~~ the final order is mailed to the petitioner.

(5) The petition shall be ~~((disposed of))~~ reviewed by the hearing officer who entered the original final order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(6) If the petition is granted in whole or in part, a new order shall be issued in the same form as the original order, and shall include the designation "amended" in its title. This amended order shall reference the petition for reconsideration in its preamble, which sets out what the hearing officer considered. Any amended order shall include the "Findings of Fact and Conclusions of Law" from the original final order with amendments.

(7) The relief granted pursuant to a petition for reconsideration is limited to review of the designated evidence and/or argument as identified in the petition. At the hearing officer's discretion, a supplemental hearing may be scheduled. Such a petition is not grounds for a new hearing, and the record already established shall remain undisturbed.

(8) A petition for reconsideration does not stay the department's action on the petitioner's driving privilege as ordered by the original final order. A petitioner seeking a stay must file a separate petition for that purpose. The hearing

officer will grant a stay only if the hearing officer determines that it is likely that the petitioner will prevail and the action be reversed and that denying the stay will create irreparable harm to the petitioner. If the hearing officer grants such a petition for a stay, the hearing officer shall sign an order releasing the action and crediting any time already served, and subsequently sign an order sustaining or reversing the action, as determined by the amended final order. Disposition denying a stay is not subject to review.

(9) An amended final order shall issue (~~either denying reconsideration or,~~) in the event reconsideration is granted, dissolving or modifying the original final order. The date of the amended final order begins the thirty-day period for the petitioner to appeal the amended final order, and there is no longer a right to appeal the original final order.

(10) The filing of a petition for reconsideration is not a prerequisite for filing an appeal. An order denying reconsideration is not subject to appeal.

NEW SECTION

WAC 308-100-400 Formal hearings—Continuances.

(1) After a hearing has been scheduled pursuant to RCW 46.25.120(5), it may be continued, rescheduled, or adjourned only at the discretion of the hearing officer.

(2) A hearing officer must continue a hearing scheduled pursuant to RCW 46.25.120(5) in the event a law enforcement officer whose attendance is required fails to appear. A hearing continued under this subsection must be adjourned until such time as the officer may be compelled to attend by issuance of a subpoena under RCW 46.20.332. A subpoena issued to compel the attendance of an officer is subject to enforcement under RCW 7.21.060.

**WSR 06-02-041
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)**

[Filed December 29, 2005, 9:54 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 388-478-0015 Need standards for cash assistance.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 7, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 8, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 7, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by February 3, 2006, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is being amended to correct a typographical error that occurred when originally filed for permanent adoption as WSR 05-23-012 with an effective date of January 1, 2006. The need standard for an assistance unit of ten or more was incorrectly stated as \$3,360 when the correct amount is \$3,630.

Reasons Supporting Proposal: This amendment will correctly implement the need standard for assistance units of ten or more members. This change will not cause any families to lose benefits of any type or to otherwise be harmed. The change is beneficial to these families.

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

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 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: Steve Ebben, 1009 College S.E., Lacey, WA 98504, (360) 725-4618.

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 outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit 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."

December 27, 2005

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-22-077 and 05-23-012, filed 10/31/05 and 11/4/05, effective 1/1/06)

WAC 388-478-0015 Need standards for cash assistance. The need standards for cash assistance units are:

(1) For assistance units with obligation to pay shelter costs:

Assistance Unit Size	Need Standard
1	\$ 989
2	1,251
3	1,545
4	1,823
5	2,101
6	2,379
7	2,749

Assistance Unit Size	Need Standard
8	3,043
9	3,336
10 or more	((3,360)) 3,630

(2) For assistance units with shelter provided at no cost:

Assistance Unit Size	Need Standard
1	\$ 528
2	668
3	825
4	973
5	1,122
6	1,270
7	1,468
8	1,625
9	1,782
10 or more	1,939

WSR 06-02-056

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF AGRICULTURE**

[Filed December 30, 2005, 3:09 p.m.]

Effective this date, the Washington state department of agriculture is withdrawing WSR 05-18-060, original notice of proposed rule amending chapter 16-228 WAC; and WSR 05-24-046, notice of continuance of adoption date.

Robert Arrington
Assistant Director

WSR 06-02-061

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

(By the Code Reviser's Office)

[Filed January 3, 2006, 12:08 p.m.]

WAC 232-12-421, 232-12-422 and 232-12-423, proposed by the department of fish and wildlife in WSR 05-13-193 appearing in issue 05-13 of the State Register, which was distributed on July 6, 2005, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

**WSR 06-02-062
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed January 3, 2006, 12:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-054.

Title of Rule and Other Identifying Information: Rule against shark finning.

Hearing Location(s): Natural Resources Building, 111 [1111] Washington Street, Olympia, WA, on February 10-11, 2006, begins 8:00 a.m. on February 10, 2006.

Date of Intended Adoption: February 10, 2006.

Submit Written Comments to: Evan Jacoby, Rules Coordinator, 600 Capitol Way, Olympia, WA 98504-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by February 3, 2006.

Assistance for Persons with Disabilities: Contact Susan Yeager by January 27, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule prohibits shark finning. Shark finning is prohibited by federal law in coastal waters, but not specifically prohibited within state waters. This rule complements the federal law.

Reasons Supporting Proposal: Shark finning is a wasteful practice that has lead to the loss of pelagic sharks. As shark populations decline, persons seeking recreational product or commercial product for market will expand their efforts. This rule seeks to clarify that shark finning is not allowed in the recreational fishery, and to prohibit commercial shark finning before a commercial market becomes established.

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: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Shark finning as a commercial business does not occur in Washington state. This rule, therefore, has no effect on any existing small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

January 3, 2006

Evan Jacoby
Rules Coordinator

AMENDATORY SECTION (Amending Order 02-278, filed 11/6/02, effective 12/7/02)

WAC 220-20-020 General provisions—Lawful and unlawful acts—Food fish other than salmon. (1) It is

unlawful to fish for or possess for commercial purposes any round, undressed white sturgeon less than 48 inches or greater than 60 inches in length or any round, undressed green sturgeon less than 48 inches or greater than 66 inches in length.

(2) It is unlawful to fish for or possess for commercial purposes or possess aboard a commercial fishing vessel for any purpose any species of halibut (*Hippoglossus*) unless permitted by the current regulations of the International Pacific Halibut Commission.

(3) It is unlawful to fish for or possess for commercial purposes sturgeon taken from any of the waters of Puget Sound or tributaries, and any sturgeon taken with any type of commercial gear incidental to a lawful fishery shall immediately be returned to the water unharmed.

(4) It is unlawful to fish for food fish for commercial purposes in the waters of Shilshole Bay inland and inside a line projected in a southwesterly direction from Meadow Point to West Point.

(5) It is unlawful to fish for or possess for commercial purposes any starry flounder less than 14 inches in length taken by any commercial gear, in all Puget Sound Marine Fish-Shellfish Areas.

(6) It shall be unlawful to harvest herring eggs naturally deposited on marine vegetation or other substrate, unless a person has a permit issued by the director.

(7) It is unlawful to fish for or possess carp taken for commercial purposes except as authorized by written permit from the director, except that carp taken incidental to a commercial fishery for other species may be retained for commercial purposes. Failure to comply with the provisions of the carp permit constitutes unlawful use of the carp commercial fishery license

(8) It is unlawful to fin sharks in Washington state waters, and it is unlawful to possess shark fins in the field unless the carcass of the shark is retained, except that once a commercially taken shark carcass has been delivered to a licensed wholesale dealer or a person acting in that capacity, and the sale of the shark has been recorded on a fish receiving ticket, the shark fins need not be retained with the shark carcass.

WSR 06-02-076

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 3, 2006, 4:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-097.

Title of Rule and Other Identifying Information: WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN); and 388-478-0080 Supplemental security income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 7, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 8, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on February 7, 2006.

Assistance for Persons with Disabilities: Contact Schiller, DSHS Rules Consultant, by February 3, 2006, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The federal SSI standard is increasing effective January 1, 2006, due to a change in federal standards. This change will affect the SSI-related standards as well as the categorically needy income level (CNIL) and medically needy income level (MNIL).

Reasons Supporting Proposal: Under Section 1924 of the Social Security Act and as directed by the federal Centers for Medicare and Medicaid Services, the department must change these standards every January.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Statute Being Implemented: Section 1924 of the Social Security Act (42 U.S.C. 1396r-5).

Rule is necessary because of federal law, 42 U.S.C. 1396r-5.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Wendy Forslin, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1343.

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

A cost-benefit analysis is not required under RCW 34.05.328. This revision is exempt from the cost-benefit analysis requirement per RCW 34.05.328 (5)(b)(vii) regarding rules related to DSHS financial or medical eligibility.

December 27, 2005

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-06-090, filed 3/1/05, effective 4/1/05)

WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN). (1) Beginning January 1, ((2005)) 2006, the medically needy income level (MNIL) is:

- | | |
|-------------------|-------------------------|
| (a) One person | \$((579.00)) <u>603</u> |
| (b) Two persons | \$((592)) <u>603</u> |
| (c) Three persons | \$667 |
| (d) Four persons | \$742 |

(e) Five persons	\$858
(f) Six persons	\$975
(g) Seven persons	\$1,125
(h) Eight persons	\$1,242
(i) Nine persons	\$1,358
(j) Ten persons and more	\$1,483

(2) The MNIL standard for a person who meets institutional status requirements is in WAC 388-513-1305(3).

(3) Countable resource standards for the MN program is:

(a) One person	\$2,000
(b) Two persons	\$3,000
(c) For each additional family member add	\$50

AMENDATORY SECTION (Amending WSR 05-06-090, filed 3/1/05, effective 4/1/05)

WAC 388-478-0080 Supplemental security income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards. (1) The SSI payment standards, also known as the federal benefit rate (FBR), beginning January 1, (~~2005~~) 2006 are:

(a) Living alone (in own home or alternate care, does not include nursing homes or medical situations)

Individual	\$(579) <u>603</u>
Individual with an ineligible spouse	\$(579) <u>603</u>
Couple	\$(869) <u>904</u>

(b) Shared living (in the home of another)

Individual	\$(386) <u>402</u>
Individual with an ineligible spouse	\$(386) <u>402</u>
Couple	\$(579) <u>603</u>

(c) Living in an institution

Individual	\$30
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(2) See WAC 388-478-0055 for the amount of the state supplemental payments (SSP) for SSI recipients.

(3) The SSI-related CNIL standards are:

(a) Single person	\$(579.00) <u>603</u>
(b) Married couple - both eligible	((869.00)) <u>904</u>
(c) Supplied shelter - single person	((386.00)) <u>402</u>
(d) Supplied shelter couple - both eligible	((579.00)) <u>603</u>

(4) The countable resource standards for SSI and SSI-related CN medical programs are:

(a) One person	\$2,000
(b) A legally married couple	\$3,000

WSR 06-02-077
PROPOSED RULES
INTERAGENCY COMMITTEE
FOR OUTDOOR RECREATION

[Filed January 3, 2006, 4:33 p.m.]

Supplemental Notice to WSR 06-01-061.

Preproposal statement of inquiry was filed as WSR 05-17-030.

Title of Rule and Other Identifying Information: Matching requirements, WAC 286-13-045 and supplementing versus supplanting local capacity, WAC 286-13-080.

Hearing time change.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA, on February 2, 2006, at 9:30 a.m.

Date of Intended Adoption: February 2, 2006.

Submit Written Comments to: Greg Lovelady, Interagency Committee for Outdoor Recreation (IAC), Rules Coordinator, 1111 Washington Street S.E., Natural Resources Building, P.O. Box 40917, Olympia, WA 98504-0917, e-mail GregL@iac.wa.gov, fax (360) 902-3026, phone (360) 902-3008, by January 23, 2006.

Assistance for Persons with Disabilities: Contact Greg Lovelady by January 25, 2006, TTY (360) 902-1996 or (360) 902-3008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this filing is to change the time of day for this hearing to 9:30 a.m. (It was scheduled for 1 p.m.)

The day of the hearing, February 2, 2006, is not changed.

Reasons Supporting Proposal: We anticipate that this hearing could last several hours. It will include:

- Staff presentations on both the WACs and related policy manual changes,
- Public testimony,
- IAC board discussion, and
- Consideration of the adoption proposal that was filed on December 19, 2005.

Statutory Authority for Adoption: RCW 79A.15.060(1), 79A.15.070(5), 79A.25.005, 79A.25.080(2), 79A.25.210.

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

Name of Proponent: Interagency committee for outdoor recreation, governmental.

Name of Agency Personnel Responsible for Drafting: Greg Lovelady, Box 40917, Olympia, WA 98504, 1111 Washington Street, Olympia, (360) 902-3008; Implementation and Enforcement: Laura Eckert Johnson, Box 40917, Olympia, WA 98504, 1111 Washington Street, Olympia, (360) 902-3000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. Only affected parties are local governments, state and federal agencies.

A cost-benefit analysis is not required under RCW 34.05.328. IAC is not a listed agency in section 201, and pro-

posed rules are technical, affecting governmental parties only.

January 3, 2006
Greg Lovelady
Rules Coordinator

WSR 06-02-078
PROPOSED RULES
INTERAGENCY COMMITTEE
FOR OUTDOOR RECREATION

[Filed January 3, 2006, 4:34 p.m.]

Supplemental Notice to WSR 06-01-062.

Preproposal statement of inquiry was filed as WSR 05-17-031.

Title of Rule and Other Identifying Information: Washington wildlife and recreation program (WWRP), chapter 286-27 WAC, Hearing time change.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA, on February 2, 2006, at 10:00 a.m.

Date of Intended Adoption: February 2, 2006.

Submit Written Comments to: Greg Lovelady, Interagency Committee for Outdoor Recreation (IAC), Rules Coordinator, 1111 Washington Street S.E., Natural Resources Building, P.O. Box 40917, Olympia, WA 98504-0917, e-mail GregL@iac.wa.gov, fax (360) 902-3026, phone (360) 902-3008, by January 23, 2006.

Assistance for Persons with Disabilities: Contact Greg Lovelady by January 25, 2006, TTY (360) 902-1996 or (360) 902-3008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this filing is to change the time of day for this hearing to 10 a.m. (It was scheduled for 1 p.m.)

The day of the hearing, February 2, 2006, is not changed.

Reasons Supporting Proposal: We anticipate that this hearing could last several hours. It will include:

- Staff presentations on both the WACs and related policy manual changes,
- Public testimony,
- IAC board discussion, and
- Consideration of the adoption proposal that was filed on December 19, 2005.

Statutory Authority for Adoption: RCW 79A.15.030(8), 79A.15.060(1), 79A.15.070(5), 79A.15.120(4), 79A.15.-130(4).

Statute Being Implemented: Chapter 79A.15 RCW.

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

Name of Proponent: Interagency committee for outdoor recreation, governmental.

Name of Agency Personnel Responsible for Drafting: Greg Lovelady, Box 40917, Olympia, WA 98504, 1111 Washington Street, Olympia, (360) 902-3008; Implementation and Enforcement: Laura Eckert Johnson, Box 40917, Olympia, WA 98504, 1111 Washington Street, Olympia, (360) 902-3000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. Affected parties are local governments, state and federal agencies.

A cost-benefit analysis is not required under RCW 34.05.328. IAC is not a listed agency in section 201, and proposed rules are technical, affecting governmental parties only.

January 3, 2006
Greg Lovelady
Rules Coordinator

WSR 06-02-079
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed January 3, 2006, 4:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-017.

Title of Rule and Other Identifying Information: Invasive aquatic species response plan.

Hearing Location(s): Natural Resources Building, 111 [1111] Washington Street, Olympia, WA, on February 10-11, 2006, begins 8:00 a.m., February 10, 2006.

Date of Intended Adoption: February 10, 2006.

Submit Written Comments to: Evan Jacoby, Rules Coordinator, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by February 3, 2006.

Assistance for Persons with Disabilities: Contact Susan Yeager by January 27, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules classify two species of tunicates as prohibited aquatic species and establish a response plan.

Reasons Supporting Proposal: Two species of tunicates have been identified as invasive in Puget Sound. A response plan was formulated to allow divers to clean Pleasant Harbor. These rules establish the species as prohibited aquatic species and establish a permanent response plan.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.828.

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: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule establishes how volunteers will dispose of invasive tunicates. There are

no businesses who perform this activity, and therefore, the rule has no effect on any existing small business.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

January 3, 2006

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 03-312, filed 12/16/03, effective 1/16/04)

WAC 220-12-090 Classification—Nonnative aquatic animal species. (1) Prohibited aquatic animal species. The following species are classified as prohibited aquatic animal species:

(a) Amphibians:

(i) In the family Hylidae: Cricket frog, in the genus *Hyla* species in the group *Arborea* including: *Hyla annectans*, *Hyla arborea*, *Hyla chinensis*, *Hyla hallowellii*, *Hyla immaculata*, *Hyla japonica*, *Hyla meridionalis*, *Hyla sanchiangensis*, *Hyla simplex*, *Hyla suweonensis*, *Hyla tsinlingensis*, *Hyla ussuriensis*, and *Hyla zhaopingensis*.

(ii) In the family Pelobatidae, spadefoots, all species of the genus *Pelobates* including *P. cultripes*, *P. fuscus*, *P. syriacus*, and *P. varaldii*. All species of the genus *Scaphiopus* including: *S. couchii*, *S. holbrookii*, and *S. hurterii*. All species of the genus *Spea* including: *S. hurterii*, *S. bombifrons*, *S. hammondii*, and *S. multiplicata* with the exception of the native species: *Spea intermontana* the great basin spadefoot.

(iii) In the family Pipidae: African clawed frog, all members of the genera *Silurana*, and *Xenopus*.

(iv) In the family Ranidae:

(A) Bull frog, *Rana catesbeiana*.

(B) Holarctic brown frogs and Palearctic green frogs of the genus *Rana*, including the following: *Rana arvalis* group (*R. arvalis*, *R. chaochiaensis*, *R. chevronta*); *Rana chensinensis* group (*R. altaica*, *R. chensinensis*, *R. dybowskii*, *R. kukunoris*, *R. kunyuensis*, *R. ornativentris*, *R. pirica*); *Rana graeca* group (*R. graeca*, *R. italica*); *Rana japonica* group (*R. amurensis*, *R. aragonensis*, *R. japonica*, *R. omeimontis*, *R. zhenhaiensis*); the subgenus *Rugosa* (*Rana rugosa*, *Rana emeljanovi*, *Rana tientaiensis*); *Rana tagoi* group (*R. sakuraii*, *R. tagoi*); *Rana temporaria* group (*R. asiatica*, *R. dalmatina*, *R. honnorate*, *R. huanrenensis*, *R. iberica*, *R. latastei*, *R. macrocnemis*, *R. okinavana*, *R. pyrenaica*, *R. tsushimensis*, *R. zhengi*); and in the *Rana Pelophylax* section, the subgenus *Pelophylax* (*R. bedriagae*, *R. bergeri*, *R. cerigensis*, *R. chosenica*, *R. cretensis*, *R. demarchii*, *R. epeirotica*, *R. fukienensis*, *R. grafti*, *R. hubeiensis*, *R. lateralis*, *R. lessonae*, *R. nigrolineata*, *R. nigromaculata*, *R. perezi*, *R. plancyi*, *R. porosa*, *R. ridibunda*, *R. saharica*, *R. shqiperica*, *R. shuchinae*, *R. terentievi*, *R. tenggerensis*); and the *Rana ridibunda-Rana lessonae* hybridogenetic complex species *R. esculenta* and *R. hispanica*.

(v) In the family Ambystomatidae: Mole salamanders. In the genus *Ambystomata*: *A. californiense*, *A. laterale*, *A. opacum*, *A. rosaceum*, *A. tigrinum*, except for the native species *A. tigrinum mavortium* Western tiger salamander, and *A. tigrinum melanostictum* Tiger salamander.

(vi) In the family Amphiumidae one, two, and three toed salamanders or congo eels: All members of the genus *Amphiuma*.

(vii) In the family Cryptobranchidae: Giant salamanders and hellbenders, all members of the genera *Andrias* and *Cryptobranchus*.

(viii) In the family Dicamptodontidae, American giant salamanders, all members of the genus *Dicamptodon*, except for the native species: *Dicamptodon tenebrosus*, Pacific giant salamander, and *Dicamptodon copei*, Cope's giant salamander.

(ix) In the family Hynobiidae: Mountain salamanders, all members of the genera *Batrachuperus*, *Hynobius*, *Liua*, *Onychodactylus*, *Pachyhynobius*, *Pseudohynobius*, *Ranodon*, and *Salamandrella*.

(x) In the family Plethodontidae, subfamily Desmognathinae: All members of the genus *Desmognathus*, dusky salamander.

(xi) In the family Plethodontidae, subfamily Plethodontinae: All members of the genera *Aneides* (climbing salamanders); *Batrachoseps* (slender salamanders); *Eurycea* (American brook salamanders); *Gyrinophilus* (cave salamanders); *Hemidactylium* (four-toed salamanders); *Hydromantes* (web-toed salamanders); *Plethodon* (woodland and slimy salamanders); *Pseudotriton* (mud or red salamanders), and *Speleomantes* (European salamanders).

(xii) In the family Proteidae, mudpuppies, all members of the genus *Necturus* and *Proteus*.

(xiii) In the family Salamandridae: Newts, all members of the genera *Chioglossa*; *Eichinotriton* (mountain newts); *Euproctus* (European mt. salamander); *Neurergus* (Kurdistan newts); *Notophthalmus* (red-spotted newts); *Pachytriton* (Chinese newts); *Paramesotriton* (warty newts); *Salamandrina* (speckled salamander); *Taricha* except for the native species *Taricha granulosa granulosa* the Northern rough-skinned newt, and *Triturus* (alpine newts).

(xiv) In the family Sirenidae, sirens, all species of the genera *Pseudobranchus* and *Siren*.

(b) Reptiles:

(i) In the family Chelydridae, snapping turtles, all species.

(ii) In the family Emydidae:

(A) Chinese pond turtles, all members of the genus *Chinemys*.

(B) Pond turtles, all members of the genus *Clemmys*.

(C) European pond turtle, *Emys orbicularis*.

(D) Asian pond turtle, all members of the genus *Mauremys*.

(iii) In the family Trionychidae, American soft shell turtles, all members of the genus *Apalone*.

(c) Crustaceans:

(i) Family Cercopagidae:

(A) Fish hook water flea, *Cercopagis pengoi*.

(B) Spiny water flea, *Bythotrephes cederstroemi*.

(ii) Family Grapsidae: Mitten crabs: All members of the genus *Erochier*.

(iii) Family Cambaridae: Crayfish: All genera.

(iv) Family Parastacidae: Crayfish: All genera except *Engaeos*, and except the species *Cherax quadricarinatus*, *Cherax papuanus*, and *Cherax tenuimanus*.

- (v) Family Portunidae: European green crab, *Carcinus maenas*.
- (vi) Family Spheromatidae: Burrowing isopod, *Sphaeroma quoyanum*.
- (d) Fish:
 - (i) Family Amiidae: Bowfin, grinnel, or mudfish, *Amia calva*.
 - (ii) Family Channidae: China fish, snakeheads: All members of the genus *Channa*.
 - (iii) Family Characidae: Piranha or caribe: All members of the genera *Pygocentrus*, *Roseveltella*, and *Serrasalmus*.
 - (iv) Family Clariidae: Walking catfish: All members of the family.
 - (v) Family Cyprinidae:
 - (A) Fathead minnow, *Pimephales promelas*.
 - (B) Carp, Bighead, *Hypophthalmichthys nobilis*.
 - (C) Carp, Black, *Mylopharyngodon piceus*.
 - (D) Carp, Grass (in the diploid form), *Ctenopharyngodon idella*.
 - (E) Carp, Silver, *Hypophthalmichthys molitrix*.
 - (F) Ide, silver orfe or golden orfe, *Leuciscus idus*.
 - (G) Rudd, *Scardinius erythrophthalmus*.
 - (vi) Family Gobiidae: Round goby, *Neogobius melanostomus*.
 - (vii) Family Esocidae: Northern pike, *Esox lucius*.
 - (viii) Family Lepisosteidae: Gar-pikes: All members of the family.
 - (e) Mammals:
 - Family Myocastoridae: Nutria, *Myocastor coypu*.
 - (f) Molluscs:
 - (i) Family Dreissenidae: Zebra mussels: All members of the genus *Dreissena* and all species known as quagga.
 - (ii) Family Gastropoda: New Zealand mud snail, *Potamopyrgus antipodarum*.
 - (g) Tunicates:
 - (i) Family Styela: Rough or leathery sea squirt, *Styela clava*.
 - (ii) Family Cionidae: *Ciona savignyi*.
- (2) Regulated aquatic animal species. The following species are classified as regulated aquatic animal species:
 - (a) Crustaceans:
 - All nonnative crustaceans classified as shellfish.
 - (b) Fish:
 - (i) All nonnative fish classified as food fish and game fish.
 - (ii) Family Cichlidae: Tilapia: All members of the genera *Tilapia*, *Oreochromis*, and *Sarotherodon*.
 - (iii) Family Clupeidae: Alewife, *Alosa pseudoharengus*.
 - (iv) Family Cyprinidae:
 - (A) Common carp, koi, *Cyprinus carpio*.
 - (B) Goldfish, *Carassius auratus*.
 - (C) Tench, *Tinca tinca*.
 - (D) Grass carp (in the triploid form), *Ctenopharyngodon idella*.
 - (v) Family Poeciliidae: Mosquito fish, *Gambusia affinis*.
 - (c) Molluscs:
 - (i) All nonnative molluscs classified as shellfish.
 - (ii) Family Psammobiidae: Mahogany clam or purple varnish clam, *Nuttalia obscurata*.

(3) Unregulated aquatic animal species. The following species are classified as unregulated aquatic animal species: None.

NEW SECTION

WAC 220-77-100 Invasive tunicate rapid response plan. (1) The provisions of this section apply to the invasive tunicate species *Styela clava* and *Ciona savignyi*.

(2) It is lawful to remove these tunicates from all state waters in unlimited quantities. The preferred method of removal is scraping the animal off the substrate, keeping the base intact. If this is impracticable, cutting the base as close to the substrate as possible and removal of the whole animal is acceptable.

(3) Once specimens of these tunicates have been separated from the substrate, every effort should be made to remove the animal from the water. It is unlawful to simply scrape or cut the animal free from the substrate and release the animal into the water.

(4) Specimens of these tunicates that have been removed from the water must be disposed of at an upland site. While delivery to a landfill or burial above the higher-high water line is preferred, any disposal that will not allow reintroduction of these tunicates into marine waters is acceptable. It is unlawful to reintroduce the tunicates into the water.

(5) It is lawful to possess specimens of these tunicates for identification purposes, provided that they have been chemically preserved. Except for removal to an upland disposal site, it is unlawful to possess live specimens of these tunicates. This subsection does not apply to live specimens of these tunicates taken under a scientific collection permit.

WSR 06-02-081

PROPOSED RULES

HORSE RACING COMMISSION

[Filed January 4, 2006, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-15-027.

Title of Rule and Other Identifying Information: WAC 260-48-800 Parimutuel wagering pools.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on February 9, 2006, at 9:30 a.m.

Date of Intended Adoption: February 9, 2006.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 6, 2006.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 6, 2006, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adopt into rule the net price calculation. With the adoption of these amendments our rule will be consistent with the international model rule.

Reasons Supporting Proposal: Brings Washington rule into compliance with the model rule, and also allows licensed racing association to conduct international wagering.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

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

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

January 3, 2006
R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 96-10-014, filed 4/19/96, effective 6/11/96)

WAC 260-48-800 Parimutuel wagering pools. (1) All permitted parimutuel wagering pools shall be separately and independently calculated and distributed. Takeout shall be deducted from each gross pool as stipulated by law. The remainder of the monies in the pool shall constitute the net pool for distribution as payoff on winning wagers.

(2) ~~(The)~~ Either standard price calculation procedure shall be used to calculate wagering pools; however, net price calculation shall be used any time international wagering is conducted.

(a) Standard price calculation procedure:

SINGLE PRICE POOL (WIN POOL)

Gross Pool	=	Sum of Wagers on all Betting Interests - Refunds
Takeout	=	Gross Pool x Percent Takeout
Net Pool	=	Gross Pool - Takeout
Profit	=	Net Pool - Gross Amount Bet on Winner
Profit Per Dollar	=	Profit/Gross Amount Bet on Winner
\$1 Unbroken Price	=	Profit Per Dollar + \$1
\$1 Broken Price	=	\$1 Unbroken Price Rounded Down to the Break Point
Total Payout	=	\$1 Broken Price x Gross Amount Bet on Winner
Total Breakage	=	Net Pool - Total Payout

PROFIT SPLIT (PLACE POOL)

Profit is net pool less gross amount bet on all place finishers. Finishers split profit 1/2 and 1/2 (place profit), then divide by gross amount bet on each place finisher for two unique prices.

PROFIT SPLIT (SHOW POOL)

Profit is net pool less gross amount bet on all show finishers. Finishers split profit 1/3 and 1/3 and 1/3 (show profit), then divide by gross amount bet on each show finisher for three unique prices.

(b) Net price calculation procedure:

SINGLE PRICE POOL (WIN POOL)

<u>Gross Pool</u>	=	<u>Sum of Wagers on all Betting Interests - Refunds</u>
<u>Takeout</u>	=	<u>Gross Pool x Percent Takeout-for each Source</u>
<u>Net Pool</u>	=	<u>Gross Pool - Takeout</u>
<u>Net Bet on Winner</u>	=	<u>Gross Amount Bet on Winner x (1 - Percent Takeout)</u>
<u>Total Net Pool</u>	=	<u>Sum of all Sources Net Pools</u>
<u>Total Net Bet on Winner</u>	=	<u>Sum of all Sources Net Bet on Winner</u>
<u>Total Profit</u>	=	<u>Total Net Pool - Total Net Bet on Winner</u>
<u>Profit Per Dollar</u>	=	<u>Total Profit/Total Net Bet on Winner</u>
<u>\$1 Unbroken Base Price</u>	=	<u>Profit Per Dollar + \$1 for each Source</u>
<u>\$1 Unbroken Price</u>	=	<u>\$1 Unbroken Base Price x (1 - Percent Takeout)</u>
<u>\$1 Broken Price</u>	=	<u>\$1 Unbroken Price Rounded Down to the Break Point</u>
<u>Total Payout</u>	=	<u>\$1 Broken Price x Gross Amount Bet on Winner</u>
<u>Total Breakage</u>	=	<u>Net Pool - Total Payout</u>

PROFIT SPLIT (PLACE POOL)

Total profit is the total net pool less the total net amount bet on all place finishers. Finishers split total profit 1/2 and 1/2 (place profit), then divide by total net amount bet on each place finisher for two unique unbroken base prices.

PROFIT SPLIT (SHOW POOL)

Total profit is the total net pool less the total net amount bet on all show finishers. Finishers split total profit 1/3 and 1/3 and 1/3 (show profit), then divide by total net amount bet on each show finisher for three unique unbroken base prices.

(3) If a profit split results in only one covered winning betting interest or combinations it shall be calculated the same as a single price pool.

(4) The individual pools outlined in these rules may be given alternative names by each association, provided prior approval is obtained from the commission.

(5) In the event a minus pool occurs in any parimutuel pool, the expense of said minus pool shall be borne by the association.

(6) The association must pay to the holder of any ticket or tickets entitling the holder to participate in the distribution of a parimutuel pool the amount wagered by such holder plus

a minimum of five percent thereof. This requirement is unaffected by the existence of a parimutuel pool which does not contain sufficient money to distribute said five percent to all persons holding such tickets.

(7) No person or corporation shall directly or indirectly purchase parimutuel tickets or participate in the purchase of any part of a parimutuel pool for another for hire or for any gratuity.

WSR 06-02-082
PROPOSED RULES
HORSE RACING COMMISSION

[Filed January 4, 2006, 9:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-07-093.

Title of Rule and Other Identifying Information: Chapter 260-36 WAC, Occupational permits and licenses.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on February 9, 2006, at 9:30 a.m.

Date of Intended Adoption: February 9, 2006.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by February 6, 2006.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 6, 2006, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update chapter 260-36 WAC as part of the agency's regulatory reform effort. Key changes to existing rules include (1) who is required a license (WAC 260-36-010); (2) which licensees are subject to certain restrictions (WAC 260-36-030); (3) making it a violation of the rules to provide false information on an application (WAC 260-36-050); (4) certain types of initial licenses require stewards approval (WAC 260-36-060); (5) duration of a license (WAC 260-36-080); (6) increasing the license fees for certain types of licenses (WAC 260-36-085); (7) requiring licensees to present and display their licenses (WAC 260-36-110); (8) amending conditions under which an application or license may be denied, suspended or revoked (WAC 260-36-120); (9) combining the provisions of several rules (WAC 260-36-150); and (10) clarifying the application process for owner's license (WAC 260-36-200). In addition, the agency is adding four new sections and repealing seven existing rules.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

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

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

January 3, 2006

R. M. Leichner

Executive Secretary

Chapter 260-36 WAC

~~((OCCUPATIONAL PERMITS AND))~~ LICENSES

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

WAC 260-36-010 ~~((Unlawful to act without license.))~~
License required. ~~((It shall be unlawful for any person to take part in or officiate in any way or to serve in any capacity at any race track without first having secured a license or permit and paid said fee.))~~ Any person acting in an official capacity or any person participating directly in horse racing must have a valid license. Employees of the commission and commissioners are not required to be licensed. Persons employed by a racing association who only perform duties of concessions, housekeeping, parking, food and beverage, landscaping or similar functions, and do not act in an official capacity or participate directly in horse racing are not required to be licensed. Decisions regarding who is required to be licensed, if not addressed in this chapter, shall be made by the executive secretary. It shall be a violation of these rules for any person to act in an official capacity or participate directly in horse racing unless licensed by the commission.

NEW SECTION

WAC 260-36-015 Age requirement for license. Applicants for licensing shall be at least fourteen years of age unless otherwise specified. An applicant may be required to submit a certified copy of his/her birth certificate.

AMENDATORY SECTION (Amending WSR 04-24-019, filed 11/22/04, effective 12/23/04)

WAC 260-36-030 Veterinarians ~~((and platers))~~—
License required. ~~((The license fee for veterinarians and platers shall be for one year. Veterinarians and platers must be approved by the commission before practicing their professions on the grounds of an association.))~~ Veterinarians licensed by the commission may also apply for a trainer's license. A licensee holding a veterinarian and a trainer's license shall be subject to the following ~~((conditions))~~ restrictions:

(1) ~~The ~~((individual licensed by the commission as a veterinarian and trainer))~~ licensee~~ may treat, using veterinary methods, only those horses for which he/she is the trainer of record.

(2) ~~The ~~((individual licensed by the commission as a veterinarian and trainer))~~ shall not practice veterinary medicine on any horse other than for which he/she is the trainer of record.~~

~~(3)) Notwithstanding subsection (1) of this section, during an emergency on the grounds of the racing association, the ~~((individual licensed by the commission as a veterinarian and trainer)) licensee~~ may respond and assist at the scene of the emergency. Any veterinary treatment provided at the scene shall be reported in writing to the official veterinarian. The report shall include, at a minimum, the names of horses treated and treatment rendered. The report must be filed by the next race day's first race.~~

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

WAC 260-36-050 Application ~~((forms))~~ for license. All applications for a license ~~((and registrations to participate in racing))~~ shall be made to the commission on approved forms ~~((supplied by them))~~. It shall be a violation of these rules for any person applying for a license to provide false information or fail to provide accurate and complete information. Persons completing an application shall be responsible for the accuracy and completeness of the information contained on the application.

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

WAC 260-36-060 Application for license—~~((Owners, trainers, jockeys, apprentices, and agents)) Stewards' review.~~ (1) Applications for an initial license ~~((filed))~~ submitted by ~~((owners;))~~ trainers, jockeys, ~~((jockey))~~ apprentice~~((s and agents))~~ jockeys, jockey agents, exercise riders, pony persons or outriders must be ~~((submitted to the board of stewards.~~

~~(1) All applications for licenses and for registrations must be approved by the board of stewards before actions will be taken by the commission.~~

~~(2) Before approving any application for a license it shall be the duty of the board of stewards individually and collectively to ascertain if the applicant is qualified, as to ability, integrity and right to the license applied for.~~

~~(3) In considering each application for a license the board of stewards may require the applicant as well as his endorsers to appear before them and show that said applicant is qualified in every respect to receive the license requested. Ability as well as integrity must be clearly shown by the applicant in order to receive recommendation for the granting of the license)) reviewed by a steward to determine if the applicant is qualified for the license requested.~~

(2) The determination whether an applicant is qualified for the license shall be made by a steward based on review of the application, and, at the discretion of the steward, the applicant may also be required to do one or more of the following:

(a) Pass a written exam;

(b) Appear for an oral interview either in person or by phone; or

(c) Demonstrate skills required for the license.

If a steward determines that an applicant is not qualified to receive the license requested, the applicant shall be notified and provided an opportunity to request a stewards' ruling conference on that issue.

(3) If an applicant has been previously determined within the past five years, to be qualified for the license requested, review of the applicant's qualifications for that license is not necessary for subsequent license applications for the same type of license. An applicant may be determined to be qualified for the license requested if that person has been licensed in this state or other recognized jurisdiction in the past five years.

NEW SECTION

WAC 260-36-062 Fitness to participate. (1) All applicants for a jockey, apprentice jockey, exercise rider, pony person or outrider license shall certify on their application that they are physically fit to ride.

(2) During the conduct of a race meet, if the board of stewards finds that a threat to the public health, safety or welfare requires emergency action, the board of stewards may require a jockey, apprentice jockey, exercise rider, pony person or outrider to provide a physician's written statement verifying fitness to ride before being allowed to ride in a race or on the grounds of the racing association.

NEW SECTION

WAC 260-36-065 Approval of application for license. The procedure for processing license applications shall be determined by the executive secretary.

AMENDATORY SECTION (Amending WSR 04-24-019, filed 11/22/04, effective 12/23/04)

WAC 260-36-080 Duration of license. (1) Every license issued by the commission shall ~~((expire on December 31st of the year for which it was issued except as provided below))~~ be for a term not exceeding one year.

~~((a) A license shall be considered expired if the licensee is no longer performing the duties for which he or she was licensed, or, if applicable, the licensee is no longer employed by the employer who hired the licensee;~~

~~(b)) Licenses shall expire on December 31st of each year except as otherwise provided in this rule.~~

(2) Licenses issued to employees of a class 1 racing association shall expire on March 1st.

(3) A license shall be considered expired as of the date a licensee is no longer performing the activities for which he or she was licensed, or, if applicable, the date the licensee is no longer employed by the employer who hired the licensee. The commission or its designee may, at its sole discretion, reinstate ~~((an expired))~~ such a license if the licensee is reemployed ~~((prior to December 31st of the year in which the license was issued;~~

~~(e) The commission may establish an expiration date beyond December 31st if the license is being issued for a single race meeting which spans two calendar years;~~

~~(d) On recommendation of the executive secretary to the commission, the commission may extend the duration of a license of a class 1 racing association employee from December 31st of the year in which the license was issued to March 1st of the following year)) or begins performing the activities for which he or she was licensed prior to the end of the~~

license period for which the license had been originally issued.

AMENDATORY SECTION (Amending WSR 04-24-019, filed 11/22/04, effective 12/23/04)

WAC 260-36-085 License and fingerprint fees. The following are the ~~((annual))~~ license fees for any person actively participating in racing activities:

Apprentice jockey	\$((66.00)) <u>67.00</u>
Assistant trainer	\$31.00
Association employee—management	\$21.00
Association employee—hourly/seasonal	\$11.00
Association ((employee—)) volunteer non-paid	No fee
Authorized agent	\$21.00
Clocker	\$21.00
Exercise person	\$((66.00)) <u>67.00</u>
Groom	\$21.00
Honorary licensee	\$11.00
Jockey agent	\$((66.00)) <u>67.00</u>
Jockey	\$((66.00)) <u>67.00</u>
Other	\$21.00
Owner	\$((66.00)) <u>67.00</u>
Pony person	\$((66.00)) <u>67.00</u>
Prospective owner	\$((66.00)) <u>67.00</u>
Service employee	\$21.00
Spouse groom	\$21.00
Stable license	\$41.00
Trainer	\$((66.00)) <u>67.00</u>
Vendor	\$((401.00)) <u>103.00</u>
Veterinarian	\$((401.00)) <u>103.00</u>

~~((Persons obtaining more than one type of license in a calendar year, excluding individuals applying for an owner and trainer license, shall not be assessed a license fee over \$100.00.))~~ The license fee for multiple licenses shall not exceed \$103.00, except persons applying for owner, veterinarian or vendor license shall pay the license fee established for each of these licenses.

The following are examples of how this section applies:

Example one - A person applies for the following licenses: Trainer (\$67.00), exercise person (\$67.00), and

pony person (\$67.00). The total license fee for these multiple licenses would only be \$103.00.

Example two - A person applies for the following licenses: Owner (\$67.00), trainer (\$67.00) and exercise person (\$67.00). The total cost of the trainer and exercise person license would be \$103.00. The cost of the owner license (\$67.00) would be added to the maximum cost of multiple licenses (\$103.00) to determine the total license fee of \$170.00.

Example three - A person applies for the following licenses: Owner (\$67.00), vendor (\$103.00), and exercise person (\$67.00). The license fees for owner (\$67.00) and vendor (\$103.00) are both added to the license fee for exercise person (\$67.00) for a total license fee of \$237.00.

In addition to the above fees, a \$10.00 fee will be added to cover the costs of conducting a fingerprint-based background check. The background check fee will be assessed only once annually per person regardless of ~~((the number of different types of licenses an individual possesses))~~ whether the person applies for more than one type of license in that year.

The commission shall review license and fingerprint fees annually to determine if they need to be adjusted to comply with RCW 67.16.020.

AMENDATORY SECTION (Amending WSR 04-24-019, filed 11/22/04, effective 12/23/04)

WAC 260-36-100 Fingerprints and photographs. Every person applying for a license ~~((to actively participate in racing))~~ shall furnish the commission his or her fingerprints and photograph upon making an initial application for a license and at least once every three years thereafter. However, the commission, in its discretion, may require fingerprints and a photograph from any applicant or licensee at any time.

AMENDATORY SECTION (Amending Order 81-06, filed 7/10/81)

WAC 260-36-110 ~~((Identification badges.))~~ Display of license. (1) ~~((All))~~ Licensees shall ~~((display))~~ present their ~~((identification badges))~~ license at all security gates ~~((and))~~ or when requested to do so by racing association security personnel or commission employees.

(2) ~~((When a racing association requires identification badges))~~ The commission may require licenses to be worn ~~((in its barn area, these badges shall not be transferable and must be prominently displayed by the occupational licensees))~~ while on association grounds.

AMENDATORY SECTION (Amending WSR 05-05-047, filed 2/14/05, effective 3/17/05)

WAC 260-36-120 Denial, suspension, and revocation—Grounds. (1) The commission or its designee may refuse to issue or may deny a license to an applicant, ~~((or))~~ may modify or place conditions upon a license, may suspend or revoke a license issued, or may order disciplinary measures, or may ban a person from all facilities under the commission's jurisdiction, if the applicant or licensee:

(a) Has been convicted of a felony, as classified by the laws of the state of Washington or the laws of the jurisdiction in which the conviction occurred;

(b) Has been convicted of violating any law regarding gambling or a controlled substance;

(c) Has pending misdemeanor or gross misdemeanor criminal charges, as classified by the laws of the state of Washington or the laws of the jurisdiction in which the conviction occurred;

(d) Has failed to meet the minimum qualifications required for the license for which they are applying;

(e) Has failed to disclose or states falsely any information required in the application;

(f) Has been found in violation of statutes or rules governing racing in this state or other jurisdictions;

(g) Has ~~((disciplinary charges pending))~~ a proceeding pending to determine whether the applicant or licensee has violated the rules of racing in this state or other racing jurisdiction;

(h) Has been or is currently excluded from association grounds by a recognized racing jurisdiction;

(i) Has had a license denied(~~(s)~~) by any racing jurisdiction;

(j) Is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or who may interfere or has interfered with the orderly conduct of a race meeting;

(k) Demonstrates financial irresponsibility by accumulating unpaid obligations, defaulting in obligations or issuing drafts or checks that are dishonored or payment refused;

(l) Has violated any of the alcohol or substance abuse provisions outlined in chapter 260-34 WAC;

(m) Has violated any of the provisions of chapter 67.16 RCW; (~~(s)~~)

(n) Has violated any provisions of Title 260 WAC;

(o) Has association with persons of known disreputable character; or

(p) Has not established the necessary skills or expertise to be qualified for a license as required by WAC 260-36-060.

(2) The commission or its designee shall deny the application for license or suspend or revoke an existing license if the applicant or licensee:

(a) Has been convicted of any felony crime(~~(s)~~) against a person. "Crime against a person" means a conviction for any offense enumerated in chapters 9A.32, 9A.36, 9A.40, 9A.42, and 9A.44 RCW, or an offense which would constitute an offense enumerated in those chapters if committed in Washington state;

(b) Has been convicted of any felony property crime within the past ten years. "Property crime" means a conviction for an offense enumerated in chapters 9A.48, 9A.52, 9A.56, and 9A.60 RCW, or an offense which would constitute an offense enumerated in those chapters if committed in Washington state;

(c) Has been convicted of any felony drug crime involving the possession or use of any drug as defined in chapter 69.41 RCW or any controlled substance as defined in chapter 69.50 RCW within the past three years.

(d) Has been convicted of any other felony drug crime as defined in chapter 69.41 RCW or felony crime involving a controlled substance as defined in chapter 69.50 RCW.

(e) Has five or more convictions for gross misdemeanors within the last three years;

(f) Is subject to current prosecution or pending charges for any felony crime;

(g) Has a felony conviction under appeal;

(h) Is currently suspended or revoked in Washington or by another recognized racing jurisdiction;

(i) Is certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order; or

(j) Has any outstanding arrest warrants.

(3) ~~((An appeal of a license denial based on this policy shall be filed as outlined in WAC 260-88-010.))~~ In considering ~~((an appeal from))~~ a challenge of a decision ~~((by the board of stewards))~~ denying or revoking a license pursuant to subsection (2) of this section, the commission may only reverse the denial or revocation on a showing by the appellant of mitigating information and that the best interests of horse racing would not be compromised by granting or reinstating a license.

(4) A license suspension or revocation shall be reported in writing to the applicant or licensee and the Association of Racing Commissioners International, Inc. ~~((whereby other member racing jurisdictions shall be advised.))~~

~~((5) A recognized racing jurisdiction shall include members of the Association of Racing Commissioners International (RCI) and the North American Pari-Mutuel Regulators Association (NAPRA), and any other racing authority with which the commission has a written reciprocity agreement)).~~

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

WAC 260-36-150 Employing or harboring an unlicensed person. ~~((Any racing association, owner, trainer, or other licensee, licensed by the commission, who shall employ an exercise boy, groom, or other employee, who is not licensed by the commission, shall be subject to suspension, fine, or both, the extent of said suspension, fine or both to be determined by the board of stewards.))~~ No racing association or licensee shall employ an unlicensed person in a position for which a license is required by these rules. No licensee shall harbor any unlicensed person in the restricted areas on the grounds of any class A or B racing association.

AMENDATORY SECTION (Amending WSR 05-05-043, filed 2/14/05, effective 3/17/05)

WAC 260-36-180 Authority to search. In order to protect the integrity of horse racing and to protect the interests and safety of the public and participants, the commission and its employees shall have the right to enter into or upon the buildings, stables, rooms, motor vehicles or other places within the grounds of a racing association to examine the same and to inspect and examine the personal property and effects of any licensee within such places. Any person who has been granted a license by the commission, by accepting a license, authorizes the commission or its employees to search

his/her person and the areas indicated herein and to seize any medication, drugs, paraphernalia or device prohibited by the rules of racing, or other evidence of a violation of the rules of racing. If a licensee refuses to allow a search, the board of stewards shall revoke his/her license and refer the matter to the commission.

AMENDATORY SECTION (Amending WSR 05-09-045, filed 4/18/05, effective 5/19/05)

WAC 260-36-200 ((Provisional)) Application for owner's license by trainer. ((A provisional owner's license is intended to allow an individual to enter a horse in Washington races for a period of time not to exceed fourteen days. The commission or its designee may issue a provisional owner's license for a period of fourteen days based on an application completed by a trainer representing the owner and payment of all license, fingerprint and labor and industries fees. The trainer shall provide the commission, at a minimum, the name, address, telephone number and date of birth of the owner. The provisional owner shall have fourteen calendar days from the date the license is issued to send to the commission a completed application, signed by the owner, and if directed, a set of fingerprints.)) (1) A trainer may submit an application for an owner's license on behalf of an owner provided the following requirements are met:

(a) The trainer must provide a statement signed by the owner that the trainer is authorized to execute the application on the owner's behalf and that the trainer is familiar with the truth of the contents of the application.

(b) Payment of all license fees and required labor and industries premiums are submitted with the application.

(2) Within fourteen days of the trainer's submission of a license application on behalf of an owner, the owner must complete the license application process by providing fingerprints, a photograph, and any other information required by the commission. If the owner fails to complete the application process within the fourteen days, the board of stewards may revoke the owner's license.

NEW SECTION

WAC 260-36-210 Owner's license. There shall be no age limitation for a person to apply for and be granted an owner's license, except that persons under the age of eighteen must have a parent or guardian assume financial responsibility for them.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 260-36-020 Licenses required of jockeys, apprentices, owners, trainers.
- WAC 260-36-040 Registration of personnel other than owners, trainers and jockeys—Fee.
- WAC 260-36-070 Licenses temporary subject to commission approval.

- WAC 260-36-130 Revocation for association with disreputable persons.
- WAC 260-36-140 Harboring person not having credentials.
- WAC 260-36-160 Personnel lists.
- WAC 260-36-190 Facsimile for owners may be used.

**WSR 06-02-084
PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed January 4, 2006, 10:08 a.m.]

Supplemental Notice to WSR 06-01-064.

Title of Rule and Other Identifying Information: Fees for on-site wastewater treatment designers and inspectors, chapter 196-30 WAC.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Olympia, WA 98502, on February 10, 2006, at 10:00 a.m.

Date of Intended Adoption: February 13, 2006.

Submit Written Comments to: George A. Twiss, Executive Director, Board of Registration, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by February 9, 2006.

Assistance for Persons with Disabilities: Contact Kim King, Secretary Administrative, by February 3, 2006, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is to amend selected fees in chapter 196-30 WAC by suspending portions of those fees for a two-year period. This amendment is to correct a typographical error that was included in the previous CR-102 and published in WSR 06-01-064.

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

Statutory Authority for Adoption: RCW 43.24.086.

Statute Being Implemented: Chapter 18.210 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 negative economic impact to small business. This proposal reduces fees paid to the state thus reducing the cost of doing business.

A cost-benefit analysis is not required under RCW 34.05.328. See statement above regarding small business economic impact statement.

January 3, 2006
Andrea C. Archer
Assistant Director
Business and Professions Division

NEW SECTION

WAC 196-30-110 Suspended fees. Effective July 1, 2006 the following fees will have the listed portions suspended from collection until July 1, 2008.

Fee categories	Current Fees	Portion Suspended	Temporary Fees
Certificate of Competency:			
Certificate of Competency renewal	\$250	\$100	\$150
Certificate of Competency late renewal	\$350	\$100	\$250

WSR 06-02-087
PROPOSED RULES
DEPARTMENT OF HEALTH
(Chiropractic Quality Assurance Commission)
[Filed January 4, 2006, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-062.

Title of Rule and Other Identifying Information: WAC 246-808-510 Definitions.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Tumwater, WA 98501, on March 25, 2006, at 10:15 a.m.

Date of Intended Adoption: March 25, 2006.

Submit Written Comments to: Karen Kelley, P.O. Box 47869, Olympia, WA 98504-7869, karen.kelley@doh.wa.gov, e-mail <http://www3.doh.wa.gov/policyreview>, fax (360) 236-4918, by March 17, 2006.

Assistance for Persons with Disabilities: Contact Karen Kelley by March 17, 2006, TTY 711 or (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments will add text that conveys more accurately the language in the statute, and clarify or add the following definitions:

Auxiliary staff - clarifies that regular senior students and clinical postgraduate trainees are not included, and that auxiliary staff receive ongoing on-the-job training.

Chiropractor - adds doctor of chiropractic to the definition.

Direct supervision - expands the definition to include direct supervision and control, and the requirement that patients be examined by a chiropractor prior to delegating duties to auxiliary staff.

Regular senior student - add definition.

Clinical postgraduate trainee - add definition.

Reasons Supporting Proposal: The amendments add clarity, more accurately reflect statute, and reflect changes to WAC 246-808-190 Preceptor or direct supervisory doctor and 246-808-535 Delegation of services to auxiliary staff and graduate doctors of chiropractic.

Statutory Authority for Adoption: RCW 18.25.0171.

Statute Being Implemented: Chapter 18.25 RCW.

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

Name of Proponent: Chiropractic quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Karen Kelley, 310 Israel Road S.E., Olympia, WA 98504-7869, (360) 236-4856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not necessary under chapter 19.85 RCW. This rule does not impose additional costs on licensed chiropractors.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Karen Kelley, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4856, fax (360) 236-4918, e-mail karen.kelley@doh.wa.gov.

December 7, 2005

Karen Kelley

Program Manager

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-510 Definitions. "Auxiliary services" means those services, excluding those practices which are restricted to licensed chiropractors, which may be needed for the support of chiropractic care.

"Auxiliary staff" means personnel, except (~~graduate doctors of chiropractic,~~) regular senior students and clinical postgraduate trainees, who receive ongoing on-the-job training and who ((are working)) work for or at the direction of a licensed doctor of chiropractic.

"Chiropractor," "doctor of chiropractic," means a person licensed (~~pursuant to~~) under chapter 18.25 RCW.

"Clinical postgraduate trainee" means a graduate doctor of chiropractic serving a period of postgraduate chiropractic training in a program of clinical chiropractic training sponsored by an accredited school of chiropractic approved by this state. The clinical postgraduate trainee works under the direct supervision and control of a commission approved preceptor as described in WAC 246-808-190 and 246-808-535. Clinical postgraduate trainees who have had their chiropractic license suspended, revoked, or otherwise conditioned or restricted under authority of any competent jurisdiction shall not perform any delegated tasks listed in WAC 246-808-535(4).

"Direct supervision" and "direct supervision and control" means (~~having~~) a licensed chiropractor is on the premises and immediately available, and has examined the

patient prior to delegating duties to auxiliary staff, regular senior students, or clinical postgraduate trainees.

~~("Graduate doctor of chiropractic" means a graduate of an approved chiropractic college who has applied for a Washington state chiropractic license. Graduate doctors of chiropractic who have failed to pass the Washington state chiropractic examination within one year of applying for a Washington state chiropractic license may only perform auxiliary services. Graduate doctors who have had their chiropractic license suspended or revoked shall not be authorized to perform any auxiliary services.)~~

"Mentally or physically disabled chiropractor" means a chiropractor who has either been determined by a court to be mentally incompetent or mentally ill or who is unable to practice chiropractic with reasonable skill and safety to patients by reason of any mental or physical condition.

"Regular senior student" means a student in his or her last term (quarter or semester) at an accredited school approved by the commission who has met all clinical and graduation requirements except clinical training hours.

"Unprofessional conduct" as used in these regulations ((shall)) means the conduct described in RCW 18.130.180 and 18.25.112.

WSR 06-02-094

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed January 4, 2006, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-027.

Title of Rule and Other Identifying Information: Sale of commercially caught sturgeon and bottomfish. Retention of commercial catch for personal use.

Hearing Location(s): Natural Resources Building, 111 [1111] Washington Street, Olympia, WA, on February 10-11, 2006, begins 8:00 a.m., February 10, 2006.

Date of Intended Adoption: February 10, 2006.

Submit Written Comments to: Evan Jacoby, Rules Coordinator, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by February 3, 2006.

Assistance for Persons with Disabilities: Contact Susan Yeager by January 27, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule clarifies the procedure and amounts of commercially caught sturgeon and bottomfish that may be retained for personal use.

Reasons Supporting Proposal: Clarification, allows commercial fishers to retain catch for personal use.

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: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule provides for personal use of commercial catch. Since the retention of such catch is the choice of the individual fisher, the rule has no regulatory effect on the fisher's business.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

January 4, 2006

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 97-51, filed 3/14/97, effective 4/14/97)

WAC 220-20-021 Sale of commercially caught sturgeon and bottomfish. (1) It is unlawful for any person while engaged in commercial fishing for sturgeon or bottomfish to:

(a) Keep ~~((in excess of one))~~ sturgeon smaller or greater than the size limits provided for in WAC 220-20-020, keep more than one sturgeon for personal use, or keep more than the equivalent of one limit of sport caught bottomfish for personal use. Any lingcod to be retained for personal use taken east of the mouth of the Sekiu River must be greater than 26 inches in length and may not exceed 40 inches in length. All commercially taken sturgeon and bottomfish retained for personal use must be recorded on fish receiving tickets.

(b) Sell any sturgeon or bottomfish taken under such license to anyone other than a licensed wholesale dealer within or outside the state of Washington, except that a person who is licensed as a wholesale dealer under the provisions of RCW 75.28.300 may sell to individuals or corporations other than licensed wholesale dealers.

(c) Sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of any sturgeon taken under such license prior to the time that the sturgeon is sold under subsection (1)(b) of this section.

(2) It is unlawful for any wholesale dealer licensed under RCW 75.28.300 to purchase or attempt to purchase sturgeon eggs from sturgeon taken by any person licensed to take sturgeon for commercial purposes under chapter 75.28 RCW if the sturgeon eggs have been removed from the body cavity of the sturgeon prior to the sale of the sturgeon.

(3) It is unlawful to purchase, sell, barter or attempt to purchase, sell, or barter any sturgeon eggs taken from sturgeon caught in the Columbia River below Bonneville Dam.

WSR 06-02-097
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed January 4, 2006, 11:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-118.

Title of Rule and Other Identifying Information: Ballast water management and control—Reporting and sampling requirements.

Hearing Location(s): Natural Resources Building, 111 [1111] Washington Street, Olympia, WA, on February 10-11, 2006, begins 8:00 a.m., February 10, 2006.

Date of Intended Adoption: February 10, 2006.

Submit Written Comments to: Evan Jacoby, Rules Coordinator, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by February 3, 2006.

Assistance for Persons with Disabilities: Contact Susan Yeager by January 27, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature has required an interim ballast water management report. This rule provides that report.

Reasons Supporting Proposal: Legislative requirement.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.120.030.

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: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, 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: An interim ballast water management report is required from all vessels subject to chapter 77.120 RCW.

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

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The cost is the preparation of the report. It is estimated that this should take less than one-half hour. Because the department does not know to whom in each shipping company the report will be assigned to, we cannot determine the costs to the company.

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 Pro-

posed 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.

It is estimated that the maximum time for preparation of the report is on-half [one-half] hour. The cost per hour of labor depends on the hourly wage of the person preparing the report.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The report is required by RCW 77.120.030(3). The department has prepared the form for the report and is making it available on line, which may be completed and returned electronically.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department has consulted with the shipping industry.

8. A List of Industries That Will Be Required to Comply with the Rule: Shipping companies which have vessels subject to the ballast water management statutes.

A copy of the statement may be obtained by contacting Evan Jacoby, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail jacobesj@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

January 4, 2006

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 01-173, filed 8/20/01, effective 9/20/01)

WAC 220-77-090 Ballast water management and control—Reporting and sampling requirements. (1) Vessels which are subject to chapter 77.120 RCW and which intend to discharge ballast water into Washington state waters must report ballast water management information at least twenty-four hours prior to entering Washington waters by filing a ballast water report pursuant to Title 33 C.F.R. Part 151.2045 with the department's designated agents as follows:

(a) Vessels bound for Puget Sound or coastal ports must file their ballast water reporting form with the Marine Exchange of Puget Sound in Seattle. Forms must be submitted by fax or in electronic format.

(b) Vessels bound for Washington ports on the Columbia River must file their ballast water reporting form with the Merchants Exchange of Portland. Forms must be submitted by fax or in electronic format.

(2) Vessels not intending to discharge ballast water into Washington state waters shall notify the department in one of the following ways:

(a) Vessel operators who do not wish to file a ballast water reporting form may send a signed letter to the state ANS coordinator, at Department of Fish and Wildlife, 600 Capitol Way No., Olympia, WA 98501-1091, which includes the following information:

(i) Vessel name, identification number (International Maritime Organization, Lloyds of London or U.S. Coast Guard registry number), owner, agent and vessel type; and

(ii) A statement that the vessel will not discharge ballast water.

(b) Vessels that would normally discharge ballast water, but will not discharge on any given trip, may continue to file the ballast water reporting form, with "not discharging" written in the ballast water history section.

(3) The department, or designated representatives, may at reasonable times and in a reasonable manner, during a vessel's scheduled stay in port, take samples of ballast water and sediment, may examine ballast water management records, and may make other appropriate inquiries to assess the compliance of vessels with ballast water reporting and control requirements.

(4) Interim report for implementing 2007 ballast water exchange program.

(a) All vessels subject to chapter 77.120 RCW that enter Washington waters after July 1, 2007, will be prohibited from discharging ballast water under the safety exemptions to the ballast water exchange program. In order to implement the 2007 program, vessel information is required to be on file with the department prior to July 1, 2006.

(b) All vessels subject to chapter 77.120 RCW that enter Washington waters after July 1, 2006, are required, prior to July 1, 2006, to file a Washington State Interim Ballast Water Management Report Form on the report form provided in (d) of this subsection.

(c) A vessel subject to chapter 77.120 RCW that enters Washington waters after July 1, 2006, and for which the vessel owner has not submitted a Washington State Interim Ballast Water Management Report Form is subject to a five hundred dollar reporting penalty.

(d) Washington State Interim Ballast Water Management Report Form and Instructions:

**Completion Instructions For:
Washington State Interim Ballast Water Management
Report Form**

(Please type in English)

SECTION 1. OWNER/OPERATOR

Vessel(s) Owner Information: Write in the name of the registered owner(s) of the vessel. If under charter, enter Operator name. Also provide mailing address.

Responsible Party Information: Print the person's name, company and contact information (current phone number and e-mail) of the person responsible for administering the management plan described below.

SECTION 2. FLEET INFORMATION

Vessel Name: Print the name of each vessel covered by this management report. A separate report is required for vessels that will use different methods of ballast management. For example: Five vessels may be listed in one report that are going to use the same type of ballast treatment system. A separate report would be required for another five vessels that intend to use ballast exchange and retaining ballast onboard as a management option.

Existing Vessel or New Build: Fill in "Existing Vessel" if this is an existing vessel currently in operation. Fill in "New

Build 1," "New Build 2" etc., for vessels that are in a design or new construction phase, but not yet in operation.

IMO Number: Fill in identification number of the vessel used by the International Maritime Organization.

Type: List specific vessel type. Use the following abbreviations: bulk (bc), ro-ro (rr), container (cs), tanker (ts), passenger (pa), oil/bulk ore (ob), general cargo (gc), reefer (rf). Write out any additional vessel types.

GT: What is the Gross Tonnage of the vessel?

Ballast Capacity: What is the maximum volume of ballast water used when no cargo is on board? ***Please include volume units in m³.***

SECTION 3. BALLAST MANAGEMENT COMPLIANCE PLAN (2007)

a. Retaining ballast: Check yes or no to indicate if the vessel's ballast management plan considers retaining some or all ballast on board when in Washington state waters.

b. Local waters: Check yes or no to indicate if the vessel's ballast management plan includes the discharge of water that originated solely within local waters.

c. Ballast exchange: Check yes or no to indicate whether the vessel's ballast management plan will include ballast exchange.

d. If unable to exchange: Safety exemptions will no longer be an acceptable management option in Washington state waters after July 1, 2007. Vessel operators that are using ballast exchange should describe how they will manage ballast discharges into Washington state waters if unable to conduct a safe exchange at sea.

e. Ballast Treatment System: Vessel operators that intend to use a ballast treatment system as a ballast management option should complete subsections **f.** through **l.**

Note: Dates supplied within subsections **h.** through **k.** can be estimated. **Additional Comments** under subsection **l.** are optional.

FOOTER. SIGNATURE AND DATE

Signature of Responsible Party: Forms submitted by fax or mail require the signature of the responsible party. Forms submitted by e-mail do not require a signature; however, the responsible party sending the form by e-mail is certifying that all information contained is complete and accurate. If you choose to send the PDF version of the form by e-mail, a message will inform you that "you are sending a data file only, not the form." This is the correct submittal process.

Date of Submission: Provide date on which form was submitted.

1. Owner/Operator		Vessel(s) Owner Information:			Responsible Party Information:		
		Name	_____	Name	_____		
		Address	_____	Address	_____		
		City, State/Province Zip	_____	City, State/Province Zip	_____		
		Country	_____	Country	_____		
		Telephone Number	_____	Telephone Number	_____		
		E-mail	_____	E-mail	_____		
2. Fleet Information							
	Vessel Name	Existing Vessel or New Build	IMO#	Type	GT	Ballast Capacity	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
Notes:							
1. If you need to list additional vessels, make sure cursor is in last row of table, select "Table" on the menu bar, choose "Insert," then select "Rows Below."							
2. Use one reporting form for each ballast water management plan.							
3. See attached instruction form.							
3. Ballast Management Compliance Plan (2007)							
a. Does this management plan include retaining ballast on board?				Yes	No		
b. Does this management plan include the discharge of water that originated solely within " local waters "?				Yes	No		
c. Does this management plan include ballast exchange ?				Yes	No		
d. If considering ballast exchange: How will you handle ballast if unable to exchange at sea?							
e. Does this management plan include a ballast treatment system ? If yes, complete f. through l.				Yes	No		
f. Vendor Company							
g. Vendor Contact							
h. Final System Selection Date				j. System Purchase Date			
i. System Installation Date				k. System Operational Date			
l. Additional Comments							
Responsible Party Signature: _____				Date: _____			
<i>By submitting this form by e-mail, the responsible party is certifying that all information provided is complete and accurate.</i>							