

WSR 06-03-020
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 6, 2006, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-08-087.

Title of Rule and Other Identifying Information: Amendments to WAC 388-14A-2160 If my information is confidential, can DCS report me to a credit bureau?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 21, 2006, at 10:00 a.m.

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

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 21, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division of child support (DCS) is proposing amendments to WAC 388-14A-2160 to bring it into conformance with current federal law. DCS seeks to update and clarify its procedures regarding reporting to consumer reporting agencies.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 26.23.120, 74.08.090, 74.20A.310.

Statute Being Implemented: RCW 26.23.120.

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: Nancy Koptur, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS is exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

January 3, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2160 If my information is confidential, can DCS report me to a credit bureau? (1) When a consumer reporting agency, (~~as defined by 45 C.F.R. 303.105(a))~~ sometimes called a credit bureau, requests information regarding the amount of overdue support owed by a noncustodial parent (NCP), the division of child support (DCS) provides this information (~~if the amount of the support debt exceeds one thousand dollars~~).

(2) In addition to responding to requests for information by consumer reporting agencies, DCS reports to those agencies information regarding overdue support owed by an NCP. DCS then updates the information on a regular basis, even after the NCP brings the account current.

(3) Before releasing information to the consumer reporting agency, DCS sends a written notice concerning the proposed release of the information to the NCP's last known address.

~~((3))~~ (4) The notice gives the NCP ten days from the date of the notice to request a conference board to contest the accuracy of the information. If the NCP requests a conference board, DCS does not release the information until a conference board decision has been issued.

(5) A noncustodial parent (NCP) who disagrees with the information supplied by DCS to a consumer reporting agency may file a dispute under the federal Fair Credit Reporting Act, 15 USC 1681.

WSR 06-03-021
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 6, 2006, 4:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-046.

Title of Rule and Other Identifying Information: The division of child support (DCS) is proposing to adopt new sections in chapter 388-14A WAC to clarify DCS rules regarding the proration of child support obligations, namely WAC 388-14A-4700 How do I ask the division of child support to prorate a child support obligation?, 388-14A-4705 When does the division of child support prorate a monthly support obligation?, 388-14A-4710 When does the division of child support not prorate a monthly support obligation?, and 388-14A-4715 What can I do if I don't agree with DCS' decision on whether or not to prorate support?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 21, 2006, at 10:00 a.m.

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

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 21, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCS received a rule-making petition under RCW 34.05.330 from a member of the public requesting that DCS put its policy regarding proration of child support obligations into rule. That rule-making petition was combined with an existing rule-making project which has since been put on hold and the underlying CR-101 filed as WSR 02-03-010 was withdrawn. A new CR-101 was filed as WSR 05-22-046 to start this rule-making project.

Reasons Supporting Proposal: Petition for rule making; clarification of DCS procedures.

Statutory Authority for Adoption: RCW 34.05.330, 26.21.016, 26.23.030, 74.08.090, and 74.20.040.

Statute Being Implemented: RCW 34.05.330, 26.21.016, 26.23.030, 74.08.090, and 74.20.040.

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: Nancy Koptur, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS is exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

January 3, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-14A-4700 How do I ask the division of child support to prorate a child support obligation? (1) As a general rule, if support is owed for any day of a given month, the entire monthly support obligation is owed for that month.

(2) Either party to a support order may request that the division of child support (DCS) prorate the monthly obligation under a child support order. The request must state the reason why the party is requesting proration of the monthly obligation.

(3) This request may be made in writing or orally, in person or by phone.

(4) DCS' response may be made in writing or orally, in person or by phone.

(5) This rule and WAC 388-14A-4705 through WAC 388-14A-4715 apply only to the enforcement of a support obligation, not to the establishment of an obligation.

NEW SECTION

WAC 388-14A-4705 When does the division of child support prorate a monthly support obligation? The division of child support (DCS) may prorate a monthly support obligation under the following circumstances:

(1) An order is entered terminating the noncustodial parent's (NCP's) support obligation and the order specifies that the NCP's obligation should be prorated;

(2) A superior or tribal court order is entered requiring that support for a given month be prorated; or

(3) When a conference board convened under WAC 388-14A-6400 decides that support for a given month should be prorated.

NEW SECTION

WAC 388-14A-4710 When does the division of child support not prorate a monthly support obligation? (1) Unless a case fits the criteria outlined in WAC 388-14A-4705, the division of child support (DCS) does not prorate a monthly support obligation.

(2) When a support order provides that the noncustodial parent's support obligation for a particular child terminates as of the child's birthday or graduation date, the entire monthly support obligation is owed, no matter what day of the month the birthday or graduation falls on.

(3) If a conference board convened under WAC 388-14A-6400 decides that support for a given month should not be prorated, DCS does not prorate for that month.

NEW SECTION

WAC 388-14A-4715 What can I do if I don't agree with DCS' decision on whether or not to prorate support?

(1) If the noncustodial parent (NCP) or custodial parent (CP) asks the division of child support (DCS) to prorate support, DCS advises the parties of its decision whether to prorate or not to prorate support for a given month.

(2) If the NCP or the CP disagrees with DCS' decision, the aggrieved party may request a conference board under WAC 388-14A-6400.

(3) Either the NCP or the CP may proceed in superior court to seek an order stating whether support should be prorated.

WSR 06-03-041

PROPOSED RULES

HORSE RACING COMMISSION

[Filed January 10, 2006, 2:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-168.

Title of Rule and Other Identifying Information: WAC 260-12-180 Safety equipment and 260-28-230 Trainer—Duty to register personnel—Occupational licenses—Safety equipment.

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

Date of Intended Adoption: March 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 March 6, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) To amend WAC 260-12-180 Safety equipment, to specify the type of safety equipment, including helmet, vests and equestrian footwear required while on horseback. (2) To amend WAC 260-28-230 to clarify the responsibility of each trainer to notify the commission when a person leaves their employ and also responsible to insure that all persons in their employ wear safety equipment when on horseback.

Reasons Supporting Proposal: Provides safety standards for specific equipment and clarifies the trainer's responsibility related to their employees.

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 9, 2006

R. M. Leichner

Executive Secretary

AMENDATORY SECTION (Amending WSR 01-01-035, filed 12/8/00, effective 1/8/01)

WAC 260-12-180 Safety equipment required. (1) When on association grounds, all persons ((while)) on horseback shall wear a securely fastened safety helmet ((and safety vest)) that meets current standards for equipment designed and manufactured for use while riding horses as established by the American Society for Testing and Materials/Safety Equipment Institute (ASTM/SEI), the British Standards Institute (BSI) or similar organization. ((Safety equipment shall be approved by the commission.))

(2) All persons on horseback shall wear a securely fastened safety vest that is designed to provide shock-absorbing

protection of at least a rating of 5, as defined by the British Equestrian Trade Association (BETA).

(3) In addition, all persons on horseback shall wear equestrian footwear with a 1/2 to 3/4 inch heel and that covers the rider's ankle.

This rule does not apply to nonracing related events conducted for entertainment purposes. Safety equipment for such entertainment events shall be at the discretion of the racing association.

AMENDATORY SECTION (Amending WSR 00-06-072, filed 3/1/00, effective 4/1/00)

WAC 260-28-230 Trainer—Duty to register personnel—((Occupational licenses—))Safety equipment. ((Each trainer shall register with the racing commission every person in his/her employ and be responsible for all his/her employees securing occupational licenses.

He/she shall also be responsible for every jockey and all his/her employees wearing a safety helmet and safety vest while on horse back. The safety helmet and safety vest shall be of a type approved by the commission and any changes in the helmet or the vest must be approved in writing by the stewards.)) A trainer shall be required to notify the commission of the names of every person in the trainer's employ and be responsible to ensure all the trainer's employees are properly licensed by the commission before being allowed to work. If a trainer releases any employee, the trainer shall notify the stewards with forty-eight hours.

A trainer shall also be responsible to ensure that all the trainer's employees wear a safety helmet and safety vest while on horseback, in compliance with WAC 260-12-180.

WSR 06-03-042

PROPOSED RULES

HORSE RACING COMMISSION

[Filed January 10, 2006, 2:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-170.

Title of Rule and Other Identifying Information: New section WAC 260-48-925 Group bet wagering.

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

Date of Intended Adoption: March 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 March 6, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establishes a new section in chapter 260-48 WAC, Mutuels, by authorizing under specific conditions group bet wagering.

Reasons Supporting Proposal: Provides greater wagering opportunities for the racing bettors and racing industry.

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 9, 2006

R. M. Leichner

Executive Secretary

NEW SECTION

WAC 260-48-925 Group bet wagering. (1) The group bet is a form of parimutuel wagering and part of the win pool in every race in which it is offered. The group bet is a bet to win on every participant in the selected group.

(2) A racing association may not offer a group bet unless the format associated with the particular group bet wagering event is first approved by the executive secretary. The request must be made in writing at least three days prior to the commencement of public wagering on the proposed group bet and the licensee may not offer public wagering on the proposed group bet until written approval of the executive secretary is issued. In approving any request of a racing association related to a group bet, the executive secretary may impose such conditions as are consistent with the best interests of racing and the interests of the wagering public.

(3) In each race in which the group bet is offered, the association shall designate one horse that shall not be a member of either group (usually the morning line favorite) and designate the remaining horses as members of one of two groups, Group A and Group B. The horses comprising each group shall number two or more horses and the number of horses in each group need not be the same, except as provided in subsection (8)(c) or (d) of this section. Each horse in a race where the group bet is offered must be a member of Group A, a member of Group B, or the sole nongroup horse.

(4) In each race in which the group bet is offered, there shall be a win payoff for bettors selecting the winning participant in standard win betting and, in the event a member of one of the groups wins the race, a group bet win payout for those bettors wagering on the winning group. If the nongroup horse wins the race, there shall be no payout for the group bet.

(5) The identity of the nongroup horse and the members of Group A and Group B shall be disseminated in the track program. This information may also be disseminated by the track announcer, on television monitors and, where applicable, by authorized advance deposit wagering service providers.

(6) The minimum bet for the group bet is the same as the minimum bet to win. The amount bet on Group A and Group

B shall be allocated among the members of the respective group in proportion to the amount bet on such member to win in standard win betting. Allocations may be made in fractional amounts less than the minimum permissible bet to win.

(7) The payout for a winning group bet shall be the same regardless of which member of the group is the race winner. The probable and actual payoff for a winning group bet on Group A or Group B shall be displayed in a similar manner as the probable and actual payout for a standard win bet.

(8) In the event of scratches in a race with a group bet, the following procedure will be followed:

(a) In the event that the nongroup horse is scratched or declared a nonstarter, group betting shall cease and all wagers on both groups refunded.

(b) In the event of a scratch or a declaration of nonstarter of all of the members of a group, group betting shall cease and all wagers on both groups shall be refunded.

(c) In the event of a scratch or declaration of nonstarter of a member of a group, moneys previously allocated to the scratched runner or nonstarter shall be reallocated amongst the remaining member or members of that group.

(d) In the event of a scratch or declaration of nonstarter of one or more horses in a group resulting in only one horse remaining in that group, the remaining horse in that group shall remain a valid betting interest and no refund will be granted.

(9) In the event of a dead heat to win involving two or more members of the same group, the group bet payout shall be calculated in the same manner as if there was one winner of the race and such winner was a member of such group. In the event of a dead heat to win involving the nongroup horse and one or more members of either group, or one or more members of different groups, the group bet payout shall be determined in the same manner as the calculation of the win payoff, i.e., by dividing the net win wagering pool.

(10) If circumstances occur which are not addressed by these rules, they shall be resolved by the board of stewards in a manner that is consistent with this rule and in accord with accepted parimutuel practices. Decisions regarding the group bet made by the board of stewards shall be final.

WSR 06-03-043

PROPOSED RULES

HORSE RACING COMMISSION

[Filed January 10, 2006, 2:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-172.

Title of Rule and Other Identifying Information: Repeal WAC 260-60-430 Claimed horse—Subsequent entry.

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

Date of Intended Adoption: March 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 March 6, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To repeal WAC 260-60-430. The current language imposes an unnecessary burden on an owner who claims a winner.

Reasons Supporting Proposal: By repealing this section, it is anticipated that claiming will improve.

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 9, 2006
R. M. Leichner
Executive Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-60-430 Claimed horse—Subsequent entry.

WSR 06-03-044 PROPOSED RULES HORSE RACING COMMISSION

[Filed January 10, 2006, 2:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-021.

Title of Rule and Other Identifying Information: Chapter 260-34 WAC, Drug and alcohol testing of licensees.

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

Date of Intended Adoption: March 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 March 6, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As part of the agency's regulatory reform effort this chapter has been reduced to three sections (eight sections being repealed). Changes to WAC 260-34-010 are only for clarification pur-

poses. Changes to WAC 260-34-020 are being made to combine several sections into one section where the use of alcohol and drugs is prohibited. Finally WAC 260-34-030 is being simplified and unnecessary portions are being removed. The following eight sections are being repealed: WAC 260-34-035 Exercising the privileges of their license, 260-34-045 Violations of the privileges granted licensees, 260-34-060 Refusal to test, 260-34-070 Responsibility to report valid prescriptions, 260-34-080 Testing procedure, 260-34-090 A positive test, 260-34-100 Confidentiality of test results, and 260-34-180 Testing expense.

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 9, 2006
R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 05-07-066, filed 3/11/05, effective 4/11/05)

WAC 260-34-010 Primary purpose. In order to protect the integrity of horse racing in the state of Washington, and to protect the safety of the public and all participants, the Washington horse racing commission intends to regulate the use of any illegal controlled substances and the use of alcohol by licensees at all race meets. This chapter shall be applicable to all licensees or applicants on the grounds of any (~~race track~~) racetrack during its licensed race meet.

AMENDATORY SECTION (Amending WSR 05-07-066, filed 3/11/05, effective 4/11/05)

WAC 260-34-020 (~~Use of controlled substances~~) Drug and alcohol violations. No licensee or applicant (~~shall~~), while acting in an official capacity or participating directly in horse racing, shall commit any of the following violations:

(1) Be under the influence of or affected by intoxicating liquor and/or drugs, have an alcohol concentration of 0.08 percent or higher, or have within their body any illegal controlled substance while on the grounds of any licensed race meet;

(2) Engage in the illegal sale or distribution of alcohol;

(3) Engage in the illegal sale or distribution of a controlled substance;

(4) Possess an illegal controlled substance;

(5) Possess on the grounds of any licensed race meet any equipment, products or materials of any kind which are used

or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing an illegal controlled substance, or any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance; or

(6) Refuse to submit to blood, breath and/or urine testing, when notified that such testing is conducted pursuant to the conditions of WAC 260-34-030.

Failure to provide a blood, breath and/or urine sample when directed or intentional contamination of the sample by any person tested for the purpose of preventing accurate analysis of the sample, or other actions with intent to subvert the test, shall be considered a refusal to submit to a test.

"Controlled substance" or "drug" as used in this chapter means any substance listed in chapter 69.50 RCW or legend drug as defined in chapter 69.41 RCW. The presence of a controlled substance or drug in any quantity measured by the testing instrument establishes the presence of that substance for the purpose of this section. The fact that a licensee or applicant is or has been entitled to use a drug under the laws of the state of Washington shall not constitute a defense against a violation for being under the influence of or affected by intoxicating liquor and/or any drug.

AMENDATORY SECTION (Amending WSR 05-07-066, filed 3/11/05, effective 4/11/05)

WAC 260-34-030 Testing. (1) A steward of the horse racing commission, a commission security investigator or the commission, acting through the executive secretary, may require any licensee or applicant to provide breath blood and/or urine samples for the purpose of drug or alcohol analysis under any of the following circumstances:

(a) When a steward or commission security investigator finds that there is reasonable suspicion to believe that the applicant or licensee has used or is under the influence of alcohol and/or any drug.

(b) When an applicant or licensee has a documented history of an unexplained positive test which indicates illegal drug usage or has a documented history of violating chapter 69.41, 69.45 or 69.50 RCW, WAC 260-34-020 or similar drug-related violation within five years of conviction or release from a correctional institution.

(c) When a steward or commission security investigator decides to test any licensee or applicant as a condition of any conditional or probationary license.

(2) For licensees or applicants who are subject to a field screening urine test under the provisions in this chapter, and whose test shows the presence of a controlled substance or alcohol, the field screening test results shall be confirmed by a laboratory acceptable to the commission (~~which shall include gas chromatography/mass spectrometry (GC/MS) procedures.~~

~~(a) When the sample quantity permits, each test sample shall be divided into portions so that one portion may be used for the confirmation procedure and another portion may be utilized by the licensee to obtain an independent analysis of~~

~~the sample. The commission shall provide for a secure chain of custody for the sample to be made available to the licensee.~~

~~(b) All costs for the transportation and testing for the sample portion made available for the licensee shall be the financial responsibility of the requesting person. The licensee or applicant being tested shall reimburse the commission the cost of transportation and testing within thirty days of receipt of notice of the costs).~~

(3) The result of a test conducted with a preliminary breath test (PBT) instrument approved by the state toxicologist in chapter 448-15 WAC or other breath test equipment approved under chapter 448-16 WAC shall constitute evidence of a violation of these rules. The results of such a test may be considered for purposes of determining whether the licensee or applicant has consumed alcohol, the level of alcohol concentration, and whether the licensee or applicant has violated a prohibition on the use or consumption of alcohol established in a conditional license.

~~((4) Upon request of the licensee or applicant, testing may be by a blood alcohol test. The requesting licensee or applicant shall pay the cost of a blood test.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 260-34-035 Exercising the privileges of their license.
- WAC 260-34-045 Violations of the privileges granted licensees.
- WAC 260-34-060 Refusal to test.
- WAC 260-34-070 Responsibility to report valid prescriptions.
- WAC 260-34-080 Testing procedure.
- WAC 260-34-090 A positive test.
- WAC 260-34-100 Confidentiality of test results.
- WAC 260-34-180 Testing expense.

WSR 06-03-045
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 10, 2006, 4:21 p.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 05-23-109.

Title of Rule and Other Identifying Information: The division of child support is proposing the amendment of WAC 388-14A-1055 Can the division of child support collect support owed or assigned to another state?, to correct a reference to the United States code.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on February 21, 2006, at 10:00 a.m.

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

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 21, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current version of the rule refers to a section of Title 42 US code which no longer exists and must be updated.

Reasons Supporting Proposal: The rule needs to have the correct statutory references.

Statutory Authority for Adoption: RCW 26.21.016, 34.05.020, 74.08.090, 74.20.040(3), 74.20A.310.

Statute Being Implemented: RCW 26.21.016, 74.08.090, 74.20.040(3).

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: Nancy Koptur, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS is exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

January 10, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-1055 Can the division of child support collect support owed or assigned to another state? (1) The division of child support (DCS) may, at the request of another state, collect child support which has been assigned to that state under 42 U.S.C. ((602(a)(26)(A))) 608 (a)(3)(A).

(2) DCS uses the remedies in chapters 26.23, 74.20 and 74.20A RCW to collect support on behalf of another state or IV-D agency.

WSR 06-03-046

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 10, 2006, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-125.

Title of Rule and Other Identifying Information: Chapter 388-527 WAC, Estate recovery.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on March 7, 2006, at 10:00 a.m.

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

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on March 7, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 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 proposed amendments to this chapter are necessary to establish rules and procedural guides for the implementation of SHB 2304 (chapter 292, Laws of 2005). Specifically to:

- Include life estates and joint tenancy among assets subject to estate recovery;
- Extend statute of limitations of liens to twenty years;
- Establish the state's use of Tax Equity Fiscal Responsibility Act (TEFRA) liens (liens prior to death) in accordance with 42 U.S.C. Sec. 1396p(a);
- Establish requests for notice of transfer or encumbrance of real property assets;
- Eliminate the homestead exemption as it relates to estate recovery activities; and
- Revise the chapter using "plain talk" as directed by the governor's Executive Order 05-03, dated March 24, 2005.

Statutory Authority for Adoption: Chapter 292, Laws of 2005 (SHB 2304), RCW 43.20B.30 [43.20B.030], 43.20B.80 [43.20B.080], 43.20B.750, 74.08.090, and chapter 43.20B RCW.

Statute Being Implemented: Chapter 292, Laws of 2005 (SHB 2304), RCW 43.20B.30 [43.20B.030], 43.20B.80 [43.20B.080], 43.20B.750, chapter 43.20B RCW, and 42 U.S.C. Section 1396p(a).

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

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

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45533, Olympia, WA

98504-5533, (360) 725-1306; Implementation and Enforcement: Bill Ward, P.O. Box 45862, Olympia, WA 98504-5862, (360) 664-5501.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule does not create more than a minor cost for affected small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Bill Ward, Department of Social and Health Services, Office of Financial Recovery, P.O. Box 45862, Olympia, WA 98504-5862, phone (360) 664-5501, e-mail wardbr@dshs.wa.gov.

January 6, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-04 issue of the Register.

WSR 06-03-050

PROPOSED RULES

ENVIRONMENTAL HEARINGS OFFICE

(Pollution Control Hearings Board)

[Filed January 11, 2006, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-089.

Title of Rule and Other Identifying Information: Procedural rules for hearings before the pollution control hearings board (PCHB).

Hearing Location(s): Environmental Hearings Office Hearing Room, 4224 6th Avenue S.E., Building 2, Lacey, WA 98504-0903, on Tuesday, February 21, 2006, at 11:00 a.m.

Date of Intended Adoption: March 14, 2006.

Submit Written Comments to: Bill Lynch, Environmental Hearings Office, 4224 6th Avenue S.E., Building 2, Lacey, WA 40903 [98504], e-mail eho@eho.wa.gov, fax (360) 438-7699, by February 21, 2006.

Assistance for Persons with Disabilities: Contact Robyn Bryant by phone at (360) 459-6327.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 371-08 WAC was previously amended to conform to 2004 SSB 5590 and to make minor changes in the procedural rules of the PCHB. The rule, as originally amended, failed to amend WAC 371-08-555. This rule governs appeal of PCHB decisions to superior court. An emergency rule was adopted (WSR 05-23-007) and is currently in effect making this change. This proposed rule will make the rule change permanent.

Statutory Authority for Adoption: RCW 43.21B.170 (PCHB rule-making authority), 34.05.360.

Statute Being Implemented: Chapter 43.21B RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The passage of SSB 5590 requires the EHO to modify the procedural rules of the PCHB so that implementing rules are consistent with the legislation.

Name of Proponent: Environmental hearings office, governmental.

Name of Agency Personnel Responsible for Drafting: Kay Brown, 4224 6th Avenue S.E., Building 2, Lacey, WA 98504-0903, (360) 459-6327; Implementation and Enforcement: Robyn Bryant, 4224 6th Avenue S.E., Building 2, Lacey, WA 98504-0903, (360) 459-6327.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is procedural in nature and does not place new requirements on those it may affect.

A cost-benefit analysis is not required under RCW 34.05.328. The environmental hearings office is not a named agency in RCW 34.05.328.

January 9, 2006

William H. Lynch
Director

AMENDATORY SECTION (Amending WSR 97-19-064, filed 9/15/97, effective 10/16/97)

WAC 371-08-555 Time for filing petitions for review to superior court. An appeal of a final board order is called a petition for review. A petition for review must be filed with superior court within thirty days of the date ((~~that the board issues its~~) of receipt of the final order or decision. The petitioner shall file a copy of the petition for review to superior court with the board and shall serve all parties of record. All appeals must first be filed in superior court even if direct review to the court of appeals will be sought.

WSR 06-03-051

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed January 11, 2006, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-148.

Title of Rule and Other Identifying Information: Amending WAC 308-125-010 Definitions, 308-125-020 Application process to take examination, 308-125-030 Examination prerequisite general classification, 308-125-040 Examination prerequisite state-certified residential classification, 308-125-045 Examination prerequisite state-licensed classification, 308-125-050 Educational courses—Preexamination, 308-125-065 Education credit for teachers of approved real estate appraisal courses, 308-125-070 Experience requirements, 308-125-075 Allowed credits for appraisal experience, 308-125-090 Continuing education required, 308-125-110 Business location and/or physical address and mailing address, 308-125-120 Fees and charges, 308-125-200 Standards of practice, 308-125-210 Required

records—Accessibility of records to the department of licensing and 308-125-225 Meetings—Notice; and new sections WAC 308-125-025 Application process to register as a real estate appraiser trainee, and 308-125-095 Responsibilities of the appraiser supervisor.

Hearing Location(s): Business and Professions Division, 405 Black Lake Boulevard, Second Floor, Conference Room 209, Olympia, WA, on February 22, 2006, at 3:00 p.m.

Date of Intended Adoption: February 22, 2006.

Submit Written Comments to: Ralph Birkedahl, Department of Licensing, Real Estate Appraiser Program, P.O. Box 9015, Olympia, WA 98507-9015, e-mail rbirkedahl@dol.wa.gov, fax (360) 664-6504, by February 20, 2006.

Assistance for Persons with Disabilities: Contact Rick Notestine by February 20, 2006, TTY (360) 664-8885 or (360) 664-6504.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Incorporation of the new appraiser qualifications criteria established by the appraiser qualifications board of the Appraisal Foundation and implementation of changes requiring that real estate appraiser trainees become registered required by RCW 18.140.280. This will require real estate appraiser trainees to register with the department, establish requirements for supervisory appraisers, eliminate redundancy and add clarity to existing language.

Reasons Supporting Proposal: To implement changes in the appraiser qualification board's real property appraiser qualifications criteria and changes required by the enactment of HB 1395; to eliminate redundancy between RCW and WAC and to streamline and clarify existing language.

Statutory Authority for Adoption: RCW 18.140.030(1), (7), (8), and (15).

Statute Being Implemented: RCW 18.140.280.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Recommend that the changes be adopted as written.

Name of Proponent: Department of licensing, real estate appraiser program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ralph Birkedahl, Olympia, (360) 664-6504.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no economic impact on small businesses. The changes will only affect individual trainees.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes have no financial impact on the department.

January 11, 2006

Ralph C. Birkedahl

Acting Program Manager

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-010 Definitions. (1) Words and terms used in these rules shall have the same meaning as each has in the Certified Real Estate Appraiser Act, (chapter 18.140 RCW) and the Uniform Standards of Professional Appraisal Practice (USPAP).

(2) ("~~Appraisal~~" means the act or process of estimating value; an estimate of value; or of or pertaining to appraising and related functions.

(3) "~~Appraisal report~~" means any communication, written or oral, of an appraisal, review, or consulting service in accordance with the standards of professional conduct or practice, adopted by the director, that is transmitted to the client upon completion of an assignment.

(4) "~~Appraisal assignment~~" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the value of specified interests in, or aspects of, identified real estate. The term "appraisal assignment" may apply to valuation work and analysis work.

(5) "~~Certified appraisal~~" means an appraisal prepared or signed by a state certified real estate appraiser. A certified appraisal represents to the public that it meets the appraisal standards defined in this chapter.

(6) "~~Licensed appraisal~~" means an appraisal prepared or signed by a state licensed real estate appraiser. A licensed appraisal represents to the public that it meets the appraisal standards defined in this chapter.

(7) "~~Department~~" means the department of licensing.

(8) "~~Director~~" means the director of the department of licensing.

(9) "~~Real estate~~" means an identified parcel or tract of land, including improvements, if any.

(10) "~~Real property~~" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(11) "~~Specialized appraisal services~~" means all appraisal services which do not fall within the definition of appraisal assignment. The term "specialized appraisal service" may apply to valuation work and to analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion or conclusion, the work is classified as an appraisal assignment and not a specialized appraisal service.

(12) "~~State certified real estate appraiser~~" means a person who develops and communicates real estate appraisals, and who holds a valid certificate issued to him/her for either general or residential real estate under this chapter. A state-certified real estate appraiser may designate or identify an appraisal rendered by him/her as a "certified appraisal" and indicate which type of certification is held.

(13) "~~State licensed real estate appraiser~~" means a person who develops and communicates real estate appraisals, and who holds a valid license issued to him/her for residential real estate under this chapter. A state-licensed real estate appraiser may designate or identify an appraisal rendered by him/her as a "licensed appraisal."

(14) "Advisory committee" means a committee of seven individuals, of whom at least five are real estate appraisers appointed by the director to provide technical assistance relating to real estate appraisal standards and real estate appraiser experience, education, and examination requirements that are appropriate for each classification of state-certified real estate appraiser.

~~(15))~~ "Appraisal Foundation" means a private association of appraiser professional organizations. The Appraisal Foundation develops appraisal standards which the regulatory agencies must use as minimum standards for federally related transactions and it develops qualification criteria for appraisers.

(3) "Appraisal Subcommittee" means a committee created by Title XI. It monitors all activities related to the implementation of Title XI.

(4) "Appraisal Standards Board" means a board established by the Appraisal Foundation for the purpose of developing, publishing, interpreting and amending the *Uniform Standards of Professional Appraisal Practice*.

(5) "The *Uniform Standards of Professional Appraisal Practice* (USPAP)" means the current edition of the publication in force of the Appraisal Standards Board (ASB) of the Appraisal Foundation. USPAP is the applicable standard for all appraisal practice in the state of Washington regulated under the provisions of chapter 18.140 RCW.

(6) "Appraiser qualifications board" means a board of the Appraisal Foundation for the purpose of developing, publishing, interpreting and amending the real property appraiser qualification criteria.

(7) "Real property appraiser qualification criteria" means the minimum criteria establishing the minimum education, experience and examination requirements for real property appraisers to obtain a state certification as established by the appraiser qualifications board (AOB) of the Appraisal Foundation under the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989, and any additional qualifying criteria established by the director in accordance with chapter 18.140 RCW.

(8) "Classroom hour" means fifty minutes out of each sixty minute hour.

~~((16))~~ (9) "Full-time" means the equivalent twelve-month period in which an applicant works at least one thousand hours in real estate appraisal.

~~((17))~~ "Licensed or residential real estate appraiser" classification applies to those individuals qualified to appraise one to four residential units.

(18) "General real estate appraiser" classification applies to those individuals qualified to appraise all types of real property.

(19) "Federally related transaction" means any real estate related financial transaction which Federal Financial Institutions Regulatory Agency (FFIRA) or the Resolution Trust Company (RTC) engages in, contracts for, or regulates and which requires the services of an appraiser.

(20) "Real estate related financial transaction" means any transaction involving:

(a) The sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof;

(b) The refinancing of real property or interests in real property; and

(c) The use of real property or interest in property as security for a loan or investment, including mortgage-backed securities.

~~(21))~~ (10) "Required core curriculum" means a set of appraiser subject matter areas (known as "modules") that require a specified number of educational hours at each credential level as established by the appraiser qualifications board.

(11) "Module" means an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum.

(12) "Residential properties" means one to four single family residential units and lots where the highest and best use is for one to four family purposes.

~~((22))~~ "Review" means the act or process of critically studying an appraisal report prepared by another. (13) "Significant professional appraisal assistance" means the work contributed or performed toward the completion of an appraisal report by either a trainee, state-licensed, or state-certified appraiser, while under the direct supervision of a certified residential appraiser or certified general appraiser as required by the department as qualifying appraisal experience for licensing. Significant professional appraisal assistance shall consist of identifying and analyzing the scope of work, collection of data, analyzing data to derive an opinion of value, and writing the appraisal report in accordance with the *Uniform Standards of Professional Appraisal Practice*.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-020 Application process to take examination. (1) Any person desiring to take an examination for licensure or certification as a state-licensed or state-certified residential real estate appraiser, or as a state-certified general real estate appraiser, must submit a completed examination application with supporting documents and appropriate fee to the department of licensing, business and professions division, at its official address. After the qualifications for the examination have been verified by the department, the applicant shall submit the preapproved examination application, the request for examination and the appropriate fee to the testing service approved by the director.

(2) ((An applicant must, as of the date his/her application is filed with the department,)) At the time of filing with the department, an application for a state license or certification, the applicant shall possess the requisite ((two years (twenty-four months) and two thousand)) hours of verifiable real estate appraisal experience((: Provided, That effective January 1, 1998, the applicant must possess the verifiable real estate appraisal experience as required by the examination prerequisite for the requested classification)). Experience shall be acquired within the requisite time. Qualifying experience shall consist of significant professional appraisal assistance under the supervision of a certified appraiser within the boundaries of the state of Washington except as referenced in WAC 308-125-...

(3) An application and ~~((the nonrefundable application))~~ fee shall be valid for six months from receipt by the department. An applicant may correct any discrepancies in the application other than experience during this six-month period. After six months, if the applicant has not met the prerequisites to sit for the licensure or certification examination, the applicant must submit a new application with the appropriate fee.

(4) Dishonored checks will be considered as an incomplete application.

(5) An applicant shall forfeit all examination fees for any examination or examinations for which the applicant has applied and does not take for any reason, other than through the fault or mistake of the department of licensing or the approved testing agency.

NEW SECTION

WAC 308-125-025 Application process to register as a real estate appraiser trainee. (1) As a prerequisite to registration, the applicant shall present evidence satisfactory to the director of successful completion of the appraiser qualifications board module of qualifying core curriculum of approved qualifying education modules:

- (a) Basic appraisal principles, thirty hours.
- (b) Basic appraisal procedures, thirty hours.
- (c) The National USPAP course or equivalent fifteen hours.

(2) Application for registration as a trainee from persons who have had either a real estate license or real estate appraiser license suspended or revoked shall not be accepted by the department until after the time period of the suspension or revocation has expired.

(3) An applicant for registration as a trainee shall present a completed registration form together with the appropriate fee and copies of core curriculum course completion certificates to the director prior to issuance of the approved trainee registration certificate.

(4) Registration as a trainee may be denied for unprofessional conduct as provided in RCW 18.235.130.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-030 Examination prerequisite general classification. The general real estate appraiser classification applies to the appraisal of all types of real property.

(1) As a prerequisite to taking the examination for certification as a state-certified general real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than one hundred ~~((sixty-five))~~ eighty classroom hours of ~~((courses in subjects related to real estate appraisal))~~ qualifying education as approved by the director. Each applicant must successfully complete a thirty classroom hour course in the basic principles of real estate appraising and a fifteen classroom hour course in the Uniform Standards of Professional Appraisal Practice as part of the one hundred ~~((sixty-five))~~ eighty classroom hours of course work: Provided, That effective ~~((January 1, 1998))~~ November 1, 2007, the required number of classroom hours is ~~((one hundred eighty-~~

~~(2) An original certification as a state-certified general real estate appraiser shall not be issued to any person who does not possess two years (twenty-four months) of experience as a full-time real estate appraiser in Washington or in another state having comparable certification requirements within the five years immediately preceding the filing of the application for examination and certification. An applicant may accumulate the required experience over the preceding five years; however, a minimum of two years (twenty-four months) is required. Provided, That effective January 1, 1998, this provision shall read:))~~ three hundred in the following core modules:

- (a) Basic appraisal principles, thirty hours.
- (b) Basic appraisal procedures, thirty hours.
- (c) The National USPAP course or equivalent, fifteen hours.
- (d) General appraiser market analysis and highest and best use, thirty hours.
- (e) Statistics, modeling and finance, fifteen hours.
- (f) General appraiser sales comparison approach, thirty hours.
- (g) General appraiser site valuation and cost approach, thirty hours.
- (h) General appraiser income approach, sixty hours.
- (i) General appraiser report writing and case studies, thirty hours.
- (j) Appraisal subject matter electives, thirty hours.

~~(2) An original certification as a state-certified general real estate appraiser shall not be issued to any person who does not possess three thousand hours of appraisal experience obtained continuously over a period of not less than thirty months in Washington or in another state having comparable certification requirements.~~

~~(3) To fulfill the experience requirement, a candidate must have at least ((one thousand hours, accumulated over the previous five years, of nonresidential appraisal experience. Provided, That effective January 1, 1998, to fulfill the experience requirement, a candidate must have at least)) one thousand five hundred hours of nonresidential appraisal experience.~~

~~(4) ((The content for courses required prerequisite to taking the examination for certification as a state-certified general real estate appraiser must include coverage of all topics listed below, with particular emphasis on the appraisal of nonresidential properties:~~

- ~~(a) Influences on real estate value.~~
- ~~(b) Legal considerations in appraisal.~~
- ~~(c) Types of value.~~
- ~~(d) Economic principles.~~
- ~~(e) Real estate markets and analysis.~~
- ~~(f) Valuation process.~~
- ~~(g) Property description.~~
- ~~(h) Highest and best use analysis.~~
- ~~(i) Appraisal math and statistics.~~
- ~~(j) Sales comparison approach.~~
- ~~(k) Site value.~~
- ~~(l) Cost approach.~~
- ~~(m) Income approach.~~

- (i) Estimation of income and expenses.
- (ii) Operation statement ratios.
- (iii) Direct capitalization.
- (iv) Cash flow estimates.
- (v) Measures of cash flow.
- (vi) Discounted cash flow analysis.
- (n) Valuation of partial interests.
- (o) Appraisal standards and ethics.
- (p) Narrative report writing.

~~Preexamination review seminars or examination preparation seminars will not be approved for clock hour credit.)~~
Effective January 1, 2008, applicants for the certified general license must possess a bachelor's degree or higher in any field of study or, in lieu of the required degree, thirty semester credit hours covering the following subject matter courses:

- (a) English composition;
- (b) Principles of economics (micro or macro);
- (c) Finance;
- (d) Algebra, geometry or, higher mathematics;
- (e) Statistics;
- (f) Introduction to computers: Word processing/spread-sheets;

(g) Business or real estate law; and
(h) Two elective courses in accounting, geography, agricultural economics, business management, or real estate; as approved by the appraiser qualifications board and the director, in addition to the required qualifying core curriculum requirements.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-040 Examination prerequisite state-certified residential classification. The state-certified residential real estate appraiser classification applies to appraisals of all types of residential property of one to four units without regard to transaction value or complexity and nonresidential property having a transaction value less than two hundred fifty thousand dollars.

(1) As a prerequisite to taking the examination for certification as a state-certified residential real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than one hundred twenty classroom hours of ~~((courses in subjects related to real estate appraisal))~~ qualifying education as approved by the director. Each applicant must successfully complete a thirty classroom hour course in the basic principles of real estate appraising and a fifteen classroom hour course in the Uniform Standards of Professional Appraisal Practice as part of the one hundred twenty classroom hours of course work~~((~~

~~(2) An original certification as a state-certified residential real estate appraiser shall not be issued to any person who does not possess two years of experience as a full-time real estate appraiser in Washington or in another state having comparable certification requirements within five years immediately preceding the filing of the application for examination and certification. An applicant may accumulate the required experience over the preceding five years; however a minimum of two years (twenty-four months) is required)):~~
 Provided, That effective January 1, ~~((1998, this provision~~

~~shall read:))~~ 2007, the required number of classroom hours is two hundred in the following core modules:

- (a) Basic appraisal principles, thirty hours.
- (b) Basic appraisal procedures, thirty hours.
- (c) The National USPAP course or equivalent, fifteen hours.
- (d) Residential market analysis and highest and best use, fifteen hours.
- (e) Residential appraiser site valuation and cost approach, fifteen hours.
- (f) Residential sales comparison and income approaches, thirty hours.
- (g) Residential appraiser report writing and case studies, fifteen hours.
- (h) Statistics, modeling and finance, fifteen hours.
- (i) Advanced residential applications and case studies, fifteen hours.
- (j) Appraisal subject matter electives, twenty hours.

~~(2) An original certification as a state-certified residential real estate appraiser shall not be issued to any person who does not possess two thousand five hundred hours of appraisal experience obtained continuously over a period of not less than twenty-four months in Washington or in another state having comparable certification requirements.~~

~~(3) ((The content for courses required prerequisite to taking the examination for certification as a state-certified residential real estate appraiser must include coverage of all the topics listed below with particular emphasis on the appraisal of one to four unit residential properties:~~

- ~~(a) Influences on real estate value.~~
- ~~(b) Legal considerations in appraisal.~~
- ~~(c) Types of value.~~
- ~~(d) Economic principles.~~
- ~~(e) Real estate markets and analysis.~~
- ~~(f) Valuation process.~~
- ~~(g) Property description.~~
- ~~(h) Highest and best use analysis.~~
- ~~(i) Appraisal statistical concepts.~~
- ~~(j) Sales comparison approach.~~
- ~~(k) Site value.~~
- ~~(l) Cost approach.~~
- ~~(m) Income approach.~~
- ~~(i) Gross rent multiplier analysis.~~
- ~~(ii) Estimation of income and expenses.~~
- ~~(iii) Operating expense ratios.~~
- ~~(iv) Direct capitalization.~~
- ~~(n) Valuation of partial interests.~~
- ~~(o) Appraisal standards and ethics.~~
- ~~(p) Narrative report writing.~~

~~Preexamination review seminars or examination preparation seminars will not be approved for clock hour credit.)~~
Effective January 1, 2008, certified residential real estate appraiser applicants must possess an associate's degree or higher in any field of study or, in lieu of the required degree, twenty-one semester credit hours covering the following subject matter courses:

- (a) English composition;
- (b) Principles of economics (micro or macro);
- (c) Finance;
- (d) Algebra, geometry or, higher mathematics;

(e) Statistics;

(f) Introduction to computers: Word processing/spread-sheets; and

(g) Business or real estate law; as approved by the appraiser qualifications board and the director, in addition to the required core curriculum.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-045 Examination prerequisite state-licensed classification. The state-licensed real estate appraiser classification applies to appraisal of noncomplex one to four residential units having a transaction value less than one million dollars and complex one to four residential units having a transaction value less than two hundred fifty thousand dollars and nonresidential property having a transaction value less than two hundred fifty thousand dollars.

(1) As a prerequisite to taking the examination for certification as a state-licensed real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than ~~((seventy-five))~~ ninety classroom hours of courses in ~~((subjects related to real estate appraisal))~~ qualifying education as approved by the director. Each applicant must successfully complete a thirty classroom hour course in the basic principles of real estate appraising and a fifteen classroom hour course in the Uniform Standards of Professional Appraisal Practice as part of the seventy-five classroom hours of course work: Provided, That effective January 1, ~~((1998))~~ 2007, the required number of classroom hours is ~~((ninety-~~

~~2)) An original certification as a state-licensed real estate appraiser shall not be issued to any person who does not possess two years of experience as a full-time real estate appraiser in Washington or in another state having comparable certification requirements within five years immediately preceding the filing of the application for examination and certification. An applicant may accumulate the required experience over the preceding five years; however a minimum of two years (twenty-four months) is required. Provided, That effective January 1, 1998, this provision shall read:))~~ one hundred fifty in the following core modules:

(a) Basic appraisal principles, thirty hours.

(b) Basic appraisal procedures, thirty hours.

(c) The National USPAP course or equivalent, fifteen hours.

(d) Residential market analysis and highest and best use, fifteen hours.

(e) Residential appraiser site valuation and cost approach, fifteen hours.

(f) Residential sales comparison and income approaches, thirty hours.

(g) Residential appraiser report writing and case studies, fifteen hours.

(2) An original certification as a state-licensed real estate appraiser shall not be issued to any person who does not possess two thousand hours of appraisal experience obtained continuously over a period of not less than twenty-four months in Washington or in another state having comparable certification requirements.

~~((3)) The content for courses required prerequisite to taking the examination for certification as a state-licensed real estate appraiser must include coverage of all the topics listed below with particular emphasis on the appraisal of one to four unit residential properties:~~

~~(a) Influences on real estate value.~~

~~(b) Legal considerations in appraisal.~~

~~(c) Types of value.~~

~~(d) Economic principles.~~

~~(e) Real estate markets and analysis.~~

~~(f) Valuation process.~~

~~(g) Property description.~~

~~(h) Highest and best use analysis.~~

~~(i) Appraisal statistical concepts.~~

~~(j) Sales comparison approach.~~

~~(k) Site value.~~

~~(l) Cost approach.~~

~~(m) Income approach.~~

~~(i) Gross rent multiplier analysis.~~

~~(ii) Estimation of income and expenses.~~

~~(iii) Operating expense ratios.~~

~~(n) Valuation of partial interests.~~

~~(o) Appraisal standards and ethics.~~

~~Preexamination review seminars or examination preparation seminars will not be approved for clock-hour credit.))~~

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-050 Educational courses—Preexamination. (1) ~~((In order for courses))~~ To be accepted under WAC 308-125-030(1), 308-125-040(1), and 308-125-045(1), courses must:

(a) Be a minimum of fifteen classroom hours in length;

(b) Include an examination; ~~((and))~~

(c) Be directly related to real estate appraising;

(d) Be approved by the director as identified in the appraiser program's publication *Approved Courses, Real Estate Appraisers*; or

(e) Be approved by the appraiser qualifications board and approved by the director.

(2) The following limitations may apply to course work submitted to the department for approval:

(a) A correspondence course may be acceptable to meet classroom hour requirements only if each course meets the following conditions:

(i) The course has been presented by an accredited college or university which offers correspondence courses in other disciplines;

(ii) An individual successfully completes a written examination administered at a location by an official approved by the college or university; ~~((and))~~ or

(iii) The content and length of the course meet the requirements for real estate appraisal-related courses established by the appraiser qualifications board and approved by the director.

(b) Video and remote television educational courses may be used to meet the classroom hour requirements only if each course meets the following conditions:

(i) The course has been presented by an accredited college or university which offers similar courses in other disciplines;

(ii) An individual successfully completes a written examination administered at a location by an official approved by the college or university; ~~((and))~~ or

(iii) The content and length of the course meet the requirements for real estate appraisal-related courses established by the appraiser qualifications board and approved by the director.

(c) An applicant shall not receive "dual credit" for courses that have the same or very similar content and are deemed comparable by the department, even if an applicant completes the courses through different course providers.

(3) Copies of official transcript of college records or certificates of course completion will be considered as satisfactory evidence for education requirements.

(4) Preexamination review seminars or examination preparation seminars will not be approved for clock hour credit.

(5) An application shall be submitted for approval not less than ninety days preceding the course start date. Course approval expiration shall be three years from the date of approval, except for the Uniform Standards of Professional Appraisal Practice courses or seminars having a definite date.

(6) All courses approved by the appraiser qualifications board will continue to be accepted by the department as approved courses until the expiration date.

(7) Appraisal course providers who have received the appraiser qualifications board's course approval are not required to submit course material or content materials to the department for approval. The course provider shall submit a secondary provider course content approval application to the department.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-065 Education(~~(experience))~~ credit for teachers of approved real estate appraisal courses. (1) An applicant may receive education credit for teaching an approved real estate appraisal course. One hour of education credit for each hour of teaching an approved real estate appraisal course shall be given.

~~(2) ((An applicant may receive experience credit for teaching an approved real estate appraisal course. One hour of experience credit for each hour of teaching an approved real estate appraisal course shall be given: Provided, That this provision will expire on January 1, 1998.~~

~~(3))~~ Once an applicant has received credit for teaching an approved real estate appraisal course, an applicant shall not receive credit for teaching that course or any substantially similar course on any subsequent occasion.

~~((4) Credit for teaching an approved real estate appraisal course may be used to satisfy education or experience credit, but shall not be used to satisfy both: Provided, That this provision will expire on January 1, 1998.))~~

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-070 Experience requirements. (1) A minimum of two years (twenty-four months) full-time experience ~~((is required. To attain the requisite experience an applicant may accumulate hours worked during the preceding five years;))~~ within five years of application is required for the state licensed and certified residential appraiser. Certified general applicants must accumulate three thousand hours within a minimum of thirty months and a maximum of seven years. However, no more than one thousand five hundred hours may be credited in any consecutive twelve-months ((period: Provided, That this provision will expire on January 1, 1998)) for any of the licensing categories.

(2) Any work product claimed for experience credit dated January 1, 1990, and later shall conform to the Uniform Standards of Professional Appraisal Practice~~((: Provided, That effective January 1, 1998, the relevant year is 1991.~~

~~(3) Any work product claimed for experience credit dated prior to January 1, 1990, shall conform to the following standards: Provided, That effective January 1, 1998, the relevant year is 1991))~~ in effect at the time the appraisal is completed.

(a) Reports shall be in writing.

~~(b) ((Reports shall contain the legal address of the subject property:~~

~~(c) Reports shall state the effective date of the appraisal.~~

~~(d) Reports shall contain a definition of value to be estimated.~~

~~(e) Reports shall contain a certification signed by the appraiser.~~

~~(f) Reports shall contain a description of the site, land, or buildings as applicable.~~

~~(g) Reports shall address all three approaches to value by either utilization of the approach or indication that the approach is not applicable or inappropriate to the specific property.~~

~~(h) Reports shall include adjustments and the value of the direct sales for the direct sales approach, which either sets forth the reasoning for value or states that the value is evident in ancillary supporting documentation or the report.~~

~~(i) Reports shall include analysis of market rents, expenses, vacancy rates, and capitalization rates when the income approach is used.~~

~~(j) Reports shall include analysis of building costs and site value when the cost approach is used.~~

~~(k) Reports shall include reasoning and supporting documentation for the final value estimate.~~

~~(l) Reports shall be signed and dated by the appraiser.~~

~~(4) An appraiser applying for certification must verify his/her completion of the required experience via affidavit, under oath subject to penalty of perjury on a form provided by the department.~~

To demonstrate experience the department may require submission of a log which details hours claimed for experience credit. The department may also require an affidavit from an employer concerning the applicant's length of experience.

(5) An appraiser performing appraisal work enabling the appraiser to apply for appraisal experience on an hourly basis, includes, but is not limited to, the following:

Fee and staff appraisal, ad valorem tax appraisal, technical review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, feasibility analysis/study, condemnation/study, teacher of appraisal courses: Provided, That effective January 1, 1998, experience credit for teachers is not available.

(6) The department reserves the right to contact an employer for confirmation of experience claimed. This will require an employer to confirm via affidavit the experience of an applicant.

(7) The department may request submission of written reports or file memoranda claimed by the applicant in the applicant's application for experience credit.) An appraisal work file must be available to the director to substantiate work performed.

(3) The department may request appraiser work files to verify, confirm, or compare entries made on the experience log. Failure to provide work files to the department upon its request may disqualify the reports as qualifying experience.

(4) An applicant for certification or license shall certify, under penalty of perjury, the completion of the required experience.

(5) Appraisal work qualifying for appraisal experience includes, but is not limited to, the following: Fee and staff appraisal, ad valorem tax appraisal, appraisal review, appraisal analysis, appraisal consulting, highest and best use analysis, feasibility analysis/study.

(6) The department may require a supervisory appraiser to certify, under penalty of perjury, the applicant's work experience.

(7) The department may request written reports or work files to verify an applicant's experience.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-075 Allowed credits for appraisal experience. (1) The department shall not grant to state-licensed or state-certified appraisers and applicants experience credits for appraisal experience that exceeds the following hourly allotments for each appraisal:

((a)) Single family residential (nonecomplex)	12 hours
(b) Single family residential (complex & 2-4)	20 hours
(c) Single family lot (URAR form)	8 hours
(d) Single family lot (narrative)	10 hours
(e) Large land tract (not subdivided)	25 hours
(f) Subdivisions	60 hours
(g) Improved commercial/industrial land	25 hours
(h) Commercial (form)	40 hours
(i) Commercial (narrative)	80 hours
(j) Regional mall/high rise office bldg/Hotel	120 hours
(k) Technical appraisal review (single family)	4 hours
(l) Technical appraisal review (commercial)	16 hours
(m) Feasibility study	80 hours

(n) Real estate consulting (nonresidential)	40 hours
(o) Agricultural	60 hours))
(a) <u>Single family residential - exterior form report</u>	<u>6 hours</u>
(b) <u>Single family residential - form report</u>	<u>12 hours</u>
(c) <u>Multifamily residential - form report</u>	<u>20 hours</u>
(d) <u>Residential lot 1 acre or less</u>	<u>8 hours</u>
(e) <u>Land tract less than or equal to 40 acres</u>	<u>16 hours</u>
(f) <u>Short plats</u>	<u>20 hours</u>
(g) <u>Land tract 41-160 acres</u>	<u>24 hours</u>
(h) <u>Land tract 161-640+ acres</u>	<u>36 hours</u>
(i) <u>Subdivisions</u>	<u>60 hours</u>
(j) <u>Commercial/industrial land</u>	<u>25 hours</u>
(k) <u>Commercial - form report</u>	<u>40 hours</u>
(l) <u>Commercial - narrative report</u>	<u>80 hours</u>
(m) <u>Regional mall/high rise office bldg./Hotel</u>	<u>120 hours</u>
(n) <u>Appraisal review (single family) (not applicable to trainees)</u>	<u>12 hours</u>
(o) <u>Appraisal review (commercial) (not applicable to trainees)</u>	<u>40 hours</u>
(p) <u>Feasibility study</u>	<u>80 hours</u>
(q) <u>Appraisal consulting (nonresidential)</u>	<u>40 hours</u>
(r) <u>Agricultural</u>	<u>60 hours</u>

(2) The department shall not grant to state-licensed or state-certified appraisers and applicants experience credits for Eminent Domain Appraisals that exceed the following hourly allotments for each appraisal:

(a) Vacant (single family lot)	((32)) <u>24 hours</u>
(b) Vacant (large land tract)	((40)) <u>32 hours</u>
(c) Single family residential	((56)) <u>42 hours</u>
(d) Multifamily residential	((80)) <u>60 hours</u>
(e) Agricultural (improved)	((96)) <u>72 hours</u>
(f) Industrial (improved)	((96)) <u>72 hours</u>
(g) Commercial (improved)	((96)) <u>72 hours</u>
(h) Very complex damages or benefits	((160)) <u>120 hours</u>
(i) Special purpose improved	((72)) <u>54 hours</u>

(3) The department shall not grant to state-licensed or state-certified appraisers and applicants experience credits for Eminent Domain (~~Technical~~) Appraisal Reviews that exceed the following hourly allotments for each appraisal:

(a) Vacant (single family lot)	8 hours
(b) Vacant (large land tract)	12 hours
(c) Single family residential	16 hours
(d) Multifamily residential	24 hours
(e) Agricultural (improved)	((32)) <u>40 hours</u>
(f) Industrial (improved)	((30)) <u>40 hours</u>
(g) Commercial (improved)	((30)) <u>40 hours</u>

- (h) Very complex damages or benefits ~~((40))~~ 50 hours
 (i) Special purpose improved ~~((24))~~ 40 hours

(4) Experience credits for appraisal experience not listed in subsections (1), (2), or (3) shall be determined by the department on a case-by-case basis.

AMENDATORY SECTION (Amending WSR 03-14-091, filed 6/30/03, effective 7/31/03)

WAC 308-125-090 Continuing education required.

(1) As a prerequisite to renewal of certification or licensure, the holder of a certificate or license shall present evidence satisfactory to the director of successful completion of the continuing education requirements of this section.

(2) The continuing education requirements for renewal of certification or licensure shall be the completion by the applicant of twenty-eight hours of instruction in courses or seminars which have received the approval of the director. Courses must be completed within the term of certification or licensure immediately preceding renewal. An applicant shall not receive credit in consecutive renewals for courses that have the same or very similar content and are deemed comparable by the department. The holder of a certificate or license will present evidence of successful completion of the seven-hour National USPAP update course or its equivalent ~~((or the fifteen-hour National USPAP course every renewal))~~.

(3) In order for courses or seminars to be accepted under subsection (2) of this section, the course or seminar must be a minimum of two hours in length and be directly related to real estate appraising. However, a maximum of one-half of the continuing education hours required for renewal can be in two-hour seminars or courses.

(4) An examination is not required for courses or seminars taken for continuing education classroom hours. ~~((The exception is the fifteen-hour Uniform Standards of Professional Appraisal Practice (USPAP) course when required by the course provider.))~~

(5) The requirement under subsection (2) of this section may be met by participation other than as a student in educational process and programs approved by the director including teaching, program development, and authorship of textbooks and other written instructional materials.

(6) Courses or seminars taken to satisfy the continuing education requirement for general real estate appraisers, should include coverage of real estate appraisal related topics, such as:

- (a) Ad valorem taxation.
- (b) Arbitrations.
- (c) Business courses related to practice of real estate appraisal.
- (d) Construction estimating.
- (e) Ethics and standards of professional practice.
- (f) Land use planning, zoning, and taxation.
- (g) Management, leasing, brokerage, timesharing.
- (h) Property development.
- (i) Real estate appraisal (valuations/evaluations).
- (j) Real estate financing and investment.
- (k) Real estate law.
- (l) Real estate litigation.

- (m) Real estate related computer applications.
 - (n) Real estate securities and syndication.
 - (o) Real property exchange.
 - (p) Such other presentations approved by the director.
- (7) Courses or seminars taken to satisfy the continuing education requirement for residential real estate appraisers should include coverage of real estate appraisal related topics, such as:
- (a) Ad valorem taxation.
 - (b) Business courses related to practice of real estate appraisal.
 - (c) Construction estimation.
 - (d) Ethics and standards of professional practice.
 - (e) Land use planning, zoning, taxation.
 - (f) Property development.
 - (g) Real estate financing and investment.
 - (h) Real estate law.
 - (i) Real estate related computer applications.
 - (j) Real estate securities and syndication.
 - (k) Real property exchange.
 - (l) Real estate feasibility and marketability studies.
 - (m) ~~((Such other presentations approved by the director.~~
 - ~~(n) Real estate securities and syndication.~~
 - ~~(o) Real estate property exchange.~~
 - ~~(p))~~ Such other presentations approved by the director.

(8) Courses or seminars taken to satisfy the continuing education requirement for licensed real estate appraisers should include coverage of real estate appraisal related topics, such as:

- (a) Ad valorem taxation.
- (b) Arbitration.
- (c) Business courses related to practice of real estate appraisal.
- (d) Construction estimating.
- (e) Ethics and standards of professional practice.
- (f) Land use planning, zoning, and taxation.
- (g) Management, leasing brokerage, timesharing.
- (h) Property development.
- (i) Real estate appraisal (valuations/evaluations).
- (j) Real estate law.
- (k) Real estate litigation.
- (l) Real estate financing and investment.
- (m) Real estate appraisal related computer applications.
- (n) Real estate securities and syndication.
- (o) Real property exchange.
- (p) Such other presentations approved by the director.

(9) The director may approve continuing education credit for attendance at the real estate appraiser commission meeting of no more than two hours.

NEW SECTION

WAC 308-125-095 Responsibilities of the appraiser supervisor. (1) A certified real estate appraiser licensed by the state of Washington may supervise trainees in accordance with the following provisions:

- (a) Not more than three real estate appraiser trainees may be supervised in accordance with the appraiser qualifications board standards unless written authorization by the depart-

ment is granted to exceed that number of trainees at any one time.

(b) Supervision of trainees in the process of appraising real property shall occur within the boundaries of the state of Washington and comply with jurisdictional and established agreements with other states. If a trainee is supervised by a certified appraiser who is licensed in both the state of Washington and with another state or has a temporary license in another state; and the trainee is registered as a trainee in that other state by either temporary permit, license, or registration, then the appraisal assignments shall qualify as work experience on the experience log.

(c) Authorization to exceed supervision of three trainees may be granted by the director upon approval of a written request and under the provisions of subsection (2) of this section.

(d) A registered real estate appraiser trainee may assist in the completion of an appraisal report, including determination of an opinion of value and may sign the appraisal report, provided that he/she is actively and personally supervised by a state-certified real estate appraiser, and provided that the appraisal report is reviewed and signed by the state-certified real estate appraiser; and provided the state-certified appraiser accepts total responsibility for the appraisal report.

(e) The certified appraiser shall:

(i) Personally inspect with the trainee, at a minimum, the interior of twenty-five subject properties.

(ii) Personally review and verify each appraisal report prepared by the trainee as entered on the trainee experience log as qualifying work experience prior to the log being submitted to the department by the supervised trainee.

(iii) Personally review and verify each appraisal report prepared by a state licensed or certified residential appraiser as entered on the qualifying work experience log prior to the log being submitted to the department by the licensee.

(iv) Comply with all USPAP requirements.

(v) Maintain a separate "properties inspected with trainee" log for each supervised trainee. This log must be made available to the department upon request and is to be submitted with trainee's application for license or certification.

(2) Authorization may be granted by the director to a certified appraiser to exceed the number of trainees allowed to be supervised providing:

(a) The certified appraiser has more than five years certified experience.

(b) The certified appraiser shall make a written application to the department requesting to supervise not more than three trainees with less than one year experience; and three trainees with more than one year experience; and five trainees with greater than two years experience. The total number of supervised trainees shall not exceed eight for all experience levels at any one time.

(c) The certified appraiser shall prepare and maintain trainee progress reports and make them available to the department until such time as the trainee becomes certified or licensed or after two years has lapsed since supervising the trainee.

(d) The certified appraiser shall provide to the department a mentoring plan for consideration prior to the department authorizing supervision of more than three trainees.

AMENDATORY SECTION (Amending WSR 93-17-020, filed 8/10/93, effective 9/10/93)

WAC 308-125-110 (~~(Address change-)~~) **Business location and/or physical address and mailing address.** It is the responsibility of each applicant (~~(state-licensed and certified)~~) state-certified and licensed real estate appraiser, and registered real estate appraiser trainee to notify the department (~~(of licensing, real estate appraiser program unit,)~~) of a change of business (~~(address)~~) location and/or physical and mailing address for receiving certified mail and service documents. Change of address notification shall be made within ten days of the change of address. If appraisal work files are stored at another location from the appraiser's place of business then such location shall be reported to the director upon request.

AMENDATORY SECTION (Amending WSR 02-03-011, filed 1/4/02, effective 5/1/02)

WAC 308-125-120 Fees and charges. The following fees shall be paid under the provisions of chapter 18.140 RCW:

Title of Fee	Fee
(1) Application for examination	\$246.00
(2) Examination	(+100.00) <u>106.00**</u>
(3) Reexamination	(+100.00) <u>106.00**</u>
(4) Original certification	206.00*
(5) Certification renewal	407.00*
(6) Late renewal penalty	38.00
(7) Duplicate certificate	28.00
(8) Certification history record	27.00
(9) Application for reciprocity	246.00
(10) Original certification via reciprocity	206.00*
(11) Temporary practice	150.00
<u>(12) Trainee registration</u>	<u>100.00</u>
<u>(13) Trainee registration renewal</u>	<u>100.00</u>

* Proposed fees for these categories marked with an asterisk include an estimated \$25.00 to be submitted by the state to Federal Government. Title XI, SEC. 1109 requires each state to submit a roster listing of state certified appraisers to the Appraiser Subcommittee "no less than annually." The state is also required to collect from such individuals who perform appraisals in federally related transactions, an annual registry fee of "not more than \$50," such fees to be transmitted by the state to the federal government on an annual basis.

** Charges for categories marked with a double asterisk are determined by contract with an outside testing service.

AMENDATORY SECTION (Amending WSR 05-05-097, filed 2/16/05, effective 3/19/05)

WAC 308-125-200 Standards of practice. (1) The standard of practice governing real estate appraisal activities will be the ~~((2005))~~ edition of the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect on the date of the appraisal report. A copy of the Uniform Standards of Professional Appraisal Practice is available for review and inspection at the office of the Real Estate Appraiser Unit Office, Olympia, Washington. The Uniform Standards of Professional Appraisal Practice is a copyright document. Copy of the full text may be obtained from the Appraisal Foundation at The Appraisal Foundation, P.O. Box 96734, Washington, DC 20090-6734.

(2) Expert review appraisers as defined by RCW 18.140.010(11) while performing expert reviews pursuant to chapter 18.140 RCW are ~~((exempt from))~~ required to comply with the Uniform Standards of Professional Appraisal Practice, Standard 3 review provisions while performing expert reviews for the director.

AMENDATORY SECTION (Amending WSR 93-17-020, filed 8/10/93, effective 9/10/93)

WAC 308-125-210 Required records—Accessibility of records to the department of licensing. All appraisers certified or licensed under chapter 18.140 RCW must retain records required by the Uniform Standards of Professional Appraisal Practice for a minimum of five years or at least two years after final disposition of any judicial proceeding in which the appraiser provided testimony related to the assignment, whichever period expires last. Such records will be subject to random audit by the department without notice and must be readily available for inspection by a representative of the department.

AMENDATORY SECTION (Amending WSR 93-17-020, filed 8/10/93, effective 9/10/93)

WAC 308-125-225 Meetings—Notice. The real estate appraiser ~~((advisory committee))~~ commission meets at the call of the director. ~~((Individuals desiring notice of the date, time, location, and agenda of the meetings must make a written request to the real estate appraiser program.))~~ Regular meetings are scheduled in February, May, August and November on the third Friday. Department requirements may necessitate altering scheduled meetings in accordance with RCW 42.30.075. Special meetings are in accordance with RCW 42.30.080.

WSR 06-03-067

PROPOSED RULES

**COLUMBIA RIVER
GORGE COMMISSION**

[Filed January 12, 2006, 11:34 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Columbia River gorge commission rules 350-11, Open meetings; 350-12, Public records; 350-13, Financial disclosure; 350-16, Administrative procedure; and 350-50, Plan amendments.

Hearing Location(s): Hood River County Administration Building, 601 State Street, Hood River, Oregon, on March 14, 2006, at 9:00 a.m. (note this is the beginning of the commission's regular meeting. The actual hearing time may be later).

Date of Intended Adoption: March 14, 2006.

Submit Written Comments to: Martha J. Bennett, Executive Director, P.O. Box 730, White Salmon, WA 98672, e-mail crgc@gorge.net, fax (509) 493-2229 by March 3, 2006.

Assistance for Persons with Disabilities: Contact Nancy Andring by March 3, 2006, (509) 493-3323.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed amendments to commission rules 350-11, 350-12, and 350-16, is to conform these rules to the more restrictive of Oregon's and Washington's statutes as required by the Scenic Area Act. These proposed amendments are necessary due to changes made during the 2005 legislative session. There is no anticipated effect for 350-11; two anticipated effects for 350-12 are that the commission may choose to charge for copies of public records on an installment basis rather than as a lump sum and to exempt communications made during mediation from public disclosure. There is no anticipated effect for 350-16.

The purpose of the proposed amendment to commission rule 350-13 is to ease the burden on gorge commissioners filing financial disclosure forms, while still complying [with] the Scenic Area Act's requirement for filing. The proposed amendment would require gorge commissioners to file in their respective states only.

The purpose of the proposed amendments to commission rule 350-50 is to improve the commission's process for reviewing plan amendments.

The proposed amendments would allow a finding that conditions in the scenic area have changed if there is a demonstrable mistake in the management plan; allows typographical and other similar changes without formal amendment of the management plan; requires a preapplication conference for every plan amendment, increases by two weeks the time the commission's executive director has to review an application before submitting a recommendation to the commission, and clarifies what actions the commission may take on the application.

Reasons Supporting Proposal: The proposed amendments would bring the commission's rules into compliance with the more restrictive of the states' statutes; would ease an internal regulatory burden; and improve the commission's plan amendment review procedure.

Statutory Authority for Adoption: 16 U.S.C. 544c(b), RCW 43.97.015, ORS 196.150.

Statute Being Implemented: 16 U.S.C. 544b(c), 544d(h), RCW 43.97.015, ORS 196.150.

Rule is necessary because of federal law, 16 U.S.C. 544c(b).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The commission is especially interested in comments on the proposed amendments to the plan amendment rule concerning the preapplication conference, whether the commission can apply conditions of approval to an application.

Name of Proponent: Columbia River gorge commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Martha J. Bennett, White Salmon, WA, (509) 493-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed amendments do not add substantive regulations. Commission rules 350-11, 350-12, 350-13, and 350-16, govern internal commission procedures; commission rule 350-50 adds a preapplication conference step to the commission's review conference - the purpose of the conference is to streamline the review process - any cost of preparing for or attending the preapplication conference would be minor.

A cost-benefit analysis is not required under RCW 34.05.328. These proposed amendments are exempt pursuant to RCW 34.05.328 [(5)(b)] (ii), (iii), and (v).

January 9, 2006

Nancy A. Andring
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 06-04 issue of the Register.

WSR 06-03-068

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF PERSONNEL

[Filed January 12, 2006, 1:53 p.m.]

The department of personnel hereby withdraws the proposed modification to WAC 357-07-065. This modification was proposed under WSR 05-24-130 filed on December 7, 2005.

Eva N. Santos
Director

WSR 06-03-077

PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Health and Recovery Services Administration)

[Filed January 12, 2006, 4:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-122.

Title of Rule and Other Identifying Information: WAC 388-542-0020 Other rules that apply to state children's health insurance program (SCHIP).

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 21, 2006, at 10:00 a.m.

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

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

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing a revision to this rule to update cross-references to other Washington Administrative Code.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.510, 74.09.522, and 74.09.450.

Statute Being Implemented: RCW 74.08.090, 74.09.510, 74.09.522, and 74.09.450.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45533, Olympia, WA 98504-5533, (360) 725-1306; Implementation and Enforcement: Kathy Johansen, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1321.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt under RCW 34.05.328 (5)(b) (vii) relating to DSHS medical or financial eligibility.

January 11, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

WAC 388-542-0020 Other rules that apply to SCHIP. In addition to the rules of this chapter, SCHIP clients are subject to the following rules:

(1) Chapter 388-538 WAC, Managed care (except WAC 388-538-061, WAC 388-538-063, and WAC 388-538-065);

(2) WAC 388-505-0210 (3) and (8), Children's medical eligibility;

(3) WAC 388-505-0211, Premium requirements for SCHIP children;

(4) WAC 388-416-0015(10), Certification periods; and

(5) WAC 388-418-0025 (4) and (5), Change of circumstance.

WSR 06-03-078
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed January 12, 2006, 4:20 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 388-513-1305 Determining eligibility for noninstitutional medical assistance in alternative living facility (ALF), 388-513-1315 Eligibility for long term care (LTC) services, 388-513-1320 Determining institutional status for LTC services, 388-513-1330 Determining available income for legally married couples for LTC services, and 388-513-1345 Determining disregarded income for institutional or hospice services under the medically needy program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503, (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 21, 2006, at 10:00 a.m.

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

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 21, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to correct obsolete WAC cross references without changing the effect of the rule.

Reasons Supporting Proposal: The department is making these changes to ensure the reader is referred to the correct WAC citation.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: A CR-101 preproposal statement of inquiry is not required for rule changes that clarify the rule without changing its effect. See RCW 34.05.310(4).

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Beth Ingram, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1327.

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

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

January 11, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

WAC 388-513-1305 Determining eligibility for non-institutional medical assistance in an alternate living facility (ALF). This section describes how the department defines the monthly income standard and uses it to determine eligibility for noninstitutional medical assistance for a client who lives in a department-contracted ALF. Refer to WAC 388-478-0045 for the personal needs allowance (PNA) amount that applies in this rule.

(1) Alternate living facilities include the following:

- (a) An adult family home (AFH);
- (b) An adult residential care facility (ARC);
- (c) An adult residential rehabilitation center (ARRC);
- (d) An adult residential treatment facility (ARTF);
- (e) An assisted living facility (AL);
- (f) A division of developmental disabilities (DDD) group home (GH); and

(g) An enhanced adult residential care facility (EARC).

(2) The monthly income standard for noninstitutional medical assistance under the categorically needy (CN) program that cannot exceed the special income level (SIL) equals the following amounts. For a client who lives in:

(a) An ARC, an ARRC, an ARTF, an AL, a DDD GH, or an EARC, the department-contracted rate based on a thirty-one day month plus the PNA; or

(b) An AFH, the department-contracted rate based on a thirty-one day month plus the PNA plus the cost of any add-on hours authorized by the department.

(3) The monthly income standard for noninstitutional medical assistance under the medically needy (MN) program equals the private facility rate based on a thirty-one-day month plus the PNA.

(4) The monthly income standard for noninstitutional medical assistance under the general assistance (GA) program equals the GA grant standard described in WAC ((~~388-478-0030~~) 388-478-0045).

(5) The department determines a client's nonexcluded resources for noninstitutional medical assistance under the:

(a) General assistance (GA) and Temporary Assistance for Needy Families (TANF) programs as described in chapter 388-470 WAC; and

(b) SSI-related medical program as described in chapter ((~~388-470~~) 388-475 WAC ((and WAC ~~388-505-0595~~)).

(6) The department determines a client's nonexcluded income for noninstitutional medical assistance as described in:

(a) Chapter 388-450 WAC ((, ~~WAC 388-505-0595, 388-506-0620, and 388-511-1130~~)) for GA and TANF programs; and

(b) Chapter 388-475 WAC and WAC 388-506-0620 for SSI-related medical programs.

(7) The department approves CN noninstitutional medical assistance for a period of up to twelve months for a client who receives supplemental security income (SSI) or who is SSI-related as described in WAC (~~(388-503-0510(1))~~) 388-475-0050, if:

(a) The client's nonexcluded resources described in subsection (5) do not exceed the standard described in WAC 388-513-1350(1); and

(b) The client's nonexcluded income described in subsection (6) does not exceed the CN standard described in subsection (2).

(8) The department approves MN noninstitutional medical assistance for a period of months described in chapter 388-416 WAC for an SSI-related client, if:

(a) The client's nonexcluded resources described in subsection (5) do not exceed the standard described in WAC 388-513-1350(1); and

(b) The client satisfies any spenddown liability as described in chapter 388-519 WAC.

(9) The department approves GA and TANF noninstitutional medical assistance for a period of months described in chapter 388-416 WAC (~~(for a client determined eligible for the program as described in WAC 388-400-0025)~~).

(10) The client described in subsections (7) and (9) keeps the PNA amount and pays remaining income to the facility for board and room.

AMENDATORY SECTION (Amending WSR 04-18-054, filed 8/27/04, effective 9/27/04)

WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services. This section describes how the department determines a client's eligibility for institutional, waiver, or hospice services under the categorically needy (CN) program and institutional or hospice services under the medically needy (MN) program. Also described are the eligibility requirements for these services under the general assistance (GA) program in subsection (11) and emergency medical programs described in subsections (10) and (12).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a) through (f);

(b) Attain institutional status as described in WAC 388-513-1320; and

(c) Not be subject to a penalty period of ineligibility as described in WAC (~~(388-513-1365 and)~~) 388-513-1364 through 388-513-1366.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the Supplemental Security Income (SSI) program as described in WAC (~~(388-503-0510(1))~~) 388-475-0050(1) or be approved for the general assistance expedited Medicaid disability (GA-X) program; and

(b) Meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (7)(a) that does not exceed the special income level (SIL); and

(ii) Nonexcluded resources described in subsection (6) that do not exceed the resource standard described in WAC 388-513-1350(1), unless subsection (3) applies; or

(c) Be eligible for the CN children's medical program as described in WAC 388-505-0210; or

(d) Be eligible for the temporary assistance for needy families (TANF) program or state family assistance (SFA) program as described in WAC 388-505-0220.

(3) The department allows a client to have nonexcluded resources in excess of the standard described in WAC 388-513-1350(1) during the month of either an application or eligibility review if, when excess resources are added to nonexcluded income, the combined total does not exceed the SIL.

(4) To be eligible for waiver or hospice services, a client must also meet the program requirements described in:

(a) WAC 388-515-1505 for COPES services;

(b) WAC 388-515-1510 for DDD waiver and OBRA services; or

(c) Chapter 388-551 WAC for hospice services.

(5) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for the MN children's medical program as described in WAC 388-505-0210; or

(b) Related to the SSI program as described in WAC (~~(388-503-0510(1))~~) 388-475-0050(1) and meet all requirements described in WAC 388-513-1395.

(6) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resources available as described in WAC 388-513-1350;

(b) Excludes resources described in WAC 388-513-1360(~~(, 388-513-1365, and)~~) and 388-513-1364 through 388-513-1366; and

(c) Compares the nonexcluded resources to the standard described in WAC 388-513-1350(1).

(7) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

(8) A client who meets the requirements of the CN program is approved for a period of up to twelve months for:

(a) Institutional services in a medical facility;

(b) Waiver services at home or in an alternate living facility; or

(c) Hospice services at home or in a medical facility.

(9) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395 (5)(a)(ii) for:

(a) Institutional services in a medical facility; or

(b) Hospice services at home or in a medical facility.

(10) The department determines eligibility for LTC services under the alien emergency medical (AEM) program described in WAC 388-438-0110 for a client who meets all other requirements for such services but does not meet citizenship requirements.

(11) The department determines eligibility for institutional services under the GA program described in WAC 388-448-0001 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (8) through (10).

~~(12) ((The department determines eligibility for institutional services under the medically indigent program described in WAC 388-438-0100 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (8) through (11)).~~

~~(13))~~ A client is eligible for Medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is less than twenty-one years old or is at least sixty-five years old.

~~((14))~~ (13) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

~~((15))~~ (14) The department considers the parents' income and resources available ~~((as described in WAC 388-405-0055 (1)(e)))~~ for a minor who is less than eighteen years old and is receiving or is expected to receive inpatient chemical dependency and/or inpatient mental health treatment.

~~((16))~~ (15) The department considers the parents' income and resources available only as contributed for a client who is less than twenty-one years old and has attained institutional status as described in WAC 388-513-1320

~~((17))~~ (16) The department determines a client's participation in the cost of care for LTC services as described in WAC 388-513-1380.

AMENDATORY SECTION (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

WAC 388-513-1320 Determining institutional status for long-term care (LTC) services. Institutional status is an eligibility requirement for LTC services.

(1) To attain institutional status, a client must:

(a) Be approved for and receiving waiver~~((ed))~~ or hospice services; or

(b) Reside or be likely to reside in a medical facility for a continuous period of:

(i) Ninety days for a child seventeen years of age or younger receiving inpatient chemical dependency and/or inpatient mental health treatment; or

(ii) Thirty days for:

(A) An SSI-related client;

(B) A child not described in subsection (1)(b)(i); or

(C) A client related to medical eligibility as described in WAC 388-513-1315 (10)(c) or (11)~~((or (12)))~~.

(2) A client's institutional status is not affected by a:

(a) Transfer between medical facilities; or

(b) Change from one kind of long-term care services to another.

(3) A client loses institutional status when the client:

(a) Is absent from the medical facility for at least thirty consecutive days; or

(b) Does not receive waiver~~((ed))~~ or hospice services for at least thirty consecutive days.

AMENDATORY SECTION (Amending WSR 00-01-051, filed 12/8/99, effective 1/8/00)

WAC 388-513-1330 Determining available income for legally married couples for long-term care (LTC) services. This section describes income the department considers available when determining a legally married client's eligibility for LTC services.

(1) The department must apply the following rules when determining income eligibility for LTC services:

(a) WAC 388-450-0005 (3)~~((and (4)))~~, Income—Ownership and availability and WAC 388-475-0200, SSI-related medical;

(b) WAC 388-450-0085, Self-employment income—Allowable expenses;

(c) WAC 388-450-0210 (4)(b)(c) and (e), ~~((and (h)))~~ Countable income for medical programs, and WAC 388-475-0750, SSI-related medical - Countable unearned income;

(d) WAC 388-506-0620, SSI-related medical clients; and

(e) ~~((WAC 388-511-1130, SSI-related income availability; and~~

~~((f)))~~ WAC 388-513-1315 (15) and (16), Eligibility for long-term care (institutional, waiver~~((ed))~~, and hospice) services.

(2) For an institutionalized client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available, unless subsection (4) applies:

(a) Income received in the client's name;

(b) Income paid to a representative on the client's behalf;

(c) One-half of the income received in the names of both spouses; and

(d) Income from a trust as provided by the trust.

(3) The department considers the following income unavailable to an institutionalized client:

(a) Separate or community income received in the name of the community spouse; and

(b) Income established as unavailable through a fair hearing.

(4) For the determination of eligibility only, if available income described in subsections (2)(a) through (d) minus income exclusions described in WAC 388-513-1340 exceeds the special income level (SIL), then:

(a) The department follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; and

(c) Considers one-half of all community income available to the institutionalized client.

(5) If both spouses are either applying or approved for LTC services, then:

(a) The department allocates one-half of all community income described in subsection (4) to each spouse; and

(b) Adds the separate income of each spouse respectively to determine available income for each of them.

(6) The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

(7) The department considers income not generated by a transferred resource available to the client, even when the client transfers or assigns the rights to the income to:

- (a) The spouse; or
- (b) A trust for the benefit of the spouse.

(8) The department evaluates the transfer of a resource described in subsection (6) according to WAC 388-513-1365 and 388-513-1366 to determine whether a penalty period of ineligibility is required.

AMENDATORY SECTION (Amending WSR 00-01-087, filed 12/14/99, effective 1/14/00)

WAC 388-513-1345 Determining disregarded income for institutional or hospice services under the medically needy (MN) program. This section describes income the department disregards when determining a client's eligibility for institutional or hospice services under the MN program. The department considers disregarded income available when determining a client's participation in the cost of care.

(1) The department disregards the following income amounts in the following order:

(a) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

- (i) Twenty dollars per month if unearned; or
- (ii) Ten dollars per month if earned.

(b) The first twenty dollars per month of earned or unearned income, unless the income paid to a client is:

- (i) Based on need; and
- (ii) Totally or partially funded by the federal government or a private agency.

(2) For a client who is related to the Supplemental Security Income (SSI) program as described in WAC (~~388-503-0510(1)~~) 388-475-0050(1), the first sixty-five dollars per month of earned income not excluded under WAC 388-513-1340, plus one-half of the remainder.

(3) For a TANF/SFA-related client, fifty percent of gross earned income.

(4) Department of Veterans Affairs benefits if:

- (a) Those benefits are designated for:
 - (i) Unusual medical expenses;
 - (ii) Aid and attendance allowance; or
 - (iii) Housebound allowance; and
- (b) The client:

- (i) Resides in a state veterans' home; and
- (ii) Has no dependents.

(5) Income the Social Security Administration (SSA) withholds from SSA Title II benefits for the recovery of an SSI overpayment.

WSR 06-03-083

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed January 13, 2006, 8:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-023.

Title of Rule and Other Identifying Information: Chapter 308-97 WAC, Vehicle license interstate and intrastate permits, 308-97-011 Definitions for a motor carrier, and 308-97-230 Appointment of vehicle trip permits agents.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on February 23, 2006, at 1:00 p.m.

Date of Intended Adoption: February 24, 2006.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-0140, by February 22, 2006.

Assistance for Persons with Disabilities: Contact Dale R. Brown by February 22, 2006, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Periodic review of all rules by an agency, WAC 308-97-230 will need to have subsection (6) removed; there was a misquote on the subsection and is no longer needed. WAC 308-97-011 will make the definition of motor carrier consistent with definitions in other state and federal regulations. The rules have also been reviewed so they are more understandable and easier to read.

Reasons Supporting Proposal: The rules change would result in department of licensing vehicle agents and sub-agents having a better understanding of who a motor carrier is when selling trip permits and what is required to submit to the department.

Statutory Authority for Adoption: RCW 46.16.160.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Toni Wilson, 1125 Washington Street S.E., Olympia, WA, (360) 902-3789.

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 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

January 13, 2006

Julie Knittle, Administrator

Prorate and Fuel Tax Administrator

AMENDATORY SECTION (Amending WSR 04-01-163, filed 12/22/03, effective 1/22/04)

WAC 308-97-011 Definitions. "Motor carrier" (~~is a person or business who owns, leases or operates a vehicle which carries freight and/or passengers and either:~~

~~(1) The vehicle has a gross vehicle weight or combined gross vehicle weight greater than twenty-six thousand pounds;~~

~~(2) Is a trailer with a gross vehicle weight rating of greater than ten thousand pounds; or~~

~~(3) Carries sixteen or more passengers, including the driver)) means an entity engaged in the transportation of goods or persons. The term includes a for-hire motor carrier, private motor carrier, contract motor carrier, or exempt motor carrier.~~

AMENDATORY SECTION (Amending WSR 04-01-163, filed 12/22/03, effective 1/22/04)

WAC 308-97-230 Appointment of vehicle trip permit agents. (1) Who can sell vehicle trip permits?

~~((Vehicle trip permits may be sold by those entities cited in RCW 46.16.160. These entities include)) Government agencies and nongovernmental organizations, including:~~

~~(a) Department of transportation;~~

~~(b) Department of licensing;~~

~~(c) County auditors;~~

~~(d) Vehicle licensing offices; and~~

~~(e) Private businesses approved by the department of licensing.~~

(2) How does a ~~((nongovernmental organization)) private business obtain approval to sell vehicle trip permits?~~

~~((Nongovernmental organizations must:))~~

~~(a) Apply to the department of licensing;~~

~~(b) ~~((Execute an)) Enter into a written agreement ((to abide by the requirements of this section and RCW 46.16.160)) with the department;~~~~

~~(c) Provide a surety bond; and~~

~~(d) Provide ~~((transmission))~~ fee schedule if issuing permits electronically.~~

(3) How ~~((do I)) does a private business obtain an application to ~~((become an agent for selling)) sell vehicle trip permits?~~~~

~~((Any nongovernmental organization may)) Obtain an application form from the department of licensing, prorate and fuel tax section.~~

(4) What are ~~((the components of)) you required to do under the agreement?~~

~~((The components of the agreement require the agent to:)) You are required to:~~

~~(a) ~~((Timely account and pay all permit)) Pay fees on time;~~~~

~~(b) ~~((Subject their books and)) Make your records ((to periodic)) available for audit;~~~~

~~(c) Pay all interest and penalties ~~((upon any deficiency));~~~~

~~(d) Maintain records of transmittals for a period of four calendar years and ~~((make)) have these records available to the department ((or its representative)) during business hours ((at the agent's office));~~~~

~~(e) ~~((Mail or deliver)) Send transmittals ((at least)) to the department on a bimonthly ((to the department by the last Friday of each recording period for permit sales covering the preceding fifteen days)) basis. Transmittals must be ~~((accom-~~~~~~

~~panied by)) included with the appropriate fees; and ((any documents required by the department;))~~

~~(f) ~~((Reimburse)) Pay the department for ((the administrative fee and excise tax of)) any unaccounted for permit(s) ~~((, which is missing, lost, or otherwise unaccounted for. For the purposes of this section, "excise tax" means the tax collected as explained in RCW 46.16.160(9)).~~~~~~

(5) What are the requirements of a surety bond?

The ~~((requirements of a surety)) bond ~~((are to)) must:~~~~

~~(a) Be on a form provided by the department of licensing; and~~

~~(b) Meet the ~~((provisions)) requirements of chapter 48.28 RCW for a corporate surety bond; and~~~~

~~(c) Be ~~((executed)) signed by the applicant ((as principal)); and~~~~

~~(d) Be payable to the state ~~((conditioned upon the performance of all the requirements of this section and RCW 46.16.160, including payment)) of Washington; and~~~~

~~(e) Be conditioned upon the performance of all the requirements of this section and RCW 46.16.160; and~~

~~(f) Require payment of ~~((any and)) all permit fees, ~~((payment of)) audit assessments, interest and penalties ~~((due or which become due)); and~~~~~~~~

~~((e)) (g) Be ~~((in an amount)) equal to the ~~((monetary)) value of vehicle trip permits issued to ~~((an)) the agent by the department.~~~~~~~~

~~(6) ~~((What is the agent fee for selling a vehicle transit permit?~~~~

~~The agent fee is the filing fee mandated by RCW 46.01.140.~~

~~((7)) How ~~((may)) can vehicle trip permits be issued?~~~~

~~((Vehicle trip)) Permits ~~((may)) can be issued in original form or, by~~~~

~~(a) Original manual form;~~

~~(b) Facsimile of the manual form; or~~

~~(c) ~~((Authorized electronic form)) fax, or electronic means.~~~~

~~((8)) (7) If the permit is issued by ~~((facsimile)) fax or other electronic means, ~~((may the agent collect)) can an additional ~~((transmission)) fee be collected?~~~~~~~~

~~Yes. As long as the fee does not exceed that listed on the ~~((transmission)) schedule filed with the department.~~~~

~~((9)) (8) What happens if ~~((the agent)) you fail ~~((s)) to comply with the agreement?~~~~~~

The department ~~((may, after proper notice, served personally or by an affidavit of mailing,)) can revoke ~~((the)) your appointment ~~((of any agent who has)) if you have violated any provisions of ~~((RCW 46.16.160, chapter 308-97 WAC, or breached the appointment)) the agreement. Upon notice ~~((of revocation of an agent's appointment, the agent)) you must return ~~((to the department any)) all remaining vehicle trip permits ~~((in inventory)) and ~~((any)) all money owed to the department.~~~~~~~~~~~~~~~~

WSR 06-03-089
PROPOSED RULES
HORSE RACING COMMISSION

[Filed January 13, 2006, 12:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-118.

Title of Rule and Other Identifying Information: Chapter 260-44 WAC, Weights and equipment.

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

Date of Intended Adoption: March 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 March 6, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As part of the agency's regulatory reform effort and to comply with the international model rule of racing, the Washington horse racing commission is amending eight sections, repealing two sections and adding one new section to this chapter. There are no substantial changes to the eight amended sections. The amendments clarify current practices and eliminate confusing and unclear language.

Reasons Supporting Proposal: Complies with the governor's executive order for regulatory reform.

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 13, 2006

R. M. Leichner
 Executive Secretary

AMENDATORY SECTION (Amending Order 73.1, filed 5/18/73)

WAC 260-44-010 Equipment changes. (1) Permission ~~((for any changes of))~~ to change any equipment from that which a horse carried in ~~((his last))~~ its previous race must be obtained from the stewards.

(2) Permission for a horse to add or remove blinkers ~~((to his equipment or discontinue the use of them))~~ must be approved by the starter before being granted by the stewards.

(3) ~~((Horses' tongues))~~ A trainer may ~~((be tied))~~ tie down a horse's tongue, but only with a clean bandage ~~((s))~~ or ~~((clean))~~ gauze.

(4) Whips shall be considered ~~((as))~~ standard equipment in all quarter horse races.

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

WAC 260-44-020 Weights for age. The following weights are carried when they are not stated in the condition of the race:

SCALE OF WEIGHTS FOR AGE						
Distance	Age	June	July	Aug.	Sept.	
Half Mile	2 years . . . . .	...	105	108		
	3 years	123	125	126	127	
	4 years	130	130	130	130	
	5 & up	130	130	130	130	
Six Furlongs	2 years . . . . .	...	102	105		
	3 years	121	123	125	126	
	4 years	130	130	130	130	
	5 & up	130	130	130	130	
One Mile	2 years . . . . .	...	...	96		
	3 years	115	117	119	121	
	4 years	126	126	126	126	
	5 & up	126	126	126	126	
One Mile & a Quarter	2 years . . . . .	...	...	...
	3 years	113	116	118	120	
	4 years	126	126	126	126	
One & a Half Miles	2 years . . . . .	...	...	...
	3 years	111	114	117	119	
	4 years	126	126	126	126	
Two Miles	2 years	126	126	126	126	
	3 years	109	112	114	117	
	4 years	126	126	125	125	
	5 & up	126	126	125	125	

(1) In races of intermediate lengths not specified above, the weights for the shorter distance are carried.

(2) In all races except handicap~~((s))~~ races and races where the conditions expressly state to the contrary, two-year-old fillies ~~((two years old))~~ are allowed 3 lbs., and three-year-old mares ~~((three years old))~~ and ~~((upward))~~ older are allowed 5 lbs., before the 1st of September, and 3 lbs., ~~((afterwards))~~ thereafter.

(3) Welter weights are 28 lbs. added to the weight for age.

(4) In all overnight races ~~((for two year olds, for three year olds or for four year olds and upward,))~~ the minimum weight shall be 112 pounds, subject to sex and apprentice allowance. This rule shall not apply to handicap~~((s or to races written for three year olds and upward))~~ races.

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

WAC 260-44-030 Penalties and allowances. (1) No horse shall carry extra weight, ~~((not))~~ or be barred from any race for having run second or ~~((in any))~~ lower ~~((place))~~ in a previous race.

(2) Penalties and allowances of weight are not cumulative, unless ~~((so declared))~~ provided by the conditions of the race.

(3) No horse shall receive allowance of weight, or be relieved from extra weight, for having been beaten in one or more races ~~((; provided that this))~~. This rule shall not prohibit maiden allowances, or allowances to horses that have not won within a specified time, or that have not won races of a specified value.

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

WAC 260-44-050 Weighing out—Equipment included in jockey's weight. ~~((If a horse runs in muzzle, martingale or breast plate, they must be included in the jockey's weight. His))~~ (1) The jockey's weight shall also include his clothing ~~((;))~~ and boots, and the saddle ~~((;))~~ and its attachments.

(2) The following items shall not be included in a jockey's weight: Whip, or a substitute for a whip, head number, bridle, bit, reins, number cloth, blinker, protective helmet or safety vest.

(3) No bridle shall exceed two pounds in weight.

(4) Whips shall have closed poppers, with a maximum length of four inches and minimum width of one and one-quarter inches. Whips shall have three rows of one-inch feathers made of leather or other materials approved by the stewards. The maximum length of a whip shall not exceed thirty-one inches (including popper). The maximum weight of a whip shall not exceed one pound.

AMENDATORY SECTION (Amending Resolution No. 87-02, filed 7/8/87)

WAC 260-44-080 Weighing out—Overweight—Declarations—Posting—Maximum. (1) If a jockey intends to carry overweight, he/she must declare the amount ~~((thereof))~~ at the time of weighing out ~~((; or if))~~. If the jockey is in doubt as to his/her proper weight, ~~((he))~~ the jockey may declare the weight he will carry.

(2) If a jockey ~~((intends to carry))~~ reports an overweight exceeding ~~((by more than))~~ two pounds ~~((the weight which his horse is to carry))~~, the owner or trainer ~~((consenting, he must declare the amount of overweight to the clerk of the scales at least forty five minutes before the time appointed for the race, and the clerk shall cause the overweight to be stated on the notice board immediately))~~ has the option to replace the jockey without being assessed a double-jock mount fee. Failure on the part of a jockey to comply with this rule shall be reported to the stewards by the clerk of scales.

(3) No horse shall carry more than seven pounds overweight, except as provided in subsection (4) of this section.

(4) ~~((However, at nonprofit race tracks,))~~ Horses running at Class C race meets may carry more than seven pounds overweight with the permission of the stewards up to a maximum weight of one hundred thirty-five pounds, except in handicap ~~((s and))~~ races or races where the conditions of the race expressly state to the contrary.

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

WAC 260-44-100 Weighing out—Attendants. ~~((The association shall provide the))~~ Only attendants ~~((who))~~ provided by the association will be permitted to assist jockeys in weighing out.

AMENDATORY SECTION (Amending WSR 99-05-049, filed 2/12/99, effective 3/15/99)

WAC 260-44-110 Weighing in—Procedure. (1) After a race has been run and after the jockey has pulled up the horse ~~((he or she has ridden))~~, the jockey shall ride promptly to the ~~((winner's circle))~~ designated unsaddling area and ~~((there))~~ dismount ~~((; after obtaining permission from the judges and present himself))~~. The jockey shall proceed to the clerk of the scales to be weighed in ~~((accordance with a method approved by the commission))~~. If a jockey is prevented from riding his/her mount to the ~~((judge's stand))~~ designated unsaddling area because of an accident or of illness to either ~~((to himself or his))~~ the jockey or the horse, ~~((he))~~ the jockey may walk or be carried to the scales, or ~~((he))~~ the stewards may ~~((be excused by))~~ excuse the ~~((stewards))~~ jockey from weighing.

(2) Except by permission of the stewards, upon arrival at the designated unsaddling area after a race, every jockey must ~~((; upon returning to the placing judge's stand,))~~ unsaddle the horse he/she has ridden ~~((; and))~~. No person shall touch the jockey or the horse except by ~~((his))~~ the horse's bridle, ~~((not))~~ or cover the horse in any manner until the jockey has removed the equipment to be weighed.

(3) No person shall assist a jockey in removing from his/her horse the equipment that is to be included in the jockey weight, except by permission of the stewards.

(4) Each jockey shall ~~((; in weighing in,))~~ carry over to the scales all pieces of equipment with which he/she weighed out. ~~((Thereafter he may hand it to his attendant.))~~

AMENDATORY SECTION (Amending WSR 99-05-049, filed 2/12/99, effective 3/15/99)

WAC 260-44-120 Weighing in—Weigh in/weigh out—Tolerances—Penalties. (1) Each jockey shall weigh in at the same weight as that at which he weighed out ~~((; and if))~~. If a jockey is short of ~~((;))~~ the weigh out amount by more than two pounds, his mount shall be disqualified. ~~((Should))~~ If a weight discrepancy arises after a race has been declared official, a change in the order of finish will not affect the parimutuel payoffs.

(2) If any jockey weighs in at more than two pounds over his/her proper or declared weight, ~~((he shall be fined or suspended or ruled off at the discretion of))~~ the clerk of scales will report the overweight to the stewards ~~((; who shall have~~

~~regard)) for possible disciplinary action. In considering discipline, the stewards shall consider any excess weight caused by rain or mud(, and the case shall be reported to the commission for such action as it may deem proper to take)).~~

NEW SECTION

WAC 260-44-150 Horseshoes. (1) A horse starting in a race shall not be shod with ordinary or training shoes. A horse shall not race without shoes, except with the permission of the stewards.

(2) Permission to use or remove bar plates must first be granted by the stewards.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-44-060	Weighing out—Equipment not included.
WAC 260-44-070	Weighing out—Bridle, whip, maximum weights and measurements.

WSR 06-03-090
PROPOSED RULES
HORSE RACING COMMISSION
[Filed January 13, 2006, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-09-008.

Title of Rule and Other Identifying Information: WAC 260-28-290 Trainer—Ownership interest.

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

Date of Intended Adoption: March 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 March 6, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new section in chapter 260-28 WAC will require trainers to train any horse the trainer has ownership interest in at the race meet the trainer is participating in. At a Class C race meet, this requirement may be waived with the permission of the stewards.

Reasons Supporting Proposal: Prohibits a trainer who has ownership interest in any horse at a race meet to allow another trainer to train the horse.

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 13, 2006

R. M. Leichner
Executive Secretary

NEW SECTION

WAC 260-28-290 Trainer—Ownership interest. A licensed trainer is responsible for training all horses participating at the race meeting that are owned wholly or in part by the trainer, except at Class C meets and then with the permission of the board of stewards.

WSR 06-03-091
PROPOSED RULES
HORSE RACING COMMISSION
[Filed January 13, 2006, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-173.

Title of Rule and Other Identifying Information: Chapter 260-80 WAC, Corrupt and prohibited practices.

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

Date of Intended Adoption: March 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 March 6, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As part of the agency's regulatory reform effort the Washington horse racing commission is amending four sections, repealing three sections and adding one new section to this chapter. There are no substantial changes to the four amended sections. The amendments clarify current practices and eliminate confusing and unclear language. The new section, WAC 260-80-150, is intended to prohibit the mistreatment of any horse on the grounds of a license racing association.

Reasons Supporting Proposal: Complies with the governor's executive order on regulatory reform.

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 13, 2006
R. M. Leichner
Executive Secretary

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

WAC 260-80-020 Accepting bribe. No ~~((racing official or his assistant, no owner, trainer, jockey, agent, no person having charge of or access to any race horse, nor any other))~~ person shall accept or offer to accept on his own behalf or on behalf of another, any bribe, gift or gratuity in any form to influence the result of a race or which would tend to do so.

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

WAC 260-80-050 Conspiracy. No person shall conspire with any other person for the commission of ~~((or connive with any other person in))~~ any corrupt or fraudulent practice in relation to racing nor shall he commit such an act on his own account.

AMENDATORY SECTION (Amending Order 6, filed 12/3/70)

WAC 260-80-100 Appliance to alter speed of horse. No electrical or mechanical device or other appliance designed or intended to increase or decrease the speed of a horse ~~((or))~~ or that would tend ~~((so to do))~~ to increase or decrease the speed of a horse, other than the ordinary whip shall be possessed by ~~((any one))~~ anyone or applied by ~~((any one))~~ anyone to a horse, at any time on the grounds of an association, during a meeting whether in a race or otherwise.

Any person aiding or abetting in the use or possession of, or soliciting or inducing the use or possession of such a device or appliance shall be subject to the same penalties as the penalty for possession or use.

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

WAC 260-80-110 Tampering with horse. No person shall improperly tamper or attempt to tamper with any horse in such a way as to affect his speed in a race, or in such a way as is intended to affect the horse's speed in a race, nor shall ~~((he))~~ any person counsel or in any way aid or abet any such tampering.

NEW SECTION

WAC 260-80-150 Mistreatment of horses. While on the association grounds no person shall subject any horse to any form of cruelty, mistreatment, neglect, abuse, abandonment, injury, maiming or killing or administer any noxious substance to or deprive any horse of necessary care or sustenance, shelter or veterinary care.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 260-80-080	Horseshoes.
WAC 260-80-090	Bar plates.
WAC 260-80-120	Paying fine of jockey.

WSR 06-03-092 PROPOSED RULES HORSE RACING COMMISSION

[Filed January 13, 2006, 2:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-169.

Title of Rule and Other Identifying Information: Chapter 260-32 WAC, Jockeys, apprentices, and agents.

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

Date of Intended Adoption: March 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 March 6, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As part of the agency's regulatory reform most of this section has been amended. Substantive changes to existing rules include, WAC 260-32-010, changes to the minimum age and maximum weight allowed; WAC 260-32-160 Physical examinations, changes to determining a jockey's fitness to ride; WAC 260-32-170, changes to this section clarify under what conditions a jockey may wager on a race; WAC 260-32-190, changes allow jockeys, during periods of suspension to ride in designated races; WAC 260-32-370, changes allow an apprentice jockey to receive an apprentice certificate and also a ten-pound allowance; and WAC 260-32-400, make changes to abilities of a jockey agent. In addition several existing sections have had amendments made to clarify current practices. Finally, in chapter 260-32 WAC fourteen sections are being repealed and three new sections are being added.

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 13, 2006
R. M. Leichner
Executive Secretary

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

WAC 260-32-010 License required—Minimum age and maximum weight. (1) ~~((Each jockey must obtain a license from the commission.~~

~~(2)))~~ No ~~((boy))~~ person under ~~((sixteen))~~ eighteen years shall be granted a jockey's license.

~~(2)~~ A person whose weight exceeds one hundred thirty pounds at the time of application shall not be licensed as a jockey.

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

WAC 260-32-040 Jockey may not be owner or trainer. ~~((No licensed))~~ A jockey shall not be ~~((the))~~ an owner or trainer of any ~~((race horse))~~ horse competing at the race meet where the jockey is riding.

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

WAC 260-32-070 Weighing out. Jockeys are required to present themselves to be weighed out ~~((at the time fixed))~~ as directed by the clerk of the scales.

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

WAC 260-32-080 Must fulfill engagements. All jockeys shall faithfully fulfill all engagements in respect to racing, unless excused by the board of stewards or a physician.

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

WAC 260-32-100 Appearance and costume. In riding a race a jockey must be neat in appearance. All riders must be dressed in clean jockey ~~((costumes))~~ attire, caps, and jackets of silk or waterproof material, white ~~((breeches))~~ jockey's pants and top boots. During off-track conditions protective rain pants may be of a different color.

NEW SECTION

WAC 260-32-105 Safety equipment. (1) It shall be mandatory that jockeys wear a protective helmet and safety vests in compliance with WAC 260-12-180.

(2) The weight of the protective helmet shall not be included in the jockey's weight.

(3) The safety vest shall weigh no more than two pounds and shall not be included in the jockey's weight.

(4) Safety vests shall not be altered.

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

WAC 260-32-130 Colors. A jockey must wear the colors of the owner or owners of the horse he/she is riding (except by special permission of the stewards) ~~((and the posting of such a change in colors on the bulletin board)),~~ and a number on the saddle cloth corresponding to the number of the horse as exhibited after the weighing out.

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

WAC 260-32-140 Numbers. A jockey ~~((shall))~~ may be required to wear a number on his/her right arm. The number on the jockey's arm ~~((and it))~~ and the saddle cloth number shall correspond to the number of the horse in the official program.

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

WAC 260-32-150 Reporting in prior to race—Attendance pending engagements. Every jockey who is engaged in a race shall report to the scale room on the day of the race at the time required by the officials. He/she shall then report his/her engagements and overweight, if any, to the clerk of scales, and thereafter, except with the permission of the stewards, shall not leave the jockey room, except to view the races from a point approved by the stewards or to ride in a race, until all of his/her engagements of the day have been fulfilled.

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

WAC 260-32-160 Physical examinations. ~~((Before the commencement of a meeting all jockeys must be examined by a licensed physician, designated by the board of stewards in order to establish their physical condition and freedom from disabling defects or contagious disease.))~~ During the conduct of a meeting, if the board of stewards has reasonable concerns that a jockey may be unfit to ride due to physical ailment, the board of stewards may require that any jockey be ~~((reexamined))~~ examined by a physician and may refuse to allow said jockey to ride until he ~~((successfully passes such examination))~~ she presents a physician's statement that the jockey is physically fit to ride.

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

WAC 260-32-170 Betting. ~~((No jockey shall make a bet on any race nor accept the promise, or the token of any bet, with respect to the race in which he is riding, except through or from the owner or trainer of the horse he rides, and then only on that horse.))~~ A jockey shall only be allowed to wager on a race in which the jockey is riding, and then only if:

(1) The owner or trainer of the horse, which the jockey is riding, makes the wager for the jockey;

(2) The jockey only wagers on his/her mount to win or finish first in combinations with other horses in multiple wagers;

(3) Records of such wagers are kept and available for presentation upon request by the stewards; and

(4) The jockey has fulfilled his/her riding engagements for the day and left the jockey's quarters.

NEW SECTION

WAC 260-32-175 Jockey's spouse. A jockey shall not compete in any race against a horse, which is trained by the jockey's spouse, except in stakes and handicaps with approval of the stewards.

AMENDATORY SECTION (Amending WSR 98-07-070, filed 3/17/98, effective 4/17/98)

WAC 260-32-180 Fees. (1) ~~((Jockey's riding fees, for a meeting must be approved by the commission.))~~ The commission must approve jockey riding fees prior to the beginning of a race meet.

(a) If any owner or trainer engages two or more jockeys for the same race, he/she shall pay the losing fee for each ~~((engaged))~~ jockey not riding in the race, as well as the proper fee to the jockey who does ride. In the event an owner or trainer elects to remove a jockey from his/her mount after scratch time or such other time as designated by the stewards, the stewards may require a double jockey fee to be paid. The double jockey fee to be paid may be equal to that earned by the jockey who rode the race or a losing fee, as determined by the board of stewards.

(b) A jockey's fee shall be considered earned when the ~~((jockey is weighed out by the))~~ clerk of scales weighs out the jockey. The fee shall not be considered earned if the jockey, of his/her own free will, takes himself/herself off ~~((his))~~ their mount, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above ruling shall be at the discretion of the stewards.

(2) In a dead heat the jockeys involved shall divide equally the sum total of the fees they would have received individually had one beaten the other or others. Likewise, the owners of the horses involved shall pay their equal share.

AMENDATORY SECTION (Amending WSR 91-15-036, filed 7/16/91, effective 8/16/91)

WAC 260-32-190 Temporary suspension. (1) If a jockey is suspended for an offense not involving fraud, and the suspension is for ten days or less, then the jockey may

ride in those stakes races, futurity races, futurity trials, or other races which are designated by the ~~((respective))~~ board of stewards as races in which the jockey may compete, even though under suspension.

(2) ~~((Official rulings for riding infractions not involving fraud, with sanctions of suspension for ten days or less shall state the term of the suspension and shall not prohibit participation in designated races.~~

~~((3))~~ (3) A listing of the designated races shall be posted in the jockey's room, and any other such place deemed appropriate by the stewards.

~~((4))~~ (3) A suspended jockey must be named at the time of entry to participate in any designated race.

~~((5))~~ (4) A day in which a jockey participated in a designated race while on suspension shall count as a suspension day, except:

(a) A day in which a suspended jockey participates in more than one designated race in Washington shall not count as a suspension day; and

(b) A day in which a jockey participates in one or more designated races in another jurisdiction shall not count as a suspension day.

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

WAC 260-32-210 Payment of ~~((forfeitures))~~ fines. ~~((A forfeiture))~~ All fines must be paid by the jockey ~~((himself and any)).~~ Any other person paying ~~((#))~~ a jockey's fine shall be subject to ~~((punishment))~~ disciplinary action.

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

WAC 260-32-220 Jockey limited to one agent who shall make all engagements. ~~((Every))~~ A jockey may have only one agent ~~((and no more)).~~ All engagements to ride ~~((; other than those for his contract employer,))~~ shall be made by his/her agent. All jockeys are bound by agreements made on their behalf by their jockey agent.

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

WAC 260-32-230 Attendants. No jockey shall have an attendant other than those provided by the association. ~~((Such attendants shall be paid from an assessment collected from the jockeys.))~~

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

WAC 260-32-300 Application of rules for jockeys. Jockey apprentices ~~((shall be bound by))~~ must comply with all the rules for jockeys ~~((; except insofar as said rules may be in conflict with the following specific regulations for apprentices)).~~

NEW SECTION

WAC 260-32-305 Probationary mounts. The board of stewards may grant a temporary license to a jockey apprentice allowing them to ride up to three probationary mounts.

AMENDATORY SECTION (Amending WSR 98-01-146, filed 12/19/97, effective 1/19/98)

WAC 260-32-370 Apprentice jockeys. (1) An applicant for an apprentice jockey license may be prohibited from riding until the stewards or the commission has sufficient opportunity (not to exceed 14 days) to verify the applicant's previous riding experience.

(2) An apprentice jockey may be granted an apprentice certificate by the board of stewards. The apprentice certificate shall grant an apprentice all the allowances and conditions stated in these rules.

(3) An apprentice jockey eligible for a ten-pound allowance may not accept mounts on two year olds and first time starters, without prior approval of the board of stewards.

(4) The conditions of an apprentice jockey license do not apply to quarter horse or mixed breed racing. A jockey's performances in quarter horse or mixed breed racing do not apply to the conditions of an apprentice jockey.

~~((3))~~ (5) An applicant with an approved apprentice certificate from another jurisdiction may be licensed as an apprentice jockey.

~~((4))~~ (6) An apprentice certificate may be obtained from the stewards on a form provided by the commission. A person shall not receive more than one apprentice certificate. In case of emergencies, a copy of the original may be obtained from the commission where it was issued.

~~((5))~~ (7) The apprentice jockey shall be responsible to have his/her apprentice certificate with them at all times. Prior to riding, the apprentice certificate shall be submitted to the clerk of scales at each racing association in which the apprentice is licensed and riding.

~~((6))~~ (8) The apprentice jockey shall keep an accurate updated record of his/her first forty winners, to be recorded on the certificate by the clerk of scales.

~~((7))~~ (9) An apprentice jockey may claim the following weight allowances in all overnight races except stakes and handicaps:

(a) Ten pound allowance beginning with the first mount and continuing until the apprentice has ridden five winners:

(b) Seven pound allowance until the apprentice has ridden an additional thirty-five winners; and

(c) If an apprentice has ridden a total of forty winners prior to the end of a period of one year from the date of riding their fifth winner, the apprentice jockey shall have an allowance of five pounds until the end of that year;

(d) If after one year from the date of the fifth winning mount, the apprentice jockey has not ridden forty winners, the applicable weight allowance shall continue for one more year or until the 40th winner, whichever comes first. In no event may a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted.

~~((8))~~ (e) An apprentice may waive the ten- or seven-pound allowance, but shall not be eligible to reinstate either allowance once waived.

(10) The commission may extend the period in which an apprentice jockey is allowed a weight allowance (~~(of an apprentice jockey)~~) when, at the discretion of the commission, an apprentice jockey is unable to continue riding due to:

(a) Physical disablement or illness;

(b) Military service;

(c) Attendance in an institution of secondary or higher education;

(d) Restriction on racing;

(e) Other valid reasons.

~~((9))~~ (11) In order to qualify for an extension, an apprentice jockey shall have been rendered unable to ride for a period of not less than seven consecutive days during the period in which the apprentice was entitled to an apprentice weight allowance. ~~((Under exceptional circumstances, total days lost collectively will be given consideration.~~

~~((10))~~ (12) The commission currently licensing the apprentice jockey shall have the authority to grant an extension to an eligible applicant, but only after the apprentice has produced documentation verifying time lost as defined by this regulation.

~~((11))~~ (13) An apprentice may petition ~~((one of))~~ the jurisdictions in which he or she is licensed and riding for an extension of the time for claiming apprentice weight allowances granted by the commission, and the apprentice shall be bound by the decision of the jurisdiction so petitioned.

~~((12))~~ ~~Apprentice jockeys shall be bound by all rules for jockeys, except insofar as said rules may be in conflict with WAC 260-32-400.)~~

AMENDATORY SECTION (Amending WSR 92-21-027, filed 10/13/92, effective 11/13/92)

WAC 260-32-400 Powers and duties. (1) Each jockey agent shall be licensed (~~(on a regular form provided)~~) by the commission.

(2) No jockey agent shall be the owner or trainer of any horse.

(3) A jockey agent may represent up to three jockeys (~~((providing the conditions justify and upon approval of the stewards))~~).

(4) No jockey agent shall make or assist in making any engagement for any rider other than those he is licensed to represent, without prior approval of the board of stewards, which may be granted for a temporary time period not to exceed ten days.

(5) If a jockey agent is absent for a period of more than ten days, the jockey will be required to engage another jockey agent.

(6) Each jockey agent shall keep, on a form provided by the association, a record by races of all engagements made by him of the riders he is representing. This record must be kept up to date and held ready at all times for the inspection by the stewards.

(7) If any jockey agent gives up the making of engagements for any rider, he/she shall immediately notify the stewards, and he/she shall also turn over to the stewards a list of

any unfilled engagements he/she may have made for that rider. A jockey agent may not drop a rider without notifying the board of stewards in writing. ~~((All rival claims for the services of a rider will be adjusted by the stewards.))~~ The stewards will decide all rival claims for the services of a rider. Jockey agents who fail to honor commitments made are subject to disciplinary action.

AMENDATORY SECTION (Amending Order 82-03, filed 4/9/82)

WAC 260-32-420 (~~Visitation privileges.~~) Prohibited areas. A jockey agent ~~((must receive permission from the stewards to visit))~~ is prohibited from entering the jockey quarters, winner's circle, racing surface, paddock(~~and film review room~~) or saddling enclosure unless permitted by the stewards.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 260-32-020 Riding prior to licensure.
- WAC 260-32-030 Apprentice may ride in same race with jockeys.
- WAC 260-32-050 Stable prerequisite to contract holding.
- WAC 260-32-060 Riding for other than contract employer.
- WAC 260-32-090 Riding against starter of contract employer.
- WAC 260-32-110 Protective helmet.
- WAC 260-32-115 Safety vests.
- WAC 260-32-240 Priority of retainers.
- WAC 260-32-310 Contracts—Form—Filing.
- WAC 260-32-320 Contracts—Transfers.
- WAC 260-32-330 Stable prerequisite to contract holding.
- WAC 260-32-335 Apprentice certificates.
- WAC 260-32-340 Application for license—Supporting documents.
- WAC 260-32-350 Riding for other than contracted employer—Fee entitlement.

WSR 06-03-093

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 05-17—Filed January 13, 2006, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-24-122.

Title of Rule and Other Identifying Information: Chapter 173-224 WAC, Wastewater discharge permit fees, this rule sets annual permit fees for holders of wastewater and stormwater discharge permits.

Hearing Location(s): Ecology Headquarters Building, Auditorium, 300 Desmond Drive, Lacey, WA 98504, on March 6, 2006, at 2:00 p.m.; at Ecology Central Regional Office, Waterfall Room, 15 West Yakima Avenue, Yakima, WA 98902, on March 7, 2006, at 2:00 p.m.; and at Ecology Eastern Regional Office, 2nd Floor Meeting Room, 4601 North Monroe Street, Spokane, WA 99205, on March 8, 2006, at 2:00 p.m.

Date of Intended Adoption: May 30, 2006.

Submit Written Comments to: Bev Poston, P.O. Box 47600, Olympia, WA 98504-7600, e-mail bpos461@ecy.wa.gov, fax (360) 407-6425 by March 22, 2006.

Assistance for Persons with Disabilities: Contact Bev Poston by February 22, 2006, TTY (800) 833-6388 or (360) 407-6425.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase annual permit fees for holders of wastewater and stormwater discharge permits. Ecology is proposing to increase fees by 3.38% for fiscal year 2007 and 5.49% for fiscal year 2008. These percentages are the fiscal growth factor determinations made by the Washington state expenditure limit committee. Ecology might be issuing a new permit for invasive moth control during these two fiscal years, a new fee category was created with a proposed fee matching other pest control permits.

Reasons Supporting Proposal: This rule resulted from the passage of Initiative 97 passed by Washington voters in 1987 requiring the waste discharge permit program to be funded from annual fees paid by holders of wastewater and/or stormwater discharge permits. This proposed rule amendment will continue funding of the waste discharge permit program.

Statutory Authority for Adoption: Chapter 98.48 [90.48] RCW, Water pollution control.

Statute Being Implemented: Chapter 90.48 RCW, Water pollution control.

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

Name of Proponent: Washington department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bev Poston, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-6425.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 173-224 WAC, Wastewater discharge permit fees already provides relief from fees for small business with no more than one million dollars in gross revenue from the activity covered by the permit. To the extent there may be a disproportionate impact on small business, this provides mitigation, as would be required by the Regulatory Fairness Act (RCW 19.85.030) were a small business economic impact statement found to be necessary.

A cost-benefit analysis is not required under RCW 34.05.328. Under certain conditions, rules changing fee schedules are exempt from significant legislative rule cost benefit analysis (RCW 34.05.328) requirements. The exemptions apply to rules which set or adjust fees or rates pursuant to legislative standards. Legislative standards for these fees appear in RCW 90.48.465 (authorizing the fee) and in the biennial budget, which establishes the total revenue which can be collected. Ecology is proposing to increase fees for wastewater and stormwater permit holders to match the fiscal growth limits for both state fiscal years 2007 and 2008 as determined by the Washington state expenditure limit committee.

January 12, 2006
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 04-15-046, filed 7/13/04, effective 8/13/04)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee will be assessed for RCRA sites regardless of whether a new permit is being issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is being modified.

(2) Industrial facility categories.

INDUSTRIAL FACILITY CATEGORIES	FY ((2005)) 2007 ANNUAL PERMIT FEE	FY ((2006)) 2008 ANNUAL PERMIT FEE AND BEYOND
Aluminum Alloys	((\$14,145.00)) <u>\$15,007.00</u>	((\$14,516.00)) <u>\$15,831.00</u>
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	((83,417.00)) <u>88,496.00</u>	((85,603.00)) <u>93,354.00</u>
b. State Permit	((41,710.00)) <u>44,250.00</u>	((42,803.00)) <u>46,679.00</u>
Aluminum Forming	((42,435.00)) <u>45,019.00</u>	((43,547.00)) <u>47,491.00</u>
Aggregate Production - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	((2,434.00)) <u>2,582.00</u>	((2,498.00)) <u>2,724.00</u>
2. Nonoperating aggregate site (fee per site)	((100.00)) <u>106.00</u>	((103.00)) <u>112.00</u>
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	((1,014.00)) <u>1,076.00</u>	((1,041.00)) <u>1,135.00</u>
2. 50,000 - < 300,000 tons/yr.	((2,435.00)) <u>2,583.00</u>	((2,499.00)) <u>2,725.00</u>
3. 300,000 tons/yr. and greater	((3,045.00)) <u>3,231.00</u>	((3,125.00)) <u>3,408.00</u>
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	((1,014.00)) <u>1,076.00</u>	((1,041.00)) <u>1,135.00</u>
2. 25,000 - < 200,000 cu. yds/yr.	((2,435.00)) <u>2,583.00</u>	((2,499.00)) <u>2,725.00</u>
3. 200,000 cu. yds/yr. and greater	((3,045.00)) <u>3,231.00</u>	((3,125.00)) <u>3,408.00</u>

The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.

INDUSTRIAL FACILITY CATEGORIES	FY ((2005)) 2007 ANNUAL PERMIT FEE	FY ((2006)) 2008 ANNUAL PERMIT FEE AND BEYOND
d. Portable Operations		
1. Rock Crushing	((2,434.00)) <u>2,582.00</u>	((2,498.00)) <u>2,724.00</u>
2. Asphalt	((2,434.00)) <u>2,582.00</u>	((2,498.00)) <u>2,724.00</u>
3. Concrete	((2,434.00)) <u>2,582.00</u>	((2,498.00)) <u>2,724.00</u>
Aggregate Production - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	((1,703.00)) <u>1,807.00</u>	((1,748.00)) <u>1,906.00</u>
2. Nonoperating aggregate site (fee per site)	((71.00)) <u>75.00</u>	((73.00)) <u>79.00</u>
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	((711.00)) <u>755.00</u>	((730.00)) <u>796.00</u>
2. 50,000 - < 300,000 tons/yr.	((1,704.00)) <u>1,808.00</u>	((1,749.00)) <u>1,907.00</u>
3. 300,000 tons/yr. and greater	((2,130.00)) <u>2,260.00</u>	((2,186.00)) <u>2,384.00</u>
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	((711.00)) <u>755.00</u>	((730.00)) <u>796.00</u>
2. 25,000 - < 200,000 cu. yds/yr.	((1,704.00)) <u>1,808.00</u>	((1,749.00)) <u>1,907.00</u>
3. 200,000 cu. yds/yr. and greater	((2,130.00)) <u>2,260.00</u>	((2,186.00)) <u>2,384.00</u>
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	((1,704.00)) <u>1,808.00</u>	((1,749.00)) <u>1,907.00</u>
2. Asphalt	((1,704.00)) <u>1,808.00</u>	((1,749.00)) <u>1,907.00</u>
3. Concrete	((1,704.00)) <u>1,808.00</u>	((1,749.00)) <u>1,907.00</u>
Aquaculture		
a. Finfish hatching and rearing - Individual Permit	((4,243.00)) <u>4,501.00</u>	((4,354.00)) <u>4,748.00</u>
b. Finfish hatching and rearing - General Permit Coverage	((2,972.00)) <u>3,153.00</u>	((3,050.00)) <u>3,326.00</u>
c. Shellfish hatching	((146.00)) <u>155.00</u>	((150.00)) <u>164.00</u>
Aquatic Pest Control		
a. Irrigation Districts	((319.00)) <u>338.00</u>	((327.00)) <u>357.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2005)) 2007	FY ((2006)) 2008
	ANNUAL PERMIT FEE	ANNUAL PERMIT FEE AND BEYOND
b. Mosquito Control Districts	((319.00)) <u>338.00</u>	((327.00)) <u>357.00</u>
c. ((Noxious)) <u>Invasive Moth Control</u>	((319.00)) <u>338.00</u>	((327.00)) <u>357.00</u>
d. ((Nuisance Weed Control Only)) <u>Aquatic Species Control & Eradication</u>	((319.00)) <u>338.00</u>	((327.00)) <u>357.00</u>
e. Oyster Growers	((319.00)) <u>338.00</u>	((327.00)) <u>357.00</u>
f. Rotenone Control	((319.00)) <u>338.00</u>	((327.00)) <u>357.00</u>
Boat Yards - Individual Permit Coverage		
a. With storm water only discharge	((362.00)) <u>384.00</u>	((371.00)) <u>405.00</u>
b. All others	((725.00)) <u>769.00</u>	((744.00)) <u>811.00</u>
Boat Yards - General Permit Coverage		
a. With storm water only discharge	((252.00)) <u>268.00</u>	((259.00)) <u>282.00</u>
b. All others	((509.00)) <u>540.00</u>	((522.00)) <u>570.00</u>
Coal Mining and Preparation		
a. < 200,000 tons per year	((5,655.00)) <u>5,999.00</u>	((5,803.00)) <u>6,328.00</u>
b. 200,000 - < 500,000 tons per year	((12,731.00)) <u>13,507.00</u>	((13,065.00)) <u>14,248.00</u>
c. 500,000 - < 1,000,000 tons per year	((22,632.00)) <u>24,010.00</u>	((23,225.00)) <u>25,328.00</u>
d. 1,000,000 tons per year and greater	((42,435.00)) <u>45,019.00</u>	((43,547.00)) <u>47,491.00</u>
Combined Industrial Waste Treatment		
a. < 10,000 gpd	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
b. 10,000 - < 50,000 gpd	((7,071.00)) <u>7,501.00</u>	((7,256.00)) <u>7,913.00</u>
c. 50,000 - < 100,000 gpd	((14,145.00)) <u>15,007.00</u>	((14,516.00)) <u>15,831.00</u>
d. 100,000 - < 500,000 gpd	((28,290.00)) <u>30,012.00</u>	((29,031.00)) <u>31,659.00</u>
e. 500,000 gpd and greater	((42,435.00)) <u>45,019.00</u>	((43,547.00)) <u>47,491.00</u>
Combined Food Processing Waste Treatment Facilities	((13,542.00)) <u>14,367.00</u>	((13,897.00)) <u>15,156.00</u>
Combined Sewer Overflow System		
a. < 50 acres	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
b. 50 - < 100 acres	((7,071.00)) <u>7,501.00</u>	((7,256.00)) <u>7,913.00</u>

	FY ((2005)) 2007	FY ((2006)) 2008
INDUSTRIAL FACILITY CATEGORIES	ANNUAL PERMIT FEE	ANNUAL PERMIT FEE AND BEYOND
c. 100 - < 500 acres	((8,490.00)) <u>9,007.00</u>	((8,712.00)) <u>9,501.00</u>
d. 500 acres and greater	((11,316.00)) <u>12,004.00</u>	((11,612.00)) <u>12,663.00</u>
Commercial Laundry	((362.00)) <u>384.00</u>	((371.00)) <u>405.00</u>
Concentrated Animal Feeding Operation		
a. < 200 Animal Units	((145.00)) <u>154.00</u>	((149.00)) <u>162.00</u>
b. 200 - < 400 Animal Units	((362.00)) <u>384.00</u>	((371.00)) <u>405.00</u>
c. 400 - < 600 Animal Units	((725.00)) <u>769.00</u>	((744.00)) <u>811.00</u>
d. 600 - < 800 Animal Units	((1,087.00)) <u>1,153.00</u>	((1,115.00)) <u>1,216.00</u>
e. 800 Animal Units and greater	((1,451.00)) <u>1,539.00</u>	((1,489.00)) <u>1,624.00</u>
Crop Preparing - Individual Permit Coverage		
a. 0 - < 1,000 bins/yr.	((282.00)) <u>299.00</u>	((289.00)) <u>315.00</u>
b. 1,000 - < 5,000 bins/yr.	((566.00)) <u>601.00</u>	((581.00)) <u>634.00</u>
c. 5,000 - < 10,000 bins/yr.	((1,131.00)) <u>1,200.00</u>	((1,161.00)) <u>1,266.00</u>
d. 10,000 - < 15,000 bins/yr.	((2,265.00)) <u>2,403.00</u>	((2,324.00)) <u>2,535.00</u>
e. 15,000 - < 20,000 bins/yr.	((3,746.00)) <u>3,974.00</u>	((3,844.00)) <u>4,192.00</u>
f. 20,000 - < 25,000 bins/yr.	((5,233.00)) <u>5,552.00</u>	((5,370.00)) <u>5,857.00</u>
g. 25,000 - < 50,000 bins/yr.	((7,001.00)) <u>7,427.00</u>	((7,184.00)) <u>7,835.00</u>
h. 50,000 - < 75,000 bins/yr.	((7,780.00)) <u>8,254.00</u>	((7,984.00)) <u>8,707.00</u>
i. 75,000 - < 100,000 bins/yr.	((9,052.00)) <u>9,603.00</u>	((9,289.00)) <u>10,130.00</u>
j. 100,000 - < 125,000 bins/yr.	((11,316.00)) <u>12,004.00</u>	((11,612.00)) <u>12,663.00</u>
k. 125,000 - < 150,000 bins/yr.	((14,145.00)) <u>15,006.00</u>	((14,516.00)) <u>15,830.00</u>
l. 150,000 bins/yr. and greater	((16,974.00)) <u>18,008.00</u>	((17,419.00)) <u>18,997.00</u>
Crop Preparing - General Permit Coverage		
a. 0 - < 1,000 bins/yr.	((197.00)) <u>209.00</u>	((202.00)) <u>220.00</u>
b. 1,000 - < 5,000 bins/yr.	((396.00)) <u>420.00</u>	((406.00)) <u>443.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2005)) 2007	FY ((2006)) 2008
		ANNUAL PERMIT FEE	ANNUAL PERMIT FEE AND BEYOND
c.	5,000 - < 10,000 bins/yr.	((793.00)) <u>842.00</u>	((814.00)) <u>888.00</u>
d.	10,000 - < 15,000 bins/yr.	((1,585.00)) <u>1,682.00</u>	((1,627.00)) <u>1,774.00</u>
e.	15,000 - < 20,000 bins/yr.	((2,623.00)) <u>2,783.00</u>	((2,692.00)) <u>2,936.00</u>
f.	20,000 - < 25,000 bins/yr.	((3,664.00)) <u>3,887.00</u>	((3,760.00)) <u>4,100.00</u>
g.	25,000 - < 50,000 bins/yr.	((4,900.00)) <u>5,198.00</u>	((5,028.00)) <u>5,483.00</u>
h.	50,000 - < 75,000 bins/yr.	((5,445.00)) <u>5,777.00</u>	((5,588.00)) <u>6,094.00</u>
i.	75,000 - < 100,000 bins/yr.	((6,331.00)) <u>6,717.00</u>	((6,497.00)) <u>7,086.00</u>
j.	100,000 - < 125,000 bins/yr.	((7,922.00)) <u>8,405.00</u>	((8,130.00)) <u>8,866.00</u>
k.	125,000 - < 150,000 bins/yr.	((9,902.00)) <u>10,504.00</u>	((10,161.00)) <u>11,081.00</u>
l.	150,000 bins/yr. and greater	((11,881.00)) <u>12,604.00</u>	((12,192.00)) <u>13,296.00</u>
Dairies \$.50 per Animal Unit not to exceed ((<u>\$1,015.00</u>)) <u>\$1,077.00</u> for FY ((2005)) 2007 and ((<u>\$1,042.00</u>)) <u>\$1,136.00</u> for FY ((2006)) 2008 and beyond			
Facilities Not Otherwise Classified - Individual Permit Coverage			
a.	< 1,000 gpd	((1,415.00)) <u>1,501.00</u>	((1,452.00)) <u>1,583.00</u>
b.	1,000 - < 10,000 gpd	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
c.	10,000 - < 50,000 gpd	((7,072.00)) <u>7,502.00</u>	((7,257.00)) <u>7,914.00</u>
d.	50,000 - < 100,000 gpd	((11,316.00)) <u>12,004.00</u>	((11,612.00)) <u>12,663.00</u>
e.	100,000 - < 500,000 gpd	((22,519.00)) <u>23,890.00</u>	((23,109.00)) <u>25,202.00</u>
f.	500,000 - < 1,000,000 gpd	((28,289.00)) <u>30,011.00</u>	((29,030.00)) <u>31,659.00</u>
g.	1,000,000 gpd and greater	((42,435.00)) <u>45,019.00</u>	((43,547.00)) <u>47,490.00</u>
Facilities Not Otherwise Classified - General Permit Coverage			
a.	< 1,000 gpd	((992.00)) <u>1,052.00</u>	((1,018.00)) <u>1,110.00</u>
b.	1,000 - < 10,000 gpd	((2,052.00)) <u>2,177.00</u>	((2,106.00)) <u>2,297.00</u>
c.	10,000 - < 50,000 gpd	((4,952.00)) <u>5,254.00</u>	((5,082.00)) <u>5,542.00</u>
d.	50,000 - < 100,000 gpd	((7,922.00)) <u>8,405.00</u>	((8,130.00)) <u>8,866.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2005)) 2007 ANNUAL PERMIT FEE	FY ((2006)) 2008 ANNUAL PERMIT FEE AND BEYOND
e.	100,000 - < 500,000 gpd	((15,841.00)) <u>16,805.00</u>	((16,256.00)) <u>17,728.00</u>
f.	500,000 - < 1,000,000 gpd	((19,801.00)) <u>21,007.00</u>	((20,320.00)) <u>22,160.00</u>
g.	1,000,000 gpd and greater	((29,705.00)) <u>31,513.00</u>	((30,483.00)) <u>33,243.00</u>
Flavor Extraction			
a.	Steam Distillation	((145.00)) <u>154.00</u>	((149.00)) <u>162.00</u>
Food Processing			
a.	< 1,000 gpd	((1,414.00)) <u>1,500.00</u>	((1,451.00)) <u>1,582.00</u>
b.	1,000 - < 10,000 gpd	((3,605.00)) <u>3,824.00</u>	((3,699.00)) <u>4,034.00</u>
c.	10,000 - < 50,000 gpd	((6,436.00)) <u>6,828.00</u>	((6,605.00)) <u>7,203.00</u>
d.	50,000 - < 100,000 gpd	((10,113.00)) <u>10,729.00</u>	((10,378.00)) <u>11,318.00</u>
e.	100,000 - < 250,000 gpd	((14,145.00)) <u>15,007.00</u>	((14,516.00)) <u>15,830.00</u>
f.	250,000 - < 500,000 gpd	((18,602.00)) <u>19,734.00</u>	((19,089.00)) <u>20,817.00</u>
g.	500,000 - < 750,000 gpd	((23,338.00)) <u>24,758.00</u>	((23,949.00)) <u>26,117.00</u>
h.	750,000 - < 1,000,000 gpd	((28,289.00)) <u>30,011.00</u>	((29,030.00)) <u>31,659.00</u>
i.	1,000,000 - < 2,500,000 gpd	((34,852.00)) <u>36,974.00</u>	((35,765.00)) <u>39,003.00</u>
j.	2,500,000 - < 5,000,000 gpd	((38,898.00)) <u>41,266.00</u>	((39,917.00)) <u>43,532.00</u>
k.	5,000,000 gpd and greater	((42,435.00)) <u>45,019.00</u>	((43,547.00)) <u>47,491.00</u>
Fuel and Chemical Storage			
a.	< 50,000 bbls	((1,415.00)) <u>1,501.00</u>	((1,452.00)) <u>1,583.00</u>
b.	50,000 - < 100,000 bbls	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
c.	100,000 - < 500,000 bbls	((7,071.00)) <u>7,501.00</u>	((7,256.00)) <u>7,913.00</u>
d.	500,000 bbls and greater	((14,145.00)) <u>15,007.00</u>	((14,516.00)) <u>15,831.00</u>
Hazardous Waste Clean Up Sites			
a.	Leaking Underground Storage Tanks (LUST)		
1.	State Permit	((3,710.00)) <u>3,936.00</u>	((3,807.00)) <u>4,152.00</u>
2.	NPDES Permit Issued pre 7/1/94	((3,710.00)) <u>3,936.00</u>	((3,807.00)) <u>4,152.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2005)) 2007 ANNUAL PERMIT FEE	FY ((2006)) 2008 ANNUAL PERMIT FEE AND BEYOND
3.	NPDES Permit Issued post 7/1/94	((7,420.00)) <u>7,871.00</u>	((7,614.00)) <u>8,303.00</u>
b.	Non-LUST Sites		
1.	1 or 2 Contaminants of concern	((7,254.00)) <u>7,696.00</u>	((7,444.00)) <u>8,118.00</u>
2.	> 2 Contaminants of concern	((14,508.00)) <u>15,391.00</u>	((14,888.00)) <u>16,236.00</u>
Ink Formulation and Printing			
a.	Commercial Print Shops	((2,176.00)) <u>2,308.00</u>	((2,233.00)) <u>2,435.00</u>
b.	Newspapers	((3,628.00)) <u>3,849.00</u>	((3,723.00)) <u>4,060.00</u>
c.	Box Plants	((5,803.00)) <u>6,156.00</u>	((5,955.00)) <u>6,494.00</u>
d.	Ink Formulation	((7,254.00)) <u>7,696.00</u>	((7,444.00)) <u>8,119.00</u>
Inorganic Chemicals Manufacturing			
a.	Lime Products	((7,071.00)) <u>7,501.00</u>	((7,256.00)) <u>7,913.00</u>
b.	Fertilizer	((8,513.00)) <u>9,031.00</u>	((8,736.00)) <u>9,527.00</u>
c.	Peroxide	((11,316.00)) <u>12,004.00</u>	((11,612.00)) <u>12,663.00</u>
d.	Alkaline Earth Salts	((14,145.00)) <u>15,007.00</u>	((14,516.00)) <u>15,831.00</u>
e.	Metal Salts	((19,800.00)) <u>21,006.00</u>	((20,319.00)) <u>22,159.00</u>
f.	Acid Manufacturing	((28,284.00)) <u>30,006.00</u>	((29,025.00)) <u>31,653.00</u>
g.	Chlor-alkali	((56,580.00)) <u>60,024.00</u>	((58,062.00)) <u>63,319.00</u>
Iron and Steel			
a.	Foundries	((14,145.00)) <u>15,007.00</u>	((14,516.00)) <u>15,831.00</u>
b.	Mills	((28,315.00)) <u>30,039.00</u>	((29,057.00)) <u>31,688.00</u>
Metal Finishing			
a.	< 1,000 gpd	((1,696.00)) <u>1,799.00</u>	((1,740.00)) <u>1,898.00</u>
b.	1,000 - < 10,000 gpd	((2,828.00)) <u>3,000.00</u>	((2,902.00)) <u>3,165.00</u>
c.	10,000 - < 50,000 gpd	((7,070.00)) <u>7,500.00</u>	((7,255.00)) <u>7,912.00</u>
d.	50,000 - < 100,000 gpd	((14,144.00)) <u>15,006.00</u>	((14,515.00)) <u>15,830.00</u>
e.	100,000 - < 500,000 gpd	((28,288.00)) <u>30,010.00</u>	((29,029.00)) <u>31,657.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2005)) <u>2007</u> ANNUAL PERMIT FEE	FY ((2006)) <u>2008</u> ANNUAL PERMIT FEE AND BEYOND
f.	500,000 gpd and greater	((42,433.00)) <u>45,017.00</u>	((43,545.00)) <u>47,488.00</u>
Noncontact Cooling Water With Additives - Individual Permit Coverage			
a.	< 1,000 gpd	((885.00)) <u>939.00</u>	((908.00)) <u>991.00</u>
b.	1,000 - < 10,000 gpd	((1,235.00)) <u>1,310.00</u>	((1,267.00)) <u>1,382.00</u>
c.	10,000 - < 50,000 gpd	((2,654.00)) <u>2,816.00</u>	((2,724.00)) <u>2,971.00</u>
d.	50,000 - < 100,000 gpd	((6,190.00)) <u>6,567.00</u>	((6,352.00)) <u>6,928.00</u>
e.	100,000 - < 500,000 gpd	((10,606.00)) <u>11,252.00</u>	((10,884.00)) <u>11,870.00</u>
f.	500,000 - < 1,000,000 gpd	((15,031.00)) <u>15,946.00</u>	((15,425.00)) <u>16,821.00</u>
g.	1,000,000 - < 2,500,000 gpd	((19,451.00)) <u>20,636.00</u>	((19,961.00)) <u>21,769.00</u>
h.	2,500,000 - < 5,000,000 gpd	((23,867.00)) <u>25,216.00</u>	((24,392.00)) <u>26,600.00</u>
i.	5,000,000 gpd and greater	((28,289.00)) <u>30,011.00</u>	((29,030.00)) <u>31,659.00</u>
Noncontact Cooling Water With Additives - General Permit Coverage			
a.	< 1,000 gpd	((620.00)) <u>657.00</u>	((636.00)) <u>694.00</u>
b.	1,000 - < 10,000 gpd	((1,237.00)) <u>1,312.00</u>	((1,269.00)) <u>1,384.00</u>
c.	10,000 - < 50,000 gpd	((1,858.00)) <u>1,971.00</u>	((1,907.00)) <u>2,079.00</u>
d.	50,000 - < 100,000 gpd	((4,334.00)) <u>4,598.00</u>	((4,448.00)) <u>4,850.00</u>
e.	100,000 - < 500,000 gpd	((7,425.00)) <u>7,878.00</u>	((7,620.00)) <u>8,310.00</u>
f.	500,000 - < 1,000,000 gpd	((10,522.00)) <u>11,163.00</u>	((10,798.00)) <u>11,776.00</u>
g.	1,000,000 - < 2,500,000 gpd	((13,615.00)) <u>14,444.00</u>	((13,972.00)) <u>15,237.00</u>
h.	2,500,000 - < 5,000,000 gpd	((16,707.00)) <u>17,725.00</u>	((17,145.00)) <u>18,698.00</u>
i.	5,000,000 gpd and greater	((19,801.00)) <u>21,007.00</u>	((20,320.00)) <u>22,160.00</u>
Noncontact Cooling Water Without Additives - Individual Permit Coverage			
a.	< 1,000 gpd	((709.00)) <u>753.00</u>	((728.00)) <u>794.00</u>
b.	1,000 - < 10,000 gpd	((1,415.00)) <u>1,501.00</u>	((1,452.00)) <u>1,583.00</u>
c.	10,000 - < 50,000 gpd	((2,123.00)) <u>2,253.00</u>	((2,179.00)) <u>2,377.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2005)) 2007 ANNUAL PERMIT FEE	FY ((2006)) 2008 ANNUAL PERMIT FEE AND BEYOND
d.	50,000 - < 100,000 gpd	((4,952.00)) <u>5,254.00</u>	((5,082.00)) <u>5,542.00</u>
e.	100,000 - < 500,000 gpd	((8,490.00)) <u>9,006.00</u>	((8,712.00)) <u>9,501.00</u>
f.	500,000 - < 1,000,000 gpd	((12,022.00)) <u>12,754.00</u>	((12,337.00)) <u>13,454.00</u>
g.	1,000,000 - < 2,500,000 gpd	((15,498.00)) <u>16,442.00</u>	((15,904.00)) <u>17,344.00</u>
h.	2,500,000 - < 5,000,000 gpd	((19,095.00)) <u>20,257.00</u>	((19,595.00)) <u>21,369.00</u>
i.	5,000,000 gpd and greater	((22,632.00)) <u>24,010.00</u>	((23,225.00)) <u>25,328.00</u>
Noncontact Cooling Water Without Additives - General Permit Coverage			
a.	< 1,000 gpd	((496.00)) <u>526.00</u>	((509.00)) <u>555.00</u>
b.	1,000 - < 10,000 gpd	((992.00)) <u>1,052.00</u>	((1,018.00)) <u>1,110.00</u>
c.	10,000 - < 50,000 gpd	((1,486.00)) <u>1,577.00</u>	((1,525.00)) <u>1,664.00</u>
d.	50,000 - < 100,000 gpd	((3,466.00)) <u>3,677.00</u>	((3,557.00)) <u>3,879.00</u>
e.	100,000 - < 500,000 gpd	((5,941.00)) <u>6,303.00</u>	((6,097.00)) <u>6,649.00</u>
f.	500,000 - < 1,000,000 gpd	((8,417.00)) <u>8,929.00</u>	((8,637.00)) <u>9,419.00</u>
g.	1,000,000 - < 2,500,000 gpd	((10,892.00)) <u>11,555.00</u>	((11,177.00)) <u>12,189.00</u>
h.	2,500,000 - < 5,000,000 gpd	((13,367.00)) <u>14,181.00</u>	((13,717.00)) <u>14,960.00</u>
i.	5,000,000 gpd and greater	((15,841.00)) <u>16,805.00</u>	((16,256.00)) <u>17,728.00</u>
Nonferrous Metals Forming			
		((14,145.00)) <u>15,007.00</u>	((14,516.00)) <u>15,831.00</u>
Ore Mining			
a.	Ore Mining	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
b.	Ore mining with physical concentration processes	((5,656.00)) <u>6,000.00</u>	((5,804.00)) <u>6,329.00</u>
c.	Ore mining with physical and chemical concentration processes	((22,632.00)) <u>24,010.00</u>	((23,225.00)) <u>25,328.00</u>
Organic Chemicals Manufacturing			
a.	Fertilizer	((14,145.00)) <u>15,007.00</u>	((14,516.00)) <u>15,831.00</u>
b.	Aliphatic	((28,289.00)) <u>30,011.00</u>	((29,030.00)) <u>31,659.00</u>
c.	Aromatic	((42,435.00)) <u>45,019.00</u>	((43,547.00)) <u>47,491.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2005)) 2007 ANNUAL PERMIT FEE	FY ((2006)) 2008 ANNUAL PERMIT FEE AND BEYOND
Petroleum Refining		
a. < 10,000 bbls/d	((28,289.00)) <u>30,011.00</u>	((29,030.00)) <u>31,659.00</u>
b. 10,000 - < 50,000 bbls/d	((56,089.00)) <u>59,503.00</u>	((57,558.00)) <u>62,770.00</u>
c. 50,000 bbls/d and greater	((113,164.00)) <u>120,054.00</u>	((116,129.00)) <u>126,645.00</u>
Photofinishers		
a. < 1,000 gpd	((1,131.00)) <u>1,200.00</u>	((1,161.00)) <u>1,266.00</u>
b. 1,000 gpd and greater	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
Power and/or Steam Plants		
a. Steam Generation - Nonelectric	((5,655.00)) <u>5,999.00</u>	((5,803.00)) <u>6,328.00</u>
b. Hydroelectric	((5,655.00)) <u>5,999.00</u>	((5,803.00)) <u>6,328.00</u>
c. Nonfossil Fuel	((8,489.00)) <u>9,005.00</u>	((8,711.00)) <u>9,499.00</u>
d. Fossil Fuel	((22,632.00)) <u>24,010.00</u>	((23,225.00)) <u>25,328.00</u>
Pulp, Paper and Paper Board		
a. Fiber Recyclers	((14,143.00)) <u>15,005.00</u>	((14,514.00)) <u>15,829.00</u>
b. Paper Mills	((28,289.00)) <u>30,011.00</u>	((29,030.00)) <u>31,659.00</u>
c. Groundwood Pulp Mills		
1. < 300 tons per day	((42,435.00)) <u>45,019.00</u>	((43,547.00)) <u>47,491.00</u>
2. > 300 tons per day	((84,869.00)) <u>90,037.00</u>	((87,093.00)) <u>94,980.00</u>
d. Chemical Pulp Mills w/o Chlorine Bleaching	((113,157.00)) <u>120,047.00</u>	((116,122.00)) <u>126,638.00</u>
e. Chemical Pulp Mills w/Chlorine Bleaching	((127,301.00)) <u>135,051.00</u>	((130,636.00)) <u>142,465.00</u>
Radioactive Effluents and Discharges (RED)		
a. < 3 waste streams	((27,362.00)) <u>29,028.00</u>	((28,079.00)) <u>30,626.00</u>
b. 3 - < 8 waste streams	((47,524.00)) <u>50,417.00</u>	((48,769.00)) <u>53,185.00</u>
c. 8 waste streams and greater	((78,274.00)) <u>83,040.00</u>	((80,325.00)) <u>87,599.00</u>
RCRA Corrective Action Sites	((19,882.00)) <u>21,093.00</u>	((20,403.00)) <u>22,251.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2005)) 2007 ANNUAL PERMIT FEE	FY ((2006)) 2008 ANNUAL PERMIT FEE AND BEYOND
Seafood Processing		
a. < 1,000 gpd	((1,415.00)) <u>1,501.00</u>	((1,452.00)) <u>1,583.00</u>
b. 1,000 - < 10,000 gpd	((3,605.00)) <u>3,824.00</u>	((3,699.00)) <u>4,034.00</u>
c. 10,000 - < 50,000 gpd	((6,436.00)) <u>6,828.00</u>	((6,605.00)) <u>7,203.00</u>
d. 50,000 - < 100,000 gpd	((10,113.00)) <u>10,729.00</u>	((10,378.00)) <u>11,318.00</u>
e. 100,000 gpd and greater	((14,145.00)) <u>15,007.00</u>	((14,516.00)) <u>15,831.00</u>
Shipyards		
a. Per crane, travel lift, small boat lift	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
b. Per drydock under 250 ft in length	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
c. Per graving dock	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
d. Per marine way	((4,243.00)) <u>4,501.00</u>	((4,354.00)) <u>4,748.00</u>
e. Per sycrolift	((4,243.00)) <u>4,501.00</u>	((4,354.00)) <u>4,748.00</u>
f. Per drydock over 250 ft in length	((5,656.00)) <u>6,000.00</u>	((5,804.00)) <u>6,329.00</u>
g. In-water vessel maintenance	((5,656.00)) <u>6,000.00</u>	((5,804.00)) <u>6,329.00</u>
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstorm water)		
a. Nonputrescible	((5,656.00)) <u>6,000.00</u>	((5,804.00)) <u>6,329.00</u>
b. < 50 acres	((11,315.00)) <u>12,003.00</u>	((11,611.00)) <u>12,662.00</u>
c. 50 - < 100 acres	((22,632.00)) <u>24,010.00</u>	((23,225.00)) <u>25,328.00</u>
d. 100 - < 250 acres	((28,289.00)) <u>30,011.00</u>	((29,030.00)) <u>31,659.00</u>
e. 250 acres and greater	((42,435.00)) <u>45,019.00</u>	((43,547.00)) <u>47,491.00</u>
Textile Mills		
	((56,580.00)) <u>60,024.00</u>	((58,062.00)) <u>63,319.00</u>
Timber Products		
a. Log Storage	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
b. Veneer	((5,656.00)) <u>6,000.00</u>	((5,804.00)) <u>6,329.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2005)) 2007 ANNUAL PERMIT FEE	FY ((2006)) 2008 ANNUAL PERMIT FEE AND BEYOND
c. Sawmills	((11,316.00)) <u>12,004.00</u>	((11,612.00)) <u>12,663.00</u>
d. Hardwood, Plywood	((19,800.00)) <u>21,006.00</u>	((20,319.00)) <u>22,159.00</u>
e. Wood Preserving	((27,165.00)) <u>28,819.00</u>	((27,877.00)) <u>30,401.00</u>
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	((93.00)) <u>98.00</u>	((95.00)) <u>104.00</u>
b. 1,000 - < 5,000 gpd	((189.00)) <u>201.00</u>	((194.00)) <u>212.00</u>
c. 5,000 - < 10,000 gpd	((372.00)) <u>395.00</u>	((382.00)) <u>417.00</u>
d. 10,000 - < 20,000 gpd	((750.00)) <u>796.00</u>	((770.00)) <u>840.00</u>
e. 20,000 and greater	((1,240.00)) <u>1,315.00</u>	((1,272.00)) <u>1,387.00</u>
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	((2,829.00)) <u>3,001.00</u>	((2,903.00)) <u>3,166.00</u>
b. 0.5 - < 1.0 acre	((5,656.00)) <u>6,000.00</u>	((5,804.00)) <u>6,329.00</u>
c. 1.0 acre and greater	((8,489.00)) <u>9,005.00</u>	((8,711.00)) <u>9,499.00</u>
Water Plants - Individual Permit Coverage	((3,537.00)) <u>3,753.00</u>	((3,630.00)) <u>3,959.00</u>
Water Plants - General Permit Coverage	((2,476.00)) <u>2,627.00</u>	((2,541.00)) <u>2,771.00</u>
Wineries		
a. < 500 gpd	((288.00)) <u>306.00</u>	((296.00)) <u>323.00</u>
b. 500 - < 750 gpd	((579.00)) <u>614.00</u>	((594.00)) <u>648.00</u>
c. 750 - < 1,000 gpd	((1,158.00)) <u>1,228.00</u>	((1,188.00)) <u>1,295.00</u>
d. 1,000 - < 2,500 gpd	((2,314.00)) <u>2,455.00</u>	((2,375.00)) <u>2,590.00</u>
e. 2,500 - < 5,000 gpd	((3,692.00)) <u>3,917.00</u>	((3,789.00)) <u>4,132.00</u>
f. 5,000 gpd and greater	((5,067.00)) <u>5,376.00</u>	((5,200.00)) <u>5,671.00</u>

(a) Facilities other than those in the aggregate production, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number

of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Crop preparation and aggregate production permit holders are required to submit information to the department certifying annual production (calendar year) or unit pro-

cesses. When required, the department will send the information form to the permit holder. The permit holder shall complete and return the information form to the department by the required due date. Failure to provide this information will result in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized general partner;

(C) In the case of a general partnership, by an authorized partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for crop preparers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the crop preparing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste clean up sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating aggregate operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode must be verified by the appropriate ecology staff. Once operations resume, the permit fee will be returned to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period will be assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit will be assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

	FY ((2005))	FY ((2006))
	<u>2007 Annual</u>	<u>2008 Annual</u>
Residential	Permit Fee	Permit Fee and
Equivalents (RE)		Beyond
< 250,000	\$ ((1-73))	\$ ((1-78))
	<u>1.80</u>	<u>1.80</u>
> 250,000	((1-05))	((1-08))
	<u>1.12</u>	<u>1.18</u>

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

(i) Holds more than one permit for domestic wastewater facilities; and

(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

	FY ((2005))	FY ((2006))
	<u>2007 Annual</u>	<u>2008 Annual</u>
Permitted Flows	Permit Fee	Permit Fee and Beyond
.1 MGD and Greater	\$((7,071.00))	\$((7,256.00))
	<u>7,501.00</u>	<u>7,913.00</u>
.05 MGD to < .1 MGD	((2,829.00))	((2,903.00))
	<u>3,001.00</u>	<u>3,166.00</u>
.0008 MGD to < .05 MGD	((1,415.00))	((1,452.00))
	<u>1,501.00</u>	<u>1,583.00</u>
< .0008 MGD	((426.00))	((437.00))
	<u>452.00</u>	<u>477.00</u>

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately-owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor; or

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(ii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(4) STORM WATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

	FY ((2005)) 2007 Annual Permit Fee	FY ((2006)) 2008 Annual Permit Fee & Beyond
a. Individual Construction or Industrial Storm Water Permits		
1. < 50 acres	((\$2,829.00)) <u>\$3,001.00</u>	((\$2,903.00)) <u>\$3,166.00</u>
2. 50 -< 100 acres	((\$5,655.00)) <u>\$5,999.00</u>	((\$5,803.00)) <u>\$6,328.00</u>
3. 100 -< 500 acres	((\$8,489.00)) <u>\$9,005.00</u>	((\$8,711.00)) <u>\$9,499.00</u>
4. 500 acres and greater	((\$11,316.00)) <u>\$12,004.00</u>	((\$11,612.00)) <u>\$12,663.00</u>
b. Facilities Covered Under the Industrial Storm Water General Permit		
1. Municipalities and state agencies	((\$650.00)) <u>\$982.00</u>	((\$950.00)) <u>\$1,036.00</u>
2. New permit holders without historical gross revenue information	((\$375.00)) <u>\$517.00</u>	((\$500.00)) <u>\$545.00</u>
3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		
Gross Revenue		
Less than \$100,000	\$100.00	((\$105.00)) <u>\$100.00</u>
\$100,000 -< \$1,000,000	((\$375.00)) <u>\$414.00</u>	((\$500.00)) <u>\$437.00</u>
\$1,000,000 -< \$2,500,000	((\$375.00)) <u>\$496.00</u>	((\$600.00)) <u>\$523.00</u>
\$2,500,000 -< \$5,000,000	((\$540.00)) <u>\$827.00</u>	((\$1,000.00)) <u>\$872.00</u>
\$5,000,000 -< \$10,000,000	((\$745.00)) <u>\$1,241.00</u>	((\$1,500.00)) <u>\$1,309.00</u>
\$10,000,000 and greater	((\$905.00)) <u>\$1,499.00</u>	((\$1,800.00)) <u>\$1,581.00</u>

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

The department may verify the information contained in the submitted documentation and, if it determines that the

permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

c. Construction Activities Covered Under the Construction Storm Water General Permit(s)

1. Less than 5 acres disturbed area	((\$350.00)) <u>\$388.00</u>	((\$375.00)) <u>\$409.00</u>
2. 5 -< 7 acres of disturbed area	((\$400.00)) <u>\$631.00</u>	((\$610.00)) <u>\$666.00</u>
3. 7 -< 10 acres of disturbed area	((\$550.00)) <u>\$853.00</u>	((\$825.00)) <u>\$900.00</u>

4. 10 -< 20 acres of dis- ~~(\$750.00)~~ ~~(\$1,125.00)~~
turbed area \$1,163.00) \$1,227.00
5. 20 acres and greater ~~(\$925.00)~~ ~~(\$1,400.00)~~
of disturbed area \$1,447.00) \$1,526.00

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal storm water permit annual fee for the entities listed below will be:

Name of Entity	FY ((2005)) <u>2007</u> Annual Permit Fee	FY ((2006)) <u>2008</u> Annual Permit Fee and Beyond
King County	(\$32,220.00) \$34,182.00	(\$33,064.00) \$36,059.00
Snohomish County	(\$32,220.00) 34,182.00	(\$33,064.00) 36,059.00
Pierce County	(\$32,220.00) 34,182.00	(\$33,064.00) 36,059.00
Tacoma, City of	(\$32,220.00) 34,182.00	(\$33,064.00) 36,059.00
Seattle, City of	(\$32,220.00) 34,182.00	(\$33,064.00) 36,059.00
Washington Department of Transportation	(\$32,220.00) 34,182.00	(\$33,064.00) 36,059.00
Clark County	(\$32,220.00) 34,182.00	(\$33,064.00) 36,059.00

(b) Municipal storm water general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, will be determined in the following manner: \$1.00 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to \$.50 per housing unit inside the geographic area covered by the permit. Fees for these entities will begin in fiscal year 2006 and will not exceed ~~(\$33,064.00)~~ \$36,059.00. The minimum annual fee will not be lower than \$1,500.00 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling \$.50 per housing unit.

(c) Other entities required to have permit coverage under a municipal storm water general permit will pay an annual fee beginning in fiscal year 2006 totaling \$1,500.00.

(d) Municipal storm water permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household

income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal storm water general permit as determined in (c) of this subsection, the fiscal year 2006 annual fee for a permit written for a specific entity shall be \$7,500.

WSR 06-03-102

**WITHDRAWAL OF PROPOSED RULES
SECRETARY OF STATE**

(By the Code Reviser's Office)

[Filed January 17, 2006, 11:07 a.m.]

WAC 434-253-290, 434-261-115, 434-261-125 and 434-261-135, proposed by the secretary of state in WSR 05-14-172 appearing in issue 05-14 of the State Register, which was distributed on July 20, 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 06-03-103

**WITHDRAWAL OF PROPOSED RULES
MARINE EMPLOYEES' COMMISSION**

(By the Code Reviser's Office)

[Filed January 17, 2006, 11:07 a.m.]

WAC 316-75-001, 316-75-010, 316-75-030, 316-75-050, 316-75-090, 316-75-110, 316-75-130, 316-75-150, 316-75-170, 316-75-190, 316-75-210, 316-75-230, 316-75-250, 316-75-270, 316-75-310, 316-85-001, 316-85-010, 316-85-020, 316-85-030, 316-85-040, 316-85-050, 316-85-060, 316-85-070, 316-85-080, 316-85-090 and 316-85-100, proposed by the Marine Employees' Commission in WSR 05-14-051 appearing in issue 05-14 of the State Register, which was distributed on July 20, 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 06-03-106

**PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed January 17, 2006, 11:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-141.

Title of Rule and Other Identifying Information: Workers' compensation self-insurance rules and regulations, chapter 296-15 WAC. This chapter governs employers who are permitted to self-insure their workers' compensation obligation pursuant to Title 51 RCW. This filing includes new sections to define "default" and "financial watch" and establishes guidelines if a self-insured employer defaults on their workers' compensation obligation or if they experience a negative financial situation.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501-5414, on February 22, 2006, at 1:30 p.m.

Date of Intended Adoption: March 21, 2006.

Submit Written Comments to: Margaret Conley, P.O. Box 44890, Olympia, WA 98504-4890, e-mail mcgm235@lni.wa.gov, fax (360) 902-6900, by February 22, 2006, 5 p.m.

Assistance for Persons with Disabilities: Contact Margaret Conley by February 10, 2006, TTY (800) 833-6388 or (360) 902-6906.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new sections will define in rule "default" and "financial watch" and establish guidelines if a self-insured employer defaults on their workers' compensation obligation or if they experience a negative financial situation. The new sections will not modify existing rules.

Reasons Supporting Proposal: The rules are being filed at the request of the insolvency trust board, to better clarify for self-insured employers the steps taken by the department when a self-insured employer defaults on their workers' compensation obligation, or when a self-insured employer experiences a negative financial situation.

Statutory Authority for Adoption: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jean Vanek, 724 Quince Street S.E., Olympia, WA 98501, (360) 902-6907.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 296-15 WAC applies only to businesses that are certified to self-insure in Washington state. Per RCW 19.85.020(1), a business must have fifty or fewer employees to qualify as a small business under the Regulatory Fairness Act. The department reviewed the number of worker hours reported by each employer currently certified to self-insure, and no self-insured business has fewer than fifty employees. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is not required under RCW 34.05.328. The new sections proposed in this rule filing are for clarification only. Per RCW 34.05.328 [(5)](b)(iv), "rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect" do not require a cost-benefit analysis.

January 17, 2006

Gary Weeks
Director

NEW SECTION

WAC 296-15-123 Financial watch. (1) What is financial watch? Financial watch occurs when the department has concerns regarding a self-insured employer's ability to promptly provide benefits to its injured workers based on an analysis of the audited financial statements provided by that employer.

The purpose of financial watch is two-fold:

(a) It serves to alert the employer that the department is concerned with its ability to provide benefits to its injured workers; and

(b) It enforces the due diligence that the department must exercise in preserving the financial integrity of each self-insurer.

(2) What factors can lead to a firm being placed on financial watch? Contributing factors that can lead to a firm being placed on financial watch are negative changes in the following ratios and trends:

(a) Net losses;

(b) Ratio of debt to equity;

(c) Liquidity ratios;

(d) Ratios of debt and equity to total assets;

(e) Ratio of net income to revenue;

(f) Trends in earnings;

(g) Trends in liquidity;

(h) Trends in levels of debt;

(i) Ratio of tangible net worth to levels of debt.

To assess an employer's ability to promptly provide any and all required benefits to its injured workers, the department will utilize these and other analytical ratios. The department may also utilize industry standards and other relevant information in its analysis.

(3) What are the consequences of being placed on financial watch? At the department's discretion, the surety requirement for a firm being placed on financial watch may be increased by up to twenty-five percent. No reduction in surety will be allowed while an employer is on financial watch.

(4) How long can a firm remain on financial watch? The status of a firm on financial watch will be re-evaluated annually upon receipt of its audited financial statements. The department may request interim financial information in addition to the annual audited financial statement.

If significant improvement is not demonstrated to the department's satisfaction after three years of being placed on financial watch, the department may undertake action to withdraw the self-insurance certification of that employer.

NEW SECTION

WAC 296-15-125 Default by a self-insurer. (1) What is a default? A default occurs when a self-insured employer no longer provides benefits to its injured workers in accordance with Title 51 of the Revised Code of Washington. A default can be a voluntary action of the self-insured employer, or an action brought on by the employer's inability to pay the obligation.

(2) What happens when the department first learns a self-insured employer has defaulted on its obligation? The department first corresponds with the self-insured employer

to determine if the self-insurer will resume the provision of benefits. If the self-insurer does not respond to the department and resume the provision of benefits within ten days, the self-insured employer is determined to have defaulted.

(3) What happens when the department confirms that a self-insurer has defaulted on its obligation? There are two actions that the department takes when a default by a self-insured employer is confirmed:

(a) First, the department assumes jurisdiction of the claims of the defaulting self-insurer and begins to provide benefits to those injured workers.

(b) Second, the department makes demand upon the surety provided by that self-insurer for the full amount of the surety. The proceeds of the surety are deposited with the department and accrue interest, which will be used to supplement the surety in providing benefits to those injured workers.

(4) What happens to a self-insured employer's certification when it defaults? The employer surrenders its self-insurance certification when it defaults. Any remaining employment in the state would need industrial insurance coverage through the state fund effective with the default by the employer.

WSR 06-03-109
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed January 17, 2006, 11:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-13-147.

Title of Rule and Other Identifying Information: Chapter 296-130 WAC, Family care.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., S117, Tumwater, WA, on March 28, 2006, at 8:30 a.m.

Date of Intended Adoption: April 18, 2006.

Submit Written Comments to: Sally Elliott, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by March 28, 2006.

Assistance for Persons with Disabilities: Contact Sally Elliott by March 10, 2006, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is a result of chapter 499, Laws of 2005 (SSB 5850), which passed the 2005 legislature.

The following changes are being proposed:

- The definition of "parent" is being amended to explicitly include adoptive parents as a covered family member for an employee's use of sick leave.
- The definition of sick leave is being amended in order to be consistent with the statute.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 49.12 RCW and chapter 499, Laws of 2005 (SSB 5850).

Statute Being Implemented: Chapter 49.12 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Rich Ervin, Tumwater, (360) 902-5310; Implementation and Enforcement: Patrick Woods, Tumwater, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined the proposed rules do not require a small business economic impact statement because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule based upon Washington state statutes (see RCW 34.05.310 (4)(c)).

A cost-benefit analysis is not required under RCW 34.05.328. The department determined the proposed changes do not require a cost-benefit analysis because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule based upon Washington state statutes (see RCW 19.85.025 referencing RCW 34.05.310 (4)(c)).

January 17, 2005 [2006]

Gary Weeks
Director

AMENDATORY SECTION (Amending WSR 03-03-010, filed 1/6/03, effective 1/6/03)

WAC 296-130-020 Definitions. (1) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees. Employer also includes the state, any state institution, any state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(2) "Employee" means a worker who is employed in the business of an employer. "Employee," for the purposes of this chapter, also includes workers performing in an executive, administrative, professional, or outside sales capacity.

(3) "Employ" means to engage, suffer, or permit to work.

(4) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* who is:

(a) Under eighteen years of age; or

(b) Eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(5) "Grandparent" means a parent of a parent of an employee.

(6) "Parent" means a biological or adoptive parent of an employee or an individual who stood *in loco parentis* to an employee when the employee was a child.

(7) "Parent-in-law" means a parent of the spouse of an employee.

(8) "Sick leave or other paid time off" means time allowed under the terms of an appropriate collective bargaining agreement or employer policy, as applicable, to an

employee for illness, vacation, and personal holiday. (~~It does not include any benefit which includes leave granted by short term or long term disability plans or policies.~~) If paid time is not allowed to an employee for illness with a sick leave or pay benefit, "sick leave or other paid time off" also means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for disability. A disability plan, fund, program or practice is excluded if it is covered by the Employee Retirement Income Security Act (ERISA) of 1974, 29 U.S.C. Sec. 1001 et seq.; and those established or maintained through the purchase of insurance.

(9) "Spouse" means a husband or wife, as the case may be.

(10) "Health condition that requires treatment or supervision" includes:

(a) Any medical condition requiring treatment or medication that the child cannot self administer;

(b) Any medical or mental health condition which would endanger the child's safety or recovery without the presence of a parent or guardian; or

(c) Any condition warranting treatment or preventive health care such as physical, dental, optical or immunization services, when a parent must be present to authorize and when sick leave may otherwise be used for the employee's preventive health care.

(11) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment or recovery in connection with such inpatient care; or that involves continuing treatment by or under the supervision of a health care provider or a provider of health care services and which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities).

(12) "Emergency condition" means a health condition that is a sudden, generally unexpected occurrence or set of circumstances related to one's health demanding immediate action, and is typically very short term in nature.

(13) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(14) "Physical or mental disability" means a physical or mental impairment that limits one or more activities of daily living or instrumental activities of daily living.

(15) "Infraction" means an alleged violation of RCW 49.12.270 through 49.12.295 as cited by the department.

(16) "Administrative law judge" means any person appointed by the chief administrative law judge, as defined in RCW 34.12.020(2) to preside at contested cases convened under RCW 49.12.270 through 49.12.295.

(17) "Department" means the department of labor and industries.

WSR 06-03-118

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 17, 2006, 4:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-13-127.

Title of Rule and Other Identifying Information: WAC 388-105-0035 What are the requirements for a capital add-on rate for assisted living facilities (ALF)?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on February 21, 2006, at 10:00 a.m.

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

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 21, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the amendment of existing WAC 388-105-0035 to limit eligibility for a capital add-on rate to assisted living (AL) facilities that meet the construction requirements specified in WAC 388-105-0035 or 388-110-140 (2)(a) and (3). This amendment adds the requirement that the AL contractor must attest in writing that its facility meets the specified construction requirements of WAC 388-105-0035. If there is no attestation, then the AL contractor must meet the construction requirements of WAC 388-110-140 (2)(a) and (3).

Further, this amendment adds the requirement that the AL contractor must place Medicaid clients in units that meet the construction requirements of WAC 388-105-0035 or 388-110-140 (2)(a) or (3).

Reasons Supporting Proposal: Unless the department adopts a change to WAC 388-105-0035, then AL facilities that are comparable to newly constructed AL facilities would be excluded from consideration for a capital add-on rate. This could result in limiting access of Medicaid clients to the better AL facilities. Limiting access would be contrary to the public interest in ensuring the health, safety and general welfare of the public that depends on Medicaid to pay for their care in AL facilities.

Statutory Authority for Adoption: Chapter 74.39A RCW.

Statute Being Implemented: Chapter 74.39A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Patricia Hague, Aging and Disability Services Administration, 640 Woodland Square Loop S.E., Lacey, WA 98503, (360) 725-2447; Implementation and Enforcement: Dick Rosage, (360) 725-2442.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3) and 34.05.310 (4)(f), the department is exempt from preparing a small business economic impact statement. These rules set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vi), the department is exempt from preparing a cost-benefit analysis. These rules set or adjust fees or rates pursuant to legislative standards.

January 11, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-22-058, filed 10/31/02, effective 12/1/02)

WAC 388-105-0035 (~~What are the~~) **Requirements for a capital add-on rate for licensed boarding homes contracted to provide assisted living ((facilities (ALF)?) (AL) services.** (1) ((Effective July 1, 2002:)) (a) To the extent of available funding, the department will grant a capital add-on rate to ((an ALF)) AL contractors that ((:

(a) Meets)) have a Medicaid occupancy percentage that equals or exceeds the applicable biyearly Medicaid minimum occupancy percentage set in accordance with subsection (3) of this section and meet the construction requirements ((of WAC 388-110-140; and))

((b) Has a Medicaid occupancy percentage that equals or exceeds the applicable biyearly Medicaid minimum occupancy percentage set in accordance with subsection (3) of this section.)) in subsection (4) of this section.

(2) The department will determine an ((ALF's)) AL contractor's Medicaid occupancy percentage by dividing its Medicaid resident days by the product of all its licensed boarding home beds irrespective of use times calendar days for the six-month period beginning one year prior to the percentage effective date.

(3)(a) To set the biyearly Medicaid minimum occupancy percentage, the department will:

(i) Determine the estimated total budgeted funds for capital add-on rates for the six-month period;

(ii) Rank from highest to lowest the individual ((ALF)) AL contractor occupancy percentages determined in accordance with subsection (2) of this section;

(iii) Assign, beginning with the highest ((ALF)) AL contractor's Medicaid occupancy percentage, the estimated

expenditure needed to pay the capital add-on rate to each facility for the six-month period;

(iv) Identify the ((ALF)) AL contractor's Medicaid occupancy percentage at which the estimated total budgeted funds determined under subsection (3)(a)(i) of this section would be expended; and

(v) Set that Medicaid occupancy percentage as the biyearly Medicaid minimum occupancy percentage.

(b) The biyearly Medicaid minimum occupancy percentage will be set every January 1 and July 1.

(4) To receive a capital add-on rate, the AL contractor that meets the Medicaid minimum occupancy percentage established in accordance with subsection (2) and (3) of this section must:

(a) Attest in writing that it has units that meet the following requirements and that it places Medicaid residents in such units, except the contractor need only place the Medicaid resident in a room with a roll-in shower when the resident's service plan and assessment details require the Medicaid resident to have a roll-in shower:

(i) A private apartment-like unit of two hundred and twenty square feet that may include counters, closets and built-ins, but must exclude the bathroom;

(ii) A separate private bathroom that includes a sink, toilet, and a shower or bathtub. The licensed boarding home must have a minimum of one wheelchair accessible bathroom with a roll-in shower of at least forty-eight inches by thirty inches for every two residents whose care is partially or fully funded by Medicaid;

(iii) A lockable entry door;

(iv) A kitchen area equipped with a refrigerator, microwave oven or stove top; a counter surface of a minimum of thirty inches wide by twenty-four inches in depth, a maximum height of thirty-four inches, and a knee space beneath at least twenty-seven inches in height; a storage space for utensils and supplies; and

(v) A living area wired for telephone and television service when available in the geographic location; or

(b) When the AL contractor does not have units that meet the requirements of subsection (4)(a) of this section, then the AL contractor may receive a capital add-on rate when its AL facility meets the definition of "new boarding home" in WAC 388-110-140 (2)(a) or its AL facility is "grandfathered" under WAC 388-110-140(3).

WSR 06-03-119

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 17, 2006, 4:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-13-127.

Title of Rule and Other Identifying Information: Chapter 388-105 WAC, Medicaid rates for contracted home and community residential care services. Amending WAC 388-

105-0005 What are the daily Medicaid payment rates for contracted adult family homes (AFH), adult residential care (ARC), and enhanced adult residential care (EARC) services?, 388-105-0045 Bed or unit hold Medicaid resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home with an adult residential care services (ARC), enhanced adult residential care services (EARC), or assisted living services (AL) contract; and repealing WAC 388-105-0010, 388-105-0015, 388-105-0020, 388-105-0025, 388-105-0030, and 388-105-040.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on February 21, 2006, at 10:00 a.m.

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

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98054, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 21, 2006.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments to chapter 388-105 WAC to:

- Update the home and community residential rates from the four level payment system to the comprehensive assessment reporting evaluation (CARE) payment levels and to reflect the vendor rate increases of July 1, 2005; and
- Amend the bed hold section to clarify the requirements for third-party payment and no payment for an absence less than twenty-four hours.

Reasons Supporting Proposal: To codify increases in rates; limitation on third-party payments for bed holds; and clarify when an absence makes a bed eligible for a bed hold payment. The subject matter in rules repealed in this proposal are not incorporated in chapter 388-106 WAC, or in the amended rules in this proposal, making the repealed sections obsolete.

Statutory Authority for Adoption: Chapter 74.39A RCW.

Statute Being Implemented: Chapter 74.39A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Patricia Hague, 640 Woodland Square Loop S.E., Lacey, WA 98503, (360) 725-2447; Implementation and Enforcement: Richard Rosage, 640 Woodland Square Loop S.E., Lacey, WA 98503, (360) 725-2442.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The amendments to chapter 388-105 WAC are exempt from a small business economic

impact statement under RCW 19.85.025(3) and 34.05.310 (4)(e), rules the content of which is explicitly and specifically dictated by statute; and (f) rules that set or adjust fees or rates pursuant to legislative standards.

The amendments to chapter 388-105 WAC set Medicaid payment rates for residential care facilities pursuant to chapter 74.39A RCW. RCW 74.39A.030(1) To the extent of available funding, the department shall expand cost-effective options for home and community services for consumers for whom the state participates in the cost of their care... and subsection (3)(a) The department shall by rule establish payment rates for home and community services that support the provision of cost-effective care.

WAC 388-105-0045 repeats the requirements of RCW 18.20.290 and exists solely to include adult family homes in the bed hold program.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vi), rules that set or adjust fees or rates pursuant to legislative standards are exempt from RCW 34.05.328. The amendments to chapter 388-105 WAC set Medicaid payment rates for residential care facilities pursuant to chapter 74.39A RCW. RCW 74.39A.030(1) To the extent of available funding, the department shall expand cost-effective options for home and community services for consumers for whom the state participates in the cost of their care... and subsection (3)(a) The department shall by rule establish payment rates for home and community services that support the provision of cost-effective care.

Under RCW 34.05.328 (5)(b)(v) Rules the content of which is explicitly and specifically dictated by statute. WAC 388-105-0045 repeats the requirements of RCW 18.20.290 and exists solely to include adult family homes in the bed hold program.

The repealed rules in this proposal are not considered significant legislative rules. The subject matter of the repealed sections are incorporated in chapter 388-106 WAC or in the amended sections in this proposal.

January 11, 2006

Andy Fernando, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-09-092, filed 4/20/04, effective 5/21/04)

WAC 388-105-0005 (~~What are~~) The daily Medicaid payment rates for (~~contracted~~) clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH)(~~g~~) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services(~~g~~). For contracted AFH(~~g~~) and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a Medicaid resident:

((Four level payment system rates for AFHs, ARCs, & EARCs

Care Levels	Non-metropolitan	Metropolitan*	King Co.
Level 1	\$ 45.70	\$ 44.43	\$ 44.43
Level 2	\$ 48.65	\$ 50.89	\$ 56.34
Level 3	\$ 56.32	\$ 58.76	\$ 65.01
Level 4	\$ 67.75))	\$ 71.67	\$ 77.91))

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE

KING COUNTY

CARE CLASSIFICATION	AL		ARC	EARC	AFH
	Without Capital	With Capital			
	Add-on	Add-on			
A Low (1)	\$64.02	\$69.03	\$45.27	\$45.27	\$45.90
A Med (2)	\$69.32	\$74.33	\$51.37	\$51.37	\$52.09
A High (3)	\$77.78	\$82.78	\$65.61	\$65.61	\$58.28
B Low (4)	\$64.02	\$69.03	\$45.27	\$45.27	\$45.90
B Med (5)	\$71.44	\$76.45	\$57.47	\$57.47	\$58.28
B High (6)	\$85.18	\$90.19	\$73.75	\$73.75	\$66.52
C Low (7)	\$69.32	\$74.33	\$51.37	\$51.37	\$52.09
C Med (8)	\$77.78	\$82.78	\$65.61	\$65.61	\$66.52
C High (9)	\$96.83	\$101.84	\$85.96	\$85.96	\$87.15
D Low (10)	\$71.44	\$76.45	\$57.47	\$57.47	\$66.52
D Med (11)	\$77.78	\$82.78	\$65.61	\$65.61	\$74.78
D High (12)	\$96.83	\$101.84	\$85.96	\$85.96	\$87.15

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE

METROPOLITAN COUNTIES*

CARE CLASSIFICATION	AL		ARC	EARC	AFH
	Without Capital	With Capital			
	Add-on	Add-on			
A Low (1)	\$58.73	\$63.28	\$45.27	\$45.27	\$45.90
A Med (2)	\$61.91	\$66.45	\$49.33	\$49.33	\$50.03
A High (3)	\$75.67	\$80.22	\$62.56	\$62.56	\$55.18
B Low (4)	\$58.73	\$63.28	\$45.27	\$45.27	\$45.90
B Med (5)	\$67.20	\$71.75	\$54.42	\$54.42	\$55.18
B High (6)	\$83.07	\$87.62	\$69.69	\$69.69	\$63.43
C Low (7)	\$61.91	\$66.45	\$49.33	\$49.33	\$50.03
C Med (8)	\$75.67	\$80.22	\$62.56	\$62.56	\$63.43
C High (9)	\$93.65	\$98.20	\$79.85	\$79.85	\$80.97
D Low (10)	\$67.20	\$71.75	\$54.42	\$54.42	\$63.43
D Med (11)	\$75.67	\$80.22	\$62.56	\$62.56	\$70.65
D High (12)	\$93.65	\$98.20	\$79.85	\$79.85	\$80.97

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

<u>COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE</u>					
<u>NON-METROPOLITAN COUNTIES**</u>					
<u>CARE CLASSIFICATION</u>	<u>AL</u>		<u>ARC</u>	<u>EARC</u>	<u>AFH</u>
	<u>Without Capital</u>	<u>With Capital</u>			
	<u>Add-on</u>	<u>Add-on</u>			
<u>A Low (1)</u>	<u>\$57.68</u>	<u>\$62.52</u>	<u>\$45.27</u>	<u>\$45.27</u>	<u>\$45.90</u>
<u>A Med (2)</u>	<u>\$61.91</u>	<u>\$66.75</u>	<u>\$48.32</u>	<u>\$48.32</u>	<u>\$49.00</u>
<u>A High (3)</u>	<u>\$75.67</u>	<u>\$80.51</u>	<u>\$61.55</u>	<u>\$61.55</u>	<u>\$54.15</u>
<u>B Low (4)</u>	<u>\$57.68</u>	<u>\$62.52</u>	<u>\$45.27</u>	<u>\$45.27</u>	<u>\$45.90</u>
<u>B Med (5)</u>	<u>\$67.20</u>	<u>\$72.04</u>	<u>\$53.41</u>	<u>\$53.41</u>	<u>\$54.16</u>
<u>B High (6)</u>	<u>\$83.07</u>	<u>\$87.91</u>	<u>\$67.65</u>	<u>\$67.65</u>	<u>\$62.41</u>
<u>C Low (7)</u>	<u>\$61.91</u>	<u>\$66.75</u>	<u>\$48.32</u>	<u>\$48.32</u>	<u>\$49.00</u>
<u>C Med (8)</u>	<u>\$75.67</u>	<u>\$80.51</u>	<u>\$61.55</u>	<u>\$61.55</u>	<u>\$62.41</u>
<u>C High (9)</u>	<u>\$93.65</u>	<u>\$98.49</u>	<u>\$76.80</u>	<u>\$76.80</u>	<u>\$77.88</u>
<u>D Low (10)</u>	<u>\$67.20</u>	<u>\$72.04</u>	<u>\$53.41</u>	<u>\$53.41</u>	<u>\$62.41</u>
<u>D Med (11)</u>	<u>\$75.67</u>	<u>\$80.51</u>	<u>\$61.55</u>	<u>\$61.55</u>	<u>\$68.59</u>
<u>D High (12)</u>	<u>\$93.65</u>	<u>\$98.49</u>	<u>\$76.80</u>	<u>\$76.80</u>	<u>\$77.88</u>

** Non-Metropolitan Counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

AMENDATORY SECTION (Amending WSR 04-09-092, filed 4/20/04, effective 5/21/04)

WAC 388-105-0045 Bed or unit hold Medicaid resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home with an adult residential care services (ARC), enhanced adult residential care services (EARC), or assisted living services (AL) contract. (1) When an AFH, ARC, EARC, or AL contracts to provide services under chapter 74.39A RCW, the AFH, ARC, EARC, and AL ((~~provider~~) contractor) must hold a Medicaid eligible resident's bed or unit when:

- (a) Short-term care is needed in a nursing home or hospital;
- (b) The resident is likely to return to the AFH, ARC, EARC, or AL; and
- (c) Payment is made under subsection (3) of this section.

(2) When the department pays the ((~~provider~~) contractor) to hold the Medicaid resident's bed or unit during the resident's short-term nursing home or hospital stay, the ((~~provider~~) contractor) must hold the unit or bed for up to twenty days. A Medicaid resident's discharge from an AFH, ARC, EARC, or an AL facility for a short term stay in a nursing home or hospital must be longer than twenty-four hours before subsection (3) of WAC 388-105-0045 applies.

(3) The department will compensate the ((~~provider~~) contractor) for holding the bed or unit for the:

- (a) First through seventh day at seventy percent of the daily rate paid for care of the resident before the hospital or nursing home stay; and
- (b) Eighth through the twentieth day, at ten dollars and ((~~forty-three~~) seventy-eight) cents a day.

(4) The AFH, ARC, EARC, or AL facility may seek third-party payment to hold a bed or unit for twenty-one days

or longer. The third-party payment shall not exceed the Medicaid daily rate paid to the facility for the resident. If third-party payment is not available and the returning Medicaid resident continues to meet the admission criteria under chapter 388-71 and/or 106 WAC, then the Medicaid resident may return to the first available and appropriate bed or unit.

(5) The department's social worker or case manager determines whether the:

- (a) ((~~Care given~~) Stay) in a nursing home or hospital will be short-term; and
- (b) Resident is likely to return to the AFH, ARC, EARC, or AL facility.

(6) When the resident's stay in the hospital or nursing home exceeds twenty days or the department's social worker or case manager determines that the Medicaid resident's stay in the nursing home or hospital is not short-term and the resident is unlikely to return to the AFH, ARC, EARC, or AL facility, then ((~~this~~) only subsection (4) of this section) ((~~does not apply~~) applies) to any private contractual arrangements that the ((~~provider~~) contractor) may make with a third party in regard to the discharged resident's unit or bed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-105-0010 What are care levels?
- WAC 388-105-0015 How does the department determine whether the Medicaid resident needs assistance in completing ADLs and/or has unmet care needs?

- WAC 388-105-0020 How does the department determine at which care level the Medicaid resident will be placed?
- WAC 388-105-0025 How many ADL values and unmet care need points correspond to the four care levels?
- WAC 388-105-0030 What are the daily Medicaid payment rates for contracted assisted living facilities (AL) not receiving a capital rate add-on?
- WAC 388-105-0040 What are the daily capital add-on rates for assisted living facilities (AL) and the AL daily payment rates with a capital add-on rate?

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

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Marcia Riggers, Office of Superintendent of Public Instruction, (360) 725-5175; and Enforcement: Allan J. Jones, Office of Superintendent of Public Instruction, (360) 725-6120.

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

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

January 13, 2006
Marty Daybell
for Dr. Terry Bergeson

WSR 06-03-121
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed January 17, 2006, 4:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-11-055.

Title of Rule and Other Identifying Information: Chapter 392-153 WAC, Traffic safety education, revisions to this chapter need to be made in response to legislative changes regarding the traffic safety education regulations.

Hearing Location(s): Office of Superintendent of Public Instruction, Brouillet Conference Room, 600 South Washington Street, Olympia, WA 98504, on March 15, 2006, at 2:00.

Date of Intended Adoption: March 15, 2006.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504-7200, e-mail ajjones@ospi.wednet.edu, fax (360) 586-6124, by March 10, 2006.

Assistance for Persons with Disabilities: Contact Joie Erickson by March 10, 2006, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: References to OSPI oversight of commercial driving schools have been eliminated, language has been changed to provide updated terminology and clarification, teacher and instructor qualifications have been modified to provide easier continuation of certification or endorsement, greater flexibility for school districts has been provided in the structure of TSE courses, and the behind the wheel training requirement has been increased from four hours to six hours to align with industry standards.

Statutory Authority for Adoption: Chapter 28A.220 RCW, RCW 46.20.100.

AMENDATORY SECTION (Amending WSR 01-16-003, filed 7/18/01, effective 8/18/01)

WAC 392-153-001 Authority and purpose. RCW 28A.220.030 (~~and 46.20.100~~) authorizes the superintendent of public instruction to adopt rules and regulations governing the operation (~~and scope of the~~) of public and private school traffic safety education programs and to monitor the quality of the programs (~~and carry out the purpose of this chapter regarding all public, commercial, and private traffic safety programs~~) offered. This chapter specifies the requirements to obtain a traffic safety education endorsement or conditional certificate and the approval requirements for public and private school traffic safety education programs. The endorsement and conditional certificate requirements in this chapter are in addition to those specified in chapter 180-79A WAC.

AMENDATORY SECTION (Amending WSR 01-16-003, filed 7/18/01, effective 8/18/01)

WAC 392-153-010 Definitions. (1) A "traffic safety education course" (~~means a course of instruction in traffic safety education approved by the superintendent of public instruction, and for commercial driving schools teaching students between fifteen and eighteen years of age, licensed and approved by the department of licensing, which shall~~) consists of two phases: Classroom instruction and laboratory experience (~~which shall be concurrent and integrated~~).

(2) "~~Classroom instruction~~" means that portion of a traffic safety education course, based in a classroom environment, which is characterized by student learning under the management of a qualified teacher or teachers. ~~Such classroom instruction shall consist of not less than thirty hours of teacher contact time in a classroom setting and where direct instruction, or teacher-led activities, does not constitute less than fifty percent of the classroom instruction.~~

(3) "~~Laboratory experience~~" shall mean that portion of a traffic safety education course, covering motor vehicle operation under real or simulated conditions, characterized by student learning experiences arising from use of simulation equipment, an off-street multiple car driving range, and/or on-street driving experience in a dual-controlled car under the direction of a teacher.

(4) A "qualified teacher of traffic safety education" shall mean an instructor certificated under the provisions of chapter 28A.410 RCW and certificated by the superintendent of public instruction to teach either the classroom phase or the laboratory phase of the traffic safety education course, or both, under regulations promulgated by the superintendent. Provided, That the laboratory phase of the traffic safety education course may be taught by instructors certificated under rules promulgated by the superintendent of public instruction, exclusive of any requirement that the instructor be certificated under the provisions of chapter 28A.410 RCW. Commercial instructors certificated under the provisions of chapter 46.82 RCW, and participating in this program, shall be subject to qualification requirements jointly adopted by the superintendent of public instruction and the director of). Laboratory experience is primarily characterized by student on-street driving, but includes simulator and multiple car driving range experience.

(2) A "satisfactory driving record" means an official record from the Washington state department of licensing and/or the corresponding licensing jurisdiction of the teacher's state of residence for the previous five-year period showing all departmental actions and:

(a) Not more than one moving traffic violation within the preceding twelve months or more than two moving traffic violations in the preceding twenty-four months;

(b) No alcohol related traffic violation, conviction or infraction, including any deferred prosecution program resulting from such violation;

(c) No driver's license suspension, cancellation, revocation or denial within the preceding three years.

(3) "School district" includes, for the purpose of this chapter, education service districts and private schools approved under chapter 180-90 WAC.

(4) A "completion certificate" is a document provided by the superintendent of public instruction that indicates successful completion of an approved school district traffic safety program and is used to verify such completion to the department of licensing.

(5) "Course work" means credits ((normally 100 level or above) awarded by a regionally accredited institution as defined in WAC 180-78A-010(6) or continuing education credit pursuant to chapter 180-85 WAC) and/or a combination of credits and professional development approved by the superintendent of public instruction as traffic safety professional ((growth for the betterment of the teacher's instructional ability. Definition of "course work" shall apply when applying for conditional renewals and continuing education.

(6) "Certification of parent involvement" means where a parent, guardian, or employer has verified in writing to the department of licensing that the driver license applicant, under eighteen years of age (as of 7/1/2001) has had at least fifty hours of guided practice driving experience, ten of which were at night, during which the driver was supervised by a person at least twenty-one years of age who has had a valid driver's license for at least five years.

(7) "Implementation of guided practice" means the process which traffic safety personnel provides information on models for adult guided practice. This may include school policy on the requirement and delivery of guided practice.

(8)) development.

(6) "Curriculum guide" means a locally written curriculum, available to and used by each teacher in the traffic safety education program.

(7) "Clock hour" of course work or instruction is defined as not less than sixty minutes of student instruction time.

((9) "Teacher trainer" is a person who has completed course work approved by the office of the superintendent of public instruction in teacher preparation for traffic safety education.))

AMENDATORY SECTION (Amending WSR 01-16-003, filed 7/18/01, effective 8/18/01)

WAC 392-153-014 ((State certificate of) Program approval ((of traffic safety education programs)). ((+)) School districts are required to apply annually to the superintendent of public instruction ((shall approve)) for approval of their traffic safety education program((s on an annual basis. Only programs meeting the requirements of this chapter shall be approved)). Only approved programs ((shall be)) are entitled to provide completion certificates ((for issuance)) to students ((under eighteen years of age for completing an approved traffic safety program.

(2) Upon an annual review for program approval, current traffic safety education programs and program applicants will receive notification of program approval status)). In order for a traffic safety education program to be approved, the school district must:

(1) Provide the name and contact information of the program administrator;

(2) Provide the names of all traffic safety education instructors; and

(3) Provide verification of compliance with the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 01-16-003, filed 7/18/01, effective 8/18/01)

WAC 392-153-020 ((Teacher qualifications.)) Traffic safety education endorsement. (1) If you are a teacher certificated under provisions of chapter 28A.410 RCW ((shall be eligible to be endorsed or receive a)), you can qualify for a traffic safety endorsement or letter of authorization issued by the superintendent of public instruction to teach the classroom or laboratory phases ((of the traffic safety education program if he/she possesses)) if you meet the following ((qualifications in addition to those required under chapter 28A.410 RCW)) requirements:

(a) Possess((es)) a valid Washington state driver's license (or a valid license issued by ((an adjacent)) another state provided ((the person is)) you are a legal resident of ((the adjacent)) that state ((and is employed by a Washington school district, commercial or private school)).

(b) Provide((s)) a ((complete record(s) or complete abstract)) current satisfactory driving record to the employing school district ((or commercial or private school,)) on an annual basis ((from the Washington state department of licensing and/or other driver licensing jurisdiction for a five-year period showing:

(i) Not more than one moving traffic violation within the preceding 12 months or more than two moving traffic violations in the preceding 24 months;

(ii) No alcohol related traffic violation, conviction or infraction within the preceding five years;

(iii) No driver's license suspension, cancellation, revocation or denial within the preceding three years.

(c) Verification by the employing school district, private or commercial driving school that the applicant complies with all of the requirements for teaching traffic safety education as set forth in this chapter.

(d) Has completed 12).

(c) Complete twelve quarter hours ((8)) eight semester hours) of approved course work ((from a regionally accredited institution as defined in WAC 180-78A-010(6) and as approved by the office of the superintendent of public instruction.

(e) Possesses a valid traffic safety education endorsement issued by the superintendent of public instruction).

(d) Provide verification to the office of the superintendent of public instruction that the employing school district has determined that you comply with all of the requirements set forth in this chapter.

(2) ((Any person)) If you were endorsed by the superintendent of public instruction to teach traffic safety education in the state of Washington prior to May 27, 1969, and ((who possesses)) you possess a conditional certificate but ((does)) do not hold a valid teaching certificate ((required by WAC 392-153-010(4), shall)) under chapter 28A.410 RCW, you can continue to be qualified to teach both classroom and laboratory phase ((of traffic safety education in this state on the condition that he or she renew such conditional certificate on a two-year basis and maintain a satisfactory driving record as set forth above in WAC 392-153-020 (1)(a) and (1)(b). Such endorsed person must fulfill all requirements relating to continuing education)) provided you continue to meet all conditional certificate requirements.

(3) The course work requirement ((for certificated teachers endorsed in)) to maintain a traffic safety education ((shall be)) endorsement or letter of approval is forty clock hours every five years ((or equivalent college credit in traffic safety education)).

AMENDATORY SECTION (Amending WSR 01-16-003, filed 7/18/01, effective 8/18/01)

WAC 392-153-021 Conditional ((instructor qualifications)) traffic safety education certificates—Behind the wheel or classroom. (1) ((The behind-the-wheel conditional course is to be taught by a regionally accredited college as defined in WAC 180-78A-010(6), state approved teacher training program, or teacher trainer approved by the superintendent of public instruction.

(2) The laboratory phase of the traffic safety education course may be taught by a commercial instructor licensed by the department of licensing pursuant to chapter 46.82 RCW or an instructor who, although not certificated pursuant to chapter 28A.410 or 46.82 RCW, serves under the supervision of the Washington state school district traffic safety educa-

tion program coordinator or his/her designee and who meets the following qualifications:

(a) Possesses a valid Washington state driver's license.

(b) Is at least twenty-one years of age.

(c) Has at least five years of driving experience.

(d) Holds a high school diploma or its equivalent.

(e) Provides a complete record(s) or complete abstract, to the employing school district, commercial, or private school, on an annual basis from the Washington state department of licensing and/or other driver licensing jurisdiction for a five-year period as set forth in WAC 392-153-020.

(f) Provides evidence of the following:

(i) Completion of at least sixty hours of course work as defined in WAC 392-153-010(5) in the field of driving instruction taught by a teacher-trainer as approved by the office of the superintendent of public instruction and the department of licensing;

(ii) Completion of behind-the-wheel supervised practice in instructing;

(iii) A request for a certificate from a school district or private school superintendent or designee, or from a commercial school owner approved by the office of the superintendent of public instruction that wishes to employ the instructor.

(g) Passes practical and knowledge examinations developed and administered by the department of licensing and required under provisions of chapter 46.82 RCW for commercial instructors.

(h) Provides evidence to an agent approved by the office of the superintendent of public instruction of the following instructional competencies:

(i) Uses teaching methods which allow for individual student driving abilities, reduces student anxieties, and involves backseat observers;

(ii) Communicates clearly, using appropriate technical vocabulary;

(iii) Establishes, utilizes and/or follows teaching lesson plans, selects routes for behind-the-wheel lessons and conducts student learning activities from simple to complex which correspond with the learner's mental, physical and emotional performance capabilities in coordination with classroom activities;

(iv) Maintains a position within the vehicle for awareness of the traffic environment and utilizes visual skills and physical control instruments to maintain safety and facilitate instruction;

(v) Applies uniform evaluation criteria in assessing needs and progress of students during and after each lesson and gives appropriate prescription for additional driving experience and/or parent guided practice.

(i) Persons desiring to teach in the simulator or on the multiple car driving range shall provide evidence of having completed an additional thirty hours of course work as defined by WAC 392-153-010(5) which includes supervised practice in instructing in each area as approved by the office of the superintendent of public instruction and the department of licensing. Provided, That a person who holds a valid certificate under the provisions of chapter 28A.410 RCW and meets the requirements for traffic safety certification set forth under WAC 392-153-020(1) who is employed as a condition-

ally certificated person shall not be required to meet any of the requirements set forth in WAC 392-153-020(3).

(3) The superintendent of public instruction may issue the conditional certificate to any person who completes all course work, and complies with chapter 180-79A WAC. An applicant must meet all the requirements set forth in WAC 392-153-020 (2) or (3) for certification as an instructor of the laboratory phase of traffic safety education and provide evidence to an agent approved by the office of the superintendent of public instruction of the following instructional competencies listed in WAC 392-153-020.

(4) The classroom conditional teacher training course is to be taught by a regionally accredited college as defined in WAC 180-78A-010(6), state approved teacher training program, or teacher trainer approved by the superintendent of public instruction.

(5) Conditional certificates issued to teach the laboratory phase of traffic safety education under provisions of chapter 392-153 WAC shall be valid for two years or less and only for the activity specified. Reissuance of such certificates shall be subject to the following requirements:

(a) Verification of employment or intent to employ;

(b) Verification of a satisfactory driving record as outlined in WAC 392-153-020;

(c) Verification of having completed sixty clock hours of course work since the issuance of the most recent certificate as approved by the employing school district or employing driving school in accordance with WAC 392-153-010(5).

(6) The conditional certificate fee and requirements shall be in accordance with chapter 180-79A WAC.

(7) When no person with regular certification endorsed in traffic safety education is available as verified by the school district or education service district or commercial school, the classroom phase may be taught by an instructor licensed by the department of licensing and who holds or has held a conditional certificate from the superintendent of public instruction and meets the following qualifications:

(a) Possesses a valid Washington state driver's license.

(b) Is at least twenty-one years of age.

(c) Has at least five years of driving experience.

(d) Holds a high school diploma or its equivalent.

(e) Provides a complete record or records from the Washington state department of licensing and/or other driver licensing jurisdiction for a five-year period showing a satisfactory driving record as set forth in subsection (2)(e) of this section.

(f) Provides evidence of the following: Provides evidence to an agent approved by the office of the superintendent of public instruction of the following instructional competencies:

(i) Completion of at least 1,000 hours of behind the wheel teaching experience over a two-year period.

(ii) Completion of an eighty clock hours instructor training course is to be taught by a regionally accredited college as defined in WAC 180-78A-010(6), state approved teacher training program, or teacher trainer approved by the superintendent of public instruction.

(iii) The 80-hour instructor training course shall consist of not less than the following content areas: Teaching techniques, classroom management, use of technology and

media, course content covering WAC 392-153-032, student evaluation, classroom teaching experience and writing lesson plans.

(iv) A recommendation for a classroom conditional certificate from the school district superintendent or designee, private school administrator or designee, or the commercial school owner.

(8) Certificates issued to teach the classroom phase of traffic safety education under provisions of chapter 392-153 WAC shall be valid for two years or less and only for the activity specified. Reissuing of such certificates shall be subject to the following requirements:

(a) Verification of employment or intent to employ.

(b) Verification of a satisfactory driving record.

(c) Verification of having completed 60 hours of course work since the issuance of the most recent certificate as approved by the employing school district or employing commercial driving school in accordance with WAC 392-153-010(5).) If you are not a certificated teacher, you may be issued a behind the wheel conditional certificate by the superintendent of public instruction to teach the laboratory phase, provided you meet the following requirements:

(a) Complete a behind the wheel conditional certificate course approved by the superintendent of public instruction that includes supervised practice in instructing and demonstration of instructional competencies. You must also pass practical and knowledge examinations administered by an agent approved by the office of the superintendent of public instruction.

(b) Possess a valid Washington state driver's license (or a valid license from another state provided you are a resident of that state).

(c) Hold a high school diploma or its equivalent.

(d) Have at least five years of driving experience.

(e) Provide a current satisfactory driving record to the employing school district on an annual basis.

(f) Verify completion of at least sixty hours of course work within the previous two years.

(g) Provide verification to the office of the superintendent of public instruction that the employing school district has determined that you comply with all of the requirements set forth in this chapter.

(h) To teach using a simulator or on a multiple car driving range, you must provide evidence of having completed an additional thirty hours of course work which includes supervised practice in instructing using the designated method.

(2) If you are not a certificated teacher, you may be issued a classroom conditional certificate by the superintendent of public instruction to teach the classroom phase, provided you meet the following requirements:

(a) Possess a valid Washington state driver's license (or a valid license from another state provided you are a resident of that state).

(b) Provide a current satisfactory driving record to the employing school district on an annual basis.

(c) Complete at least one thousand hours of behind the wheel teaching experience within the last five years.

(d) Complete an eighty clock hour classroom instructor training course approved by the superintendent of public instruction.

(e) Provide verification to the office of the superintendent of public instruction that the employing school district has determined that you comply with all of the requirements set forth in this chapter.

(3) A behind the wheel or classroom conditional certificate is valid for two years or less. The superintendent of public instruction may reissue the conditional certificate if you provide verification that you continue to meet all requirements of this chapter, including having completed sixty hours of course work within the previous two years. However, for the purpose of reissue, the employing school district superintendent may approve up to forty-eight of the sixty hours, including approving credit for professional development courses or traffic safety education related projects.

(4) Conditional certificates are subject to suspension and revocation under the provisions of 180-79A WAC.

AMENDATORY SECTION (Amending WSR 01-16-003, filed 7/18/01, effective 8/18/01)

WAC 392-153-025 Traffic safety education vehicles.

((All vehicles loaned by an automobile dealer shall comply with subsections (1), (2), (3) and (4) of this section. District-owned vehicles shall comply with subsections (1), (2) and (4) of this section only.

(1) Equipment. Every vehicle used in on-street instruction shall)) Every vehicle used in on-street traffic safety education instruction shall:

(1) Be equipped with a dual control brake, rear view mirror for the instructor, and seat belts for each occupant.

(2) ((Signing. Every vehicle used in on-street instruction shall have a sign where the lettering and background colors shall be of contrasting shades so as to be clearly readable at one hundred feet in clear daylight. The sign shall be readable from the rear with normal vision from a safe following distance. The sign shall designate the vehicle as a traffic safety education vehicle or a vehicle driven by a student driver. The sign shall have letter size not less than two inches high.)) Have a sign clearly readable from the rear at one hundred feet designating the vehicle is driven by a student driver.

(3) ((Use. A traffic safety education vehicle shall)) Be used exclusively for traffic safety education purposes while the course is in session, if the vehicle is on loan from an automobile dealer.

(4) ((Inspection. Every vehicle used in the public, commercial and private traffic safety education program shall)) Pass a safety inspection ((requirement pursuant to)) according to the requirements of WAC 392-143-070 ((and 392-153-025. Commercial and private programs, in lieu of chapter 46.32 RCW, shall use the superintendent of public instruction approved self-inspection form unless providing a contracted service for the laboratory phase to a public school. The approved self-inspection form shall be submitted annually to the superintendent of public instruction for each vehicle used for behind the wheel instruction and shall be on file at the commercial or private driving school)).

AMENDATORY SECTION (Amending WSR 01-16-003, filed 7/18/01, effective 8/18/01)

WAC 392-153-032 ((Realistic level of effort.)) Curriculum guide and course requirements. (1) Each school district ~~((, private school, and commercial driving school shall have a locally written curriculum guide available to each teacher and such guide shall be used by each teacher in the traffic safety education program. A student shall not enroll in a traffic safety education class after classroom instruction has started. The exception is public school transferring students where there is a sufficient amount of time to complete traffic safety education instruction.~~

The student shall be taught at least the following program concepts: ~~Introduction to highway transportation system; preparing and controlling the vehicle; maneuvering in limited space; signs, signals, and pavement markings; vehicle characteristics; human functions used in driving; roadway variations; intersections; management of time and space; lane changes; passing; nonmotorized traffic; internal factors affecting driving performance; physical factors affecting driving performance; alcohol and drugs; vehicle maintenance; planning for travel; limited visibility; reduced traction; special driving conditions; vehicle malfunctioning; avoiding and minimizing impact; post-crash responsibilities; legal responsibilities; highway transportation system improvement; fuel conservation; and motorcycle awareness. The guide)) shall ((also)) include:~~

(a) ~~((The performance objectives appropriate for the area of instruction.)) The minimum concepts to be taught, which are: Introduction to highway transportation system; preparing and controlling the vehicle; maneuvering in limited space; signs, signals, and pavement markings; vehicle characteristics; human functions used in driving; roadway variations; intersections, which shall include highway-rail grade crossings; management of time and space; lane changes; passing; nonmotorized traffic; internal factors affecting driving performance, which shall include emotional and behavior issues; physical factors affecting driving performance, which shall include seatbelt usage and its benefits; alcohol and drugs; vehicle maintenance; planning for travel; limited visibility; reduced traction; special driving conditions; vehicle malfunctioning; avoiding and minimizing impact; post-crash responsibilities; legal responsibilities; highway transportation system improvement; fuel conservation; and motorcycle awareness.~~

(b) The methods of instruction used by the teacher in presenting the material ~~((where direct instruction does not constitute less than fifty percent of the classroom instruction as approved by the superintendent of public instruction)).~~

(c) The student ~~((activities that will enable a student to accomplish the)) performance objectives and ((to the extent possible allow for individual differences)) evaluation criteria.~~

(d) ~~((The level of competency each student is to successfully complete for each objective.~~

~~((The evaluation criteria for the classroom and laboratory phase.)) The activities that will enable a student to accomplish the objectives (while allowing for individual differences) and the required level of competency for each objective.~~

(e) Information on models for adult guided practice.

(f) A flow chart that indicates how the classroom and laboratory lessons are sequenced and integrated.

(g) Lesson plans, including driving routes for laboratory experience.

~~(2) ((A student enrolled in a traffic safety education program must have a valid driver's permit issued before or within seven days after the start date of the traffic safety education classroom instruction. A student shall meet the objectives and competencies listed in the district, private and commercial driving school curriculum guide, as approved by the office of the superintendent of public instruction, as a condition of successful completion of the traffic safety education program. Effective January 31, 2003, all completing students must pass a comprehensive written and driving test as verified by providing results of achieving a criteria of not less than eighty percent accuracy rate. Comprehensive written exams must be approved or provided by the superintendent of public instruction.~~

For the purposes of school district reporting and state reimbursement a completing student means a person under twenty-one years of age at the time of enrollment who has enrolled in an approved course and has met one of the following criteria:

~~(a) Has completed all the program objectives as required by the school district and approved by the state superintendent of public instruction and has received a passing grade; or~~

~~(b) Has received a failing grade after attending more than fifty percent of the program's scheduled classes but achieved less than ninety percent of the program objectives; or~~

~~(c) Has officially withdrawn, dropped, or transferred after attending more than fifty percent of the program's scheduled classes.~~

~~(3) A student taking the course more than once because of a failing grade on the first and subsequent attempts may be counted as a completing student for each attempt.~~

~~The traffic safety education course including the classroom and the laboratory phase shall be provided for students in a time period not to exceed eighteen school weeks nor be less than eight school weeks in length equaling not less than fifty-six days during the school year. Provided, That public, private, and commercial driving schools offering a summer school course must deliver an approved program that shall not be less than five weeks in length and equaling not less than thirty-five days in length. A minimum course of instruction is defined as not less than thirty hours of contact time in a classroom setting with a certified teacher and not less than four hours of actual driving behind the wheel. Where simulation and/or off-street multiple car driving ranges are utilized, not less than three hours of actual driving behind the wheel per student shall occur. When simulation instruction is used, four hours of instruction equates to one hour of actual driving. When multiple car off-street driving ranges are used for instruction, two hours of instruction equates to one hour of actual driving. In addition, the traffic safety education course shall:~~

~~(a) Provide students with no more than two hours of classroom instruction and one hour of on-street instruction during any twenty-four hour period. Where simulation and/or off-street multiple car driving ranges are utilized, not more than one additional hour per student per day shall be allowed.~~

~~(b) Provide laboratory instruction only to students who are currently participating in classroom instruction.~~

~~(c) Provide a course where any break time given shall not be counted as classroom sessions or instruction.~~

~~(d) Provide a course where any missed classroom sessions shall be made up with assignments and instruction which pertain to the missed lesson(s) according to WAC 392-153-035(2) and does not exceed maximum duration of program.~~

~~(e) Provide a course where a student shall not enroll in a traffic safety education class after classroom instruction has started. The exception is public school transferring students where there is a sufficient amount of time for completion of traffic safety education instruction.~~

~~(f) Provide a program where driving time is verified by the school's driving routes, lesson plans and student record cards.~~

~~(g) Provide not less than four hours of behind-the-wheel observation time to all students enrolled in a traffic safety education class.)~~ Each traffic safety education course shall include comprehensive written exams.

NEW SECTION

WAC 392-153-033 Student requirements. A student enrolled in a traffic safety education course must have a valid driver instruction permit issued before or within seven days after the start date of classroom instruction. A student shall meet the objectives and competencies listed in the curriculum guide prior to being issued a completion certificate.

AMENDATORY SECTION (Amending WSR 01-16-003, filed 7/18/01, effective 8/18/01)

WAC 392-153-035 Course scheduling requirements. (1) Any portion((s)) of a traffic safety education course may be taught after regular school hours or on Saturdays, as well as on regular school days or as a summer school course((—at the option of the school district.

~~(2) Classroom and laboratory instruction shall be offered concurrently. Classroom treatment of concepts, where applicable, shall be followed by laboratory treatment of those concepts before other concepts are introduced in the classroom portion of instruction in the traffic safety education course.~~

~~(3) Classroom and laboratory instruction shall be conducted during daylight hours. Provided, That such instruction may be extended to the hours of 8:00 p.m. during winter months even though darkness may occur prior to 8:00 p.m.: Provided further, That classroom instruction may be conducted at night for those students who are currently not enrolled in a high school but are otherwise eligible to attend or where the school district conducts one or more educational offerings at night for high school students))~~

(2) Students shall not have more than two hours of classroom and one hour laboratory instruction in any twenty-four hour period. Where simulation and/or off-street multiple car driving ranges are utilized, up to one additional hour per day is allowed.

(3) The minimum course of instruction is thirty hours of classroom instruction, six hours of driving experience and four hours of driving observation time. Break time shall not

be included in clock hours. Four hours of simulation instruction may be substituted for up to one hour driving experience. Two hours of multiple car off-street driving range time may be substituted for up to one hour of driving experience.

(4) Night driving ((~~experiences~~)) may be offered ((~~as a part of the traffic safety education course: Provided, That (a))~~) provided a student has previously completed ((~~sufficient~~)) daytime driving experience, and ((~~(b))~~) such night driving experience ((~~shall in no case~~)) does not exceed fifty percent of the student's total driving experience.

((~~On-street instruction shall be included in all programs.~~))

(5) ~~The traffic safety education course including the classroom and the laboratory phase shall be provided for students in a time period not to exceed eighteen school weeks nor be less than eight school weeks in length equaling not less than fifty-six days during the school year: Provided, That public school summer school course offerings, private and commercial driving schools offering an approved program shall not be less than five weeks in length and equaling not less than thirty-five days in length. A minimum course of instruction is defined as not less than thirty hours of contact time in a classroom setting with a certified teacher and not less than four hours of actual driving behind the wheel. Where simulation and/or off-street multiple car driving ranges are utilized, not less than three hours of actual driving behind the wheel per student shall occur. When simulation instruction is used, four hours of instruction equates to one hour of actual driving. When multiple car off-street driving ranges are used for instruction, two hours of instruction equates to one hour of actual driving. In addition, the traffic safety education course shall:~~

(a) ~~Provide students with no more than two hours of classroom instruction and one hour of on-street instruction during any twenty-four hour period. Where simulation and/or off-street multiple car driving ranges are utilized, not more than one additional hour per student per day shall be allowed.~~

(b) ~~Provide laboratory instruction only to students who are currently participating in classroom instruction.~~

(c) ~~Provide a course where any break time given shall not be counted as classroom sessions or instruction during a thirty-hour minimum classroom course offering.~~

(d) ~~Provide a course where any missed classroom sessions shall be made up with assignments and instruction which pertain to the missed lesson(s) according to WAC 392-153-035(2) and does not exceed maximum duration of program.~~

(e) ~~Provide a course where a student shall not enroll in a traffic safety education class after classroom instruction has started. The exception is public school transferring students where there is a sufficient amount of time for completion of traffic safety education instruction.~~

(f) ~~Provide a program where driving time is verified by the school's driving routes and lesson plans.~~

(g) ~~Provide not less than four hours of behind-the-wheel observation time to all students enrolled in a traffic safety education class.)~~

AMENDATORY SECTION (Amending WSR 01-16-003, filed 7/18/01, effective 8/18/01)

WAC 392-153-040 Administration. (((1) Each school district, private, or commercial driving school shall appoint a supervisor, coordinator, master teacher or other person to be in charge of the district's, private, or commercial driving school's traffic safety education program. The person appointed pursuant to this section shall be responsible for ensuring that the requirements of this chapter governing the operation of an approved traffic safety education course are adequately maintained on a continuing basis.

(2) Each school district, private, or commercial driving school shall adopt a written policy including, but not limited to,) Each school district offering an approved traffic safety education program shall:

(1) Appoint a person to be responsible for ensuring the program's continuing compliance with the requirements of this chapter.

(2) Adopt written policies including enrollment criteria, student fees, student fee refunds, failures, repeats, and ((~~for public schools written policies of~~)) access for part-time and home-based students.

(3) ((Each school district, private, or commercial driving school shall)) Maintain individual student records ((~~on forms provided by the superintendent of public instruction or an equivalent form approved by the superintendent of public instruction~~)) which include((s)) the student's progress, time ((~~involvement~~)) of instruction and evaluation results.

Records shall also include information ((~~pertaining to attendance, classroom and behind-the-wheel,~~)) and the starting and ending dates for the program. ((~~Time of instruction shall be included on student records. Records shall also include, for commercial and private traffic safety education programs, the office of the superintendent of public instruction teacher and instructor certificates which shall be posted in a conspicuous place at the location where instruction takes place. Registration of public school traffic safety education teacher and instructor certificates shall be referred to chapter 28A.410 RCW.~~))

(4) Each school district shall maintain accurate cost records as required by F-196, Part II, as now or hereafter amended and such further information and records as may be required by The Accounting Manual for Public School Districts of the State of Washington.

(5) Every school district, private, or commercial driving school is to submit in writing all reportable traffic safety education motor vehicle collisions and injury and fatality collisions to the superintendent of public instruction within forty-eight hours of occurrence.) (4) Ensure that any activity provided under a contract with a commercial driving school meets all the requirements of a public school program.

(5) Notify the superintendent of public instruction, in accordance with the provisions of chapter 180-79A WAC, of any instructor no longer meeting the requirements of WAC 392-153-010(2).

NEW SECTION

WAC 392-153-050 Discipline—Grounds for denial, reprimand, suspension, or revocation of program approval. A request for program approval may be denied or a program approval issued under this chapter may be suspended or revoked for failure to meet any of the minimum requirements set forth in this chapter.

NEW SECTION

WAC 392-153-060 Discipline—Emergency suspension. If the superintendent of public instruction finds that public health, safety, or welfare of students, instructors, teachers, or the general public is threatened or compromised and requires an emergency action, and incorporates a finding to that effect in its order, emergency suspension of the program approval may be ordered pending proceedings for revocation or other action. In all cases in this section, the superintendent of public instruction shall expedite all due process actions.

NEW SECTION

WAC 392-153-070 Discipline—Appeals—Adjudicative proceedings. Any school district may appeal a decision by the superintendent of public instruction to deny, suspend, or revoke a traffic safety education program approval, using the adjudicative proceedings in RCW 34.05.413 through 34.05.494 and the administrative practices and procedures in chapter 392-101 WAC.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-153-005	Purposes.
WAC 392-153-015	State reimbursement to school districts.
WAC 392-153-017	Reporting.
WAC 392-153-022	Discipline—Grounds for denial, reprimand, suspension, or revocation of certification endorsement or program approval.
WAC 392-153-023	Discipline—Emergency suspension.
WAC 392-153-024	Discipline—Appeals—Adjudicative proceedings.
WAC 392-153-045	Burden and standard of proof.

WSR 06-03-125**PROPOSED RULES****DEPARTMENT OF TRANSPORTATION**

[Filed January 18, 2006, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-147.

Title of Rule and Other Identifying Information: The proposal is an update to chapter 468-38 WAC with specific modifications/amendments to the following citations: WAC 468-38-070 (3)(c)(ii) and (iii), 468-38-075(3), 468-38-100 (1)(d), (g) and (15), 468-38-120 (6)(b) and (13), 468-38-175(6), 468-38-280 (3)(a), and 468-38-290 (3)(a).

Hearing Location(s): Transportation Building, Commission Board Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA, on February 27, 2006, at 9:00 a.m.

Date of Intended Adoption: February 27, 2006.

Submit Written Comments to: Barry Diseth, P.O. Box 47367, Olympia, WA 98504-7367, e-mail disethb@wsdot.wa.gov, fax (360) 705-7805 by February 22, 2006.

Assistance for Persons with Disabilities: Contact Jessica Alexander by February 22, 2006, TTY (360) 705-7796 or fax (360) 705-6808.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The general purpose is to update and correct the newly rewritten chapter.

Reasons Supporting Proposal: The modifications and amendments create a more complete document aiding in the administration and enforcement of the state's vehicle size and weight laws.

Statutory Authority for Adoption: RCW 46.44.090.

Statute Being Implemented: RCW 46.44.090.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The amendment chapter will have a relative seamless implementation due to the coordinated review with industry and enforcement prior to filing the document. There is no fiscal impact to any state or federal agency and no known negative impact to industry.

Name of Proponent: Washington state department of transportation, maintenance and operations, commercial vehicle services, governmental.

Name of Agency Personnel Responsible for Drafting: Barry Diseth, Tumwater Office Building, 7345 Linderson Way S.W., (360) 705-7805; Implementation: Jim Stuart, Tumwater Office Building, 7345 Linderson Way S.W., (360) 705-7987; and Enforcement: Captain Coral Estes, 210 11th Street, Olympia, WA, General Administration Building, (360) 753-0350.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposal meets several of the criteria stated in RCW 34.05.310(4).

A cost-benefit analysis is not required under RCW 34.05.328. There are no known added costs resulting from the implementation of the amended chapter.

January 12, 2006
John F. Conrad
Assistant Secretary
Engineering and
Regional Operations

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-070 Maximums and other criteria for special permits—Nondivisible. (1) **Are there maximum dimensions established for moving nondivisible over-dimensional vehicles and/or loads?** Yes. In all instances the general safety of the public is considered paramount and will ultimately govern over-dimensional moves. There are some general rules; however, physical barriers determine most maximums for over-dimensional moves. Over-dimensional maximums are addressed as follows:

(a) **Overwidth:** As stipulated in RCW 46.44.092, fourteen feet on any two-lane highway; twenty feet on any multiple-lane highway where a physical barrier serving as a median divider (i.e., jersey barrier, cyclone fence, guardrail, etc.) separates the oncoming and opposing traffic lanes; thirty-two feet on any multiple-lane undivided highway. Permits may be issued for widths in excess of the preceding limits when traveling on highway segments that by design can accommodate the greater width.

(b) **Overheight:** Any move involving height, especially permitted moves exceeding fourteen feet, are governed by the ability to clear overhead obstructions such as bridges, underpasses, wires, overhead signs, and other objects. The issuance of a permit does not insure the route to be free of overhead obstructions. It is the responsibility of the permit applicant to check, or prerun, the proposed route and provide for safe maneuvers around the obstruction or detours as necessary. Structures owned by the state should be reviewed with department field personnel to determine safe navigation of the move, including options for temporary removal of obstructions. Detours off the state route onto county or city roads require authorization from those jurisdictions. A traffic control plan (see WAC 468-38-405 (3)(d)) may be requested for approval by the department before a permit is issued.

(c) **Overlength:** Routes will be limited to over-dimensional moves based on ability to negotiate curves, interchanges, entrance and exit roadways and other obstacles.

(2) **Are there maximum weights established for moving nondivisible overweight vehicles and/or loads?** Yes. Weight maximums for the movement of a nondivisible load under special permit are established in RCW 46.44.091. In addition, tire loading for the movement of a nondivisible load is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire.

(3) **Are there maximums and/or other criteria established for the use of specific vehicle combinations when moving over-dimensional nondivisible loads?** Yes. The maximums for specific vehicle combinations are as follows:

(a) **Truck-tractor pulling a semi-trailer or full trailer:** Trailers in excess of legal length and/or width dimensions, or the permitted length of fifty-six feet, shall not exceed the length or width of the nondivisible load being transported. The department may grant an exception when the added dimension is necessary to spread the weight of the load to comply with requirements established by the department to protect the infrastructure. Jeeps and/or boosters may be added to the trailer to help distribute weight as necessary. A "pusher" power unit may also be added to the configuration upon approval of the department. Jeeps, boosters and pusher power units will be considered part of the trailing unit plus load measurement.

(b) **Truck-tractor pulling semi-trailer and full trailer (or two semi-trailers in B-train configuration):** The combined trailer length, including the space between trailers, may not exceed sixty-one feet. This combination is limited to nondivisible loads not to exceed ten feet wide. Both trailers may carry a nondivisible load, with the widest load carried on the first trailer. Trailers in excess of legal width shall not exceed the width of the nondivisible load being transported. This combination may not carry overheight, overlength or overweight loads.

(c) **Truck and trailer:** There are ~~((two))~~ three scenarios for this combination:

(i) **Both truck and trailer carrying loads:** The combined overall length of the combination when carrying a nondivisible overlength load must not exceed eighty-five feet. Any nondivisible overlength load is restricted to only one vehicle. The trailer may be loaded with the overhang entirely to the rear of the trailer, or the truck may be loaded with the overhang entirely to the front of the truck. Both truck and trailer may carry overwidth and overheight loads. The truck and/or trailer in this configuration may not carry an overweight nondivisible load.

(ii) **Unladen truck and trailer:** The unladen truck may be treated as a truck-tractor and the combination addressed as described in (a) of this subsection: Provided, That the truck-tractor is not carrying **any** load of any kind, and that its use as an unladen truck is specified on the special permit. The trailing unit is measured from the foremost point of the draw bar or load, whichever is greater, to the rearmost part of the trailer or load, whichever is greater. This combination may carry a nondivisible overweight load on the trailer. For example, an unladen dump truck may acquire a special permit to pull a tilt trailer with a dozer or backhoe where the trailer load causes the axles to exceed legal weight. An unladen truck with unladen trailer must not exceed an overall length of eighty-five feet.

(iii) **Log truck with pole trailer - nondivisible poles:** A log truck with pole trailer hauling a single load of nondivisible poles, where the log truck is supporting a proportionate share of the load, must be permitted for overlength based on load length, similar to a truck tractor semi-trailer configuration. Measurement will be taken from the front of load or bunks, whichever comes first, to the end of the load. No portion of the pole trailer may extend beyond the load in an overlength configuration.

(4) **Can a vehicle, or vehicle combination, carry multiple pieces when using an over-dimensional nondivisible special permit?** Yes, under the following conditions:

(a) The vehicle(s) and load are transported at legal weights.

(b) The largest nondivisible piece(s) must be loaded to its practicable minimum. No single piece may create a dimension greater than the dimension it would create if loaded properly and carried by itself.

(c) Additional pieces may be added within the envelope dimension created by the largest piece(s) loaded to its practicable minimum. The envelope should be viewed as an imaginary cube with height, length and width defined by the extremities, regardless of shape, of the over-dimensional piece(s) and other legal dimensions as necessary. The department will provide an illustrative example upon request.

(5) **Are there any circumstances when an over-dimensional vehicle(s) can move a legal size load?** Yes, when the following conditions have been met:

(a) The vehicle(s) are making the move in conjunction with being in route to pick up a nondivisible load under special permit (front haul); or

(b) The vehicle(s) are making the move in conjunction with returning from a delivery of a nondivisible load under special permit (back haul); and

(c) The route traveled is the same route that would have been used if a legal load had not been moved; and

(d) The front haul or back haul is noted on the special permit used for the nondivisible move.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-075 Special permit exemptions for authorized vehicles and/or loads. (1) What special permit requirements/restrictions are exempted for an authorized overlength vehicle and/or load? The following exemptions for authorized overlength vehicles and/or loads include:

(a) The requirement to display "OVERSIZE LOAD" signs (WAC 468-38-155(7));

(b) The requirement to cease operation on routes governed by commuter hour restrictions, and during holiday travel restrictions (WAC 468-38-175 (1) and (2));

(c) The requirement that approved night movement be stated on the special permit (WAC 468-38-175(3)); and

(d) The restriction for movement during winter road conditions when the following sign is displayed: "TRACTION ADVISORY/OVERSIZE VEHICLES PROHIBITED" (WAC 468-38-095(8)). In addition to being an authorized vehicle, the vehicle must also comply with WAC 204-24-050 Use of tire chains or other traction devices.

(2) **What overlength vehicles and/or loads are authorized to receive the exemptions?** The following vehicles and/or loads are exempted from the requirements/restrictions identified in subsection (1) of this section:

(a) A truck-tractor/semi-trailer combination where the single trailer does not exceed fifty-six feet, including load;

(b) A truck-tractor/semi-trailer/trailer combination where the combined trailer length does not exceed sixty-eight feet, including load;

(c) A vehicle or vehicle combination with a front overhang not exceeding four feet beyond the three foot legal limit set in RCW 46.44.034 (see also bumper criteria set in RCW 46.37.517), and/or a rear overhang not exceeding fifteen feet;

(d) A single unit fixed load vehicle not exceeding an overall length of forty-five feet including the allowable overhangs in (c); and

(e) A nondivisible load, including the trailer upon which it is carried, not exceeding sixty-one feet.

(3) **Are there exemptions for permitted vehicles exceeding legal height or width?** Yes. A vehicle or vehicle combination that does not exceed a defined envelope of twelve feet wide, fourteen feet six inches high and an overall combined length of one hundred five feet is exempt from the restriction on movement at night, as referenced in subsection (1)(c) of this section.

(4) **Are there exemptions for vehicles operating with an overweight special permit?** Yes. A vehicle or vehicle combination operating on a special permit for overweight only, in compliance with all legal dimension limits, is exempt from all of the requirements/restrictions included in subsection (1)(a) through (d) of this section: Provided, That the vehicle or vehicle combination can maintain posted speed limits. This exemption may be used in conjunction with the height and width exemption in subsection (3) of this section.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-100 Pilot/escort vehicle and operator requirements. (1) When is a pilot/escort vehicle(s) required to accompany an extra-legal vehicle or load? A pilot/escort vehicle(s) must accompany an extra-legal load when:

(a) The vehicle(s) or load is over eleven feet wide. Two pilot/escort vehicles are required on two lane roads, one in front and one in back.

(b) The vehicle(s) or load is over fourteen feet wide. One escort vehicle is required at the rear of the movement on multilane highways.

(c) The vehicle(s) or load is over twenty feet wide. Two pilot/escort vehicles are required on multilane undivided highways, one in front and one in back.

(d) The trailer length, including load, of a tractor/trailer combination exceeds one hundred five feet, or when the rear overhang of a load measured from the center of the rear axle exceeds one-third of the trailer length plus load of a tractor/trailer or truck/trailer combination. One pilot/escort vehicle is required at the rear of the movement on two-lane highways.

(e) The trailer length, including load, of a tractor/trailer combination exceeds one hundred twenty-five feet. One pilot/escort vehicle is required at the rear of the movement on multilane highways.

(f) The front overhang of a load measured from the center of the front steer axle exceeds twenty feet. One pilot/escort vehicle is required at the front on all two-lane highways.

(g) The rear overhang of a load on a single unit vehicle, measured from the center of the rear axle, exceeds (~~one-third the total length of a single unit vehicle with load~~) twenty

feet. One pilot/escort vehicle is required at the rear of the movement on two-lane highways.

(h) The height of the vehicle(s) or load exceeds fourteen feet six inches. One pilot/escort vehicle with height measuring device (pole) is required at the front of the movement on all state highways and roads.

(i) The operator, using rearview mirrors, cannot see two hundred feet to the rear of the vehicle or vehicle combination.

(j) In the opinion of the department, a pilot/escort vehicle(s) is necessary to protect the traveling public. Assignments of this nature must be authorized through the department's administrator for commercial vehicle services.

(2) **Can a pilot/escort vehicle be temporarily reassigned a position relative to the load during a move?** When road conditions dictate that the use of the pilot/escort vehicle in another position would be more effective, the pilot/escort vehicle may be temporarily reassigned. For example: A pilot/escort vehicle is assigned to the rear of an overlength load on a two-lane highway. The load is about to enter a highway segment that has curves significant enough to cause the vehicle and/or load to encroach on the oncoming lane of traffic. The pilot/escort vehicle may be temporarily reassigned to the front to warn oncoming traffic.

(3) **Can a certified flag person ever substitute for a pilot/escort vehicle?** In subsection (1)(d) and (e) of this section, the special permit may authorize a riding flag person, in lieu of a pilot/escort vehicle, to provide adequate traffic control for the configuration.

(4) **Must an operator of a pilot/escort vehicle be certified to operate in the state of Washington?** Yes. To help assure compliance with the rules of this chapter, consistent basic operating procedures are needed for pilot/escort vehicle operators to properly interact with the escorted vehicle and the surrounding traffic. Operators of pilot/escort vehicles, therefore, must be certified as having received department-approved base level training as a pilot/escort vehicle operator. A pilot/escort vehicle operator with a Washington state driver's license must have a valid Washington state pilot/escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties. Escort vehicle operators with a driver's license from a jurisdiction other than Washington state may acquire a Washington state escort vehicle operator certificate/card, or operate with a certification from another jurisdiction approved by the department, subject to the periodic review of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's commercial vehicle services office. Washington state pilot/escort vehicle operator cards must be renewed every three years.

(5) **What are the pretrip procedures that must be followed by the operator of a pilot/escort vehicle?**

(a) Discuss with the operator of the extra-legal vehicle the aspects of the move including, but not limited to, the vehicle configuration, the route, and the responsibilities that will be assigned or shared.

(b) Prerun the route, if necessary, to verify acceptable clearances.

(c) Review the special permit conditions with the operator of the extra-legal vehicle.

(d) Determine proper position of required pilot/escort vehicles and set procedures to be used among the operators.

(e) Assure availability of additional certified flag persons if stated as a condition of the oversize/overweight special permit.

(f) Check mandatory equipment, provided in subsections (9) and (10) of this section. Each operator is responsible for his or her own vehicle.

(g) Check two-way communication system to ensure clear communications and predetermine the channel to be used.

(h) Adjust mirrors, mount signs and turn on lights, provided in subsections (8)(e) and (9)(a) and (b) of this section.

(6) **What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be in front of the extra-legal movement?** The operator shall:

(a) Provide general warning to oncoming traffic of the presence of the permitted vehicle by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, road-surface hazards; overhead clearances; obstructions; traffic congestion; pedestrians; etc.;

(c) Provide guidance to the extra-legal vehicle through lane changes, egress from one designated route and access to the next designated route on the approved route itinerary, and around any obstacle;

(d) In the event of traffic buildup behind the extra-legal vehicle, locate a safe place adjacent to the highway where the extra-legal vehicle can make a temporary stop. Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), in sufficient time for the extra-legal vehicle to move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough in front of the extra-legal vehicle to signal oncoming traffic to stop in a safe and timely manner before entering any narrow structure or otherwise restricted highway where an extra-legal vehicle has entered and must clear before oncoming traffic can enter;

(f) In accordance with training, do not be any farther ahead of the extra-legal vehicle than is reasonably prudent, considering speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between pilot/escort vehicle and extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(7) **What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be at the rear of the extra-legal movement?** The operator shall:

(a) Provide general warning to traffic approaching from the rear of the extra-legal vehicle ahead by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any leading pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, objects coming loose from the extra-legal vehicle; flat tires on the extra-legal vehicle; rapidly approaching traffic or vehicles attempting to pass the extra-legal vehicle; etc.;

(c) Notify the operator of the extra-legal vehicle, and/or the operator of the lead pilot/escort vehicle, about traffic buildup or other delays to normal traffic flow resulting from the extra-legal move;

(d) In the event of traffic buildup behind the extra-legal vehicle, notify the operator of the extra-legal vehicle, and the operator(s) of any pilot/escort vehicle(s) in the lead, and assist the extra-legal vehicle in its move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough behind the extra-legal vehicle to provide visual warning to approaching traffic to slow or stop in a timely manner, depending upon the action to be taken by the extra-legal vehicle, or the condition of the highway segment (i.e., limited sight distance, mountainous terrain, narrow corridor, etc.);

(f) Do not follow more closely than is reasonably prudent, considering the speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between the pilot/escort vehicle and the extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(8) What kind of vehicle can be used as a pilot/escort vehicle? In addition to being in safe and reliable operating condition, the vehicle shall:

(a) Be either a single unit passenger car, including passenger van, or a two-axle truck;

(b) Not exceed a maximum gross vehicle weight rating of fourteen thousand pounds;

(c) Have a body width of at least sixty inches but no greater than one hundred two inches;

(d) Not exceed the legal limits of size and weight, as defined in chapter 46.44 RCW; and

(e) Be equipped with outside rear-view mirrors, located on each side of the vehicle.

(9) In addition to equipment required by traffic law, what additional equipment is required on the vehicle when operating as a pilot/escort, and when is it used?

(a) A minimum of two flashing or rotating amber (yellow) lights, positioned above the roof line, visible from a minimum of five hundred feet to approaching traffic from the front or rear of the vehicle. Light bars, with appropriately colored lights, meeting the visibility minimums are acceptable. Lights must only be activated while escorting an extra-legal vehicle, or when used as traffic warning devices while stopped at the side of the road taking height measurements

during the prunning of a planned route. The vehicle's headlights must also be activated while escorting an extra-legal vehicle.

(b) A sign reading "OVERSIZE LOAD," measuring at least five feet wide, ten inches high with black lettering at least eight inches high in a one-inch brush stroke on yellow background. The sign shall be mounted over the roof of the vehicle and shall be displayed only while performing as the pilot/escort of an extra-legal load. When the vehicle is not performing as a pilot/escort, the sign must be removed, retracted or otherwise covered.

(c) A two-way radio communications system capable of providing reliable two-way voice communications, at all times, between the operators of the pilot/escort vehicle(s) and the extra-legal vehicle(s).

(10) What additional or specialized equipment must be carried in a pilot/escort vehicle?

(a) A standard eighteen-inch STOP AND SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one five-pound B, C fire extinguisher, or equivalent.

(d) A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, *American National Standard for High Visibility Safety Apparel*, to be worn when performing pilot/escort duties outside of the vehicle. The acceptable high visibility colors are fluorescent yellow-green, fluorescent orange-red or fluorescent red.

(e) A highly visible colored hard hat, also to be worn when performing pilot/escort duties outside of the vehicle, per WAC 296-155-305.

(f) A height-measuring device (pole), which is nonconductive and nondestructive to overhead clearances, when required by the terms of the special permit. The pole may be carried outside of the vehicle when not in use. See also subsection (14) of this section.

(g) First-aid supplies as prescribed in WAC 296-800-15020.

(h) A flashlight in good working order with red nose cone. Additional batteries should also be on hand.

(11) Can the pilot/escort vehicle carry passengers? A pilot/escort vehicle may not contain passengers, human or animal, except for a certified individual in training status or necessary flag person.

(12) Can the pilot/escort vehicle carry any other items, equipment, or load? Yes, as long as the items, equipment or load have been properly secured: Provided, no equipment or load may be carried in or on the pilot/escort vehicle that:

(a) Exceeds the height, length, or width of the pilot/escort vehicle, or overhangs the vehicle, or otherwise impairs its immediate recognition as a pilot/escort vehicle by the traveling public;

(b) Obstructs the view of the flashing or rotating amber lights, or "OVERSIZE LOAD" sign on the vehicle;

(c) Causes safety risks; or

(d) Otherwise impairs the performance by the operator of the pilot/escort vehicle of the duties required by these rules.

(13) Can a pilot/escort vehicle escort more than one extra-legal load at the same time? No, unless the depart-

ment determines there are special circumstances that have resulted in an express authorization on the special permit.

(14) **When and how must a pilot/escort vehicle use a height-measuring device?** The height-measuring device (pole) must be used when escorting an extra-legal load in excess of fourteen feet six inches high, unless an alternative authorization has been granted by the department and stated on the special permit, or in rule. The height pole must extend between three and six inches above the maximum height of the extra-legal vehicle, or load, to compensate for the affect of wind and motion. When not in the act of escorting an extra-legal move, or prerunning a route to determine height acceptance, the height pole shall be removed, tied down or otherwise reduced to legal height.

(15) **Do the rules change when a uniformed off-duty law enforcement officer, using official police car or motorcycle, performs the escorting function?** While the spirit of the rules remains the same, specific rules may be modified to fit the situation.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-120 Transport of extra-legal manufactured housing. (1) **How many vehicles can be combined in the move of a manufactured home?** The vehicle combination is limited to two vehicles, a towing unit, sometimes referred to as a "toter," and the semi-trailer designed housing unit.

(2) **What are the dimensional limits of the combination?** While the overall combination is not limited by dimension, the following limits are established:

(a) **Length:** The length of the manufactured housing unit may not exceed seventy-five feet, including the length of the tongue.

(b) **Width:** The width of the manufactured housing unit must not exceed a box (base) width of sixteen feet. The unit may have an eave provided it does not extend beyond either side by:

(i) More than thirty inches for units with a box width less than sixteen feet wide; or

(ii) More than sixteen inches for a unit with a box width of sixteen feet; however, the overall width shall not, under any circumstances, exceed eighteen feet.

(c) **Width exemptions:** External features, such as door-knobs, window fasteners, eave cap, clearance lights, and load securing devices, that extend no more than two inches on each side of the unit, are exempt from the overall width measurement.

(d) **Height:** The height of the unit is limited to the actual overhead clearance of the route.

(3) **What are the criteria for receiving an annual/monthly special permit versus a single trip special permit?**

(a) **Annual/monthly permits** are issued only to dealers or manufacturers described in chapter 46.70 RCW or licensed transporters described in chapter 46.76 RCW. Use of the annual/monthly permit is restricted to the movement of housing units with a box width not exceeding fourteen feet wide, plus an eave not to exceed twelve inches, and a height not to

exceed fifteen feet measured from level ground when in transit mode.

(b) **Single trip permits** are required when the permit applicant is not a qualified dealer or transporter as described in (a) of this subsection, or when the width of the housing unit box exceeds fourteen feet wide, the overall width exceeds fifteen feet wide, and/or the height exceeds fifteen feet measured from level ground when in transit mode. **Housing units that exceed sixteen feet wide and/or sixteen feet high must also comply with the requirements of WAC 468-38-405 Superloads**, prior to the issuance of a special permit.

(4) **When is it necessary to include a pilot/escort vehicle(s) in the movement of a manufactured house?** The requirements for a pilot/escort vehicle escorting a manufactured home are the same as those found in WAC 468-38-100, except that the use of a height measuring device (pole) on the front pilot/escort vehicle is not required until the overall height of the housing unit exceeds fifteen feet. The vehicle or load width referenced in WAC 468-38-100 is to be interpreted as overall width when measuring a manufactured home.

(5) **What are the insurance requirements, and what special reporting responsibilities does the transporter have in case of an accident?**

(a) Insurance requirements for the movement of a manufactured home are outlined in RCW 46.44.180.

(b) When an incident occurs while transporting a manufactured house under special permit, the transporter must immediately notify the nearest state patrol office if the damage to the manufactured home is greater than two hundred fifty dollars or if the damage to other vehicles or structures exceeds one hundred dollars. The transport of the home must not resume without permission from the state patrol.

(6) **What requirements must a manufactured home meet for axles, brakes, tires and other suspension components before it can be transported?**

(a) **Axles** on each housing unit in transport must be in sufficient number to support enough tires to comply with (c)(i) and (ii) of this subsection. Any housing unit exceeding fourteen feet wide must have a minimum of four axles.

(b) **Brakes** must be designed and installed to activate if the housing unit accidentally breaks away from the towing vehicle. ~~((Brakes must be operational on all wheels, except))~~ The brakes on all vehicle/housing unit combinations must be capable of complying with the braking performance requirements of RCW 46.37.351. In addition, there must be compliance with the following special installation criteria:

(i) For housing units manufactured prior to June 15, 1976((-Pre June 15, 1976, housing units)), brake installation must, at a minimum, comply with the following table:

Width of Unit at Base	Number of Axles Required	Wheels w/ Brakes
> 8' 6" but < 10'	2 or more	All wheels on 2 axles (a towing unit w/minimum. 9,000 GVWR all wheels on 1 axle)
10' to 14' (under 60' in length)	2 or more (3 or more if > 60' long)	All wheels on 2 axles (tires w/minimum 8:00 x 14.5, 10 ply)

(ii) For all vehicle/housing unit combinations exceeding fourteen feet wide, all wheels on at least three of the axles must be properly equipped with brakes.

(c) **Tire** loadings are dependent on when the housing unit was manufactured and must comply as follows:

(i) **Tire loadings** on housing units manufactured **after January 1, 2002**, (labeled pursuant to *Code of Federal Regulation*, 24 CFR 3282.362 (c)(2)(i)) may not exceed the manufacturer's rating as marked on the sidewall. In the absence of a sidewall marking, the tires on the housing unit must comply with the load rating specified in any of the publications of any organization listed in the *Federal Motor Carrier Safety Standard (FMCSS) No. 119* (49 CFR 571.119, S5.1 (b)). Housing units with no verifiable date of manufacture must also not exceed the manufacturer's tire load rating.

(ii) **Tire loadings** on housing units manufactured **before January 1, 2002**, (labeled pursuant to 24 CFR 3282.362 (c)(2)(i)) must not exceed more than eighteen percent above the manufacturer's rating as marked on the sidewall. In the absence of a sidewall marking, the tires on the housing unit must not exceed eighteen percent above the load rating specified in any of the publications of any organization listed in the *Federal Motor Carrier Safety Standard (FMCSS) No. 119* (49 CFR 571.119, S5.1 (b)). Housing units transported on tires overloaded by nine percent or more must not be moved at speeds exceeding fifty miles per hour (eighty kilometers per hour).

(d) **Tow spare tires**, inflated and ready for use, must be carried during transport.

(e) The manufacturer's rating must not be exceeded for any **wheel, axle, drawbar, hitch, or other suspension device**.

(7) Does a tow vehicle (toter) have any special requirements? Yes. The tow vehicle must:

(a) Be equipped with dual wheels on the drive axle.

(b) Have a combined minimum gross axle weight rating, assigned by the manufacturer, of thirty-two thousand pounds, if the housing unit being transported exceeds fourteen feet wide.

(c) Have sufficient engine horsepower to maintain towing speeds of forty-five miles per hour on the interstate and thirty-five miles per hour on other highways.

(8) What unique travel requirements must be complied with? Requirements for signs, lights, unit covering, routes, speed, moving multiple units at the same time and lane of travel are as follows:

(a) **Signs** for the towing unit and housing unit must comply with WAC 468-38-155(7). The sign for the housing unit must be mounted on the rear of the unit, on a horizontal plane, between five and seven feet above the road surface.

(b) In addition to any other **lighting** requirements in law or rule, two six-inch flashing amber lights, with a minimum of thirty-five candle power, a flashing cycle of sixty to one hundred twenty times per minute during transit, must be mounted on the rear of the housing unit, on a horizontal plane, at least ten feet above the road surface. An additional two lights, of the same specifications, must be mounted above the roofline of the towing vehicle, either on the towing vehicle roof or the front of the housing unit. The two lights at

each location, front and rear, must be located as close to the outside extremities of the housing unit as practical.

(c) **Coverings** of open sides may be with a rigid material such as plywood or hardboard, or a sufficiently strong ply plastic. When plastic is used, a grillwork of lumber or similar material must be applied to prevent tears and/or billowing of the material.

(d) **Routes** of travel with restrictions must be strictly adhered to. Housing units in transport mode that exceed sixteen feet high or sixteen feet wide must be approved for travel on a case-by-case basis, as per WAC 468-38-405, Superloads. **Dealers selling extra-legal manufactured homes must advise the prospective purchaser in writing that not all state highways are approved for the transport of manufactured homes in excess of twelve feet wide.**

(e) **Speed** of the in-transit housing unit is governed by WAC 468-38-175(5).

(f) **Multiple housing units moving together** must comply with WAC 468-38-175(6), Moves in convoy.

(g) The **right-hand lane must be used for travel**, except when passing or avoiding an obstruction. On two-lane highways, housing units must not pass other vehicles except when required to pass a slow moving vehicle that is hindering safe traffic flow.

(9) Is a decal from the county treasurer required before a manufactured home can be transported? Yes, except as provided for in RCW 46.44.170 (2)(a) and (b), a decal issued by the county treasurer must be displayed on the rear of the manufactured home during transport on public highways of this state. If the manufactured home is being transported as multiple units (double-wide or more), an individual decal must be displayed on each unit being transported.

(10) How is the county treasurer decal issued? The decal is issued at the same time the county treasurer issues the tax certificate that shows all taxes have been paid to date.

(11) RCW 46.44.170 requires the department to design the decal for uniform implementation. What are the design specifications? The decal must:

(a) Be at least eight and one-half inches square.

(b) Be printed on Appleton Radiant Florescent Bristol (weight .010) or paper of comparable quality.

(c) Be fluorescent orange in color.

(d) Disclose the make, model and serial number of the manufactured home, the date issued, the name of the transporter, the transporter's WUTC permit number ID required, the department of transportation special motor vehicle permit number, and the name of the county issuing the decal.

(e) Clearly display the expiration date of the decal, which must not be more than fifteen days after the date issued.

(12) Can decals be transferred to other housing units? Under no circumstance can the decal be transferred.

(13) What other vehicles are treated like manufactured housing for permitting purposes? Any enclosed structure built on a manufactured housing type chassis with its own axles must comply with the provisions of this section to receive an overlegal permit, including, but not limited to: Portable construction offices, portable classrooms, and "park-model" trailers.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-175 Highway travel restrictions—Days, times and highway use. What restrictions are imposed on vehicles operating under special permit relative to days, times and use of the highway? Day, time and highway use are divided into the following categories:

(1) **Days when travel is restricted:** Vehicles operating under special permit for overweight/overdimensional, except as provided for in WAC 468-38-075, may be restricted from the state highways on the holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving, Christmas Day, and commencing at noon of the day preceding said holidays.

(2) **Commuter traffic restrictions:** Vehicles operating under special permit for overweight/overdimensional, except as provided for in WAC 468-38-075, may be restricted from specified sections of state highways having excessive volumes of traffic during morning and afternoon commuting hours. The department shall identify and publish on the internet, and as an addendum to the special permit, specific areas, hours and vehicle widths relating to the restrictions.

(3) **Nighttime travel:** Vehicles or combinations operating under a special permit for overweight/overdimensional may be permitted to move at night on state highways subject to department preferred hours and routes of travel. "Night movement approved" must be stated on the permit, except as provided for in WAC 468-38-075. Overdimensional moves authorized to move at night must have lighting equipment that complies with the *Code of Federal Regulation*, 49 CFR, Part 393.11. No movements shall be made when visibility is reduced to five hundred feet or when hazardous roadway conditions exist (including, but not limited to: Snow, ice, mudslide, wind or water flooding over roadway). It is the responsibility of the vehicle operator to discontinue the move and exit the highway to a safe location when any of the above conditions exist.

(4) **Reversible lane use:** Trucks carrying flammable liquid cargoes, as described in chapter 470-12 WAC, are restricted from using the reversible lanes on SR 5, Seattle freeway, between James Street and 110th Street N.E. The term flammable liquid as applied to this rule shall be as defined in RCW 46.04.187. This rule applies to all vehicles, whether operating under special permit or not.

(5) **Speed limits:** Speed of travel must comply with the following:

(a) Unless otherwise stated, maximum speed for a vehicle(s) under special permit shall be the same speed limit posted for trucks.

(b) When travel on the roadway shoulder is required on a two-lane highway to allow overtaking traffic to pass, the speed must not exceed twenty-five miles per hour.

(c) If a speed limit is stated on the special permit, it becomes one of the conditions under which the permit was issued. This stated speed must not be exceeded; however, if a lower speed is posted, it shall take precedence. Violation of the speed limit stated on the permit shall render the permit null and void.

(6) **Moves in convoy:** Extra-legal vehicles or loads requiring pilot/escort accompaniment must not travel in con-

voy, ~~((except))~~ unless specifically authorized to do so by the department, or as provided for in WAC 468-38-290 (8)(e).

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-280 Retractable axles. (1) What criteria must a retractable axle meet in order to carry the weight provided in RCW 46.44.041? The retractable axle must meet three criteria:

(a) The retractable axle must have a manufacturer's rating of at least eight thousand pounds. The weight carried on the axle must not exceed the design load capacity as indicated by an attached data plate or written certification from the vendor/manufacturer; and

(b) The weight carried per tire must not exceed the lesser of manufacturer's rating or five hundred pounds (six hundred when operating under a special permit for overweight) per inch width of tire as described in RCW 46.44.042; and

(c) The axle must be self-steering.

(2) **Are there restrictions on the location of the operating controls for the retractable axle?** Yes. The simple "up/down" control may be in the driver's compartment; however, any variable control used to adjust axle loadings, by regulating air pressure or other means, must not be within reach of the driver's compartment.

(3) **Are there any exceptions to the self-steering requirement?** Yes. The self-steering requirement does not apply when:

(a) The retractable axle, equipped with four tires, is used ~~((to create a tandem axle configuration))~~ for the purpose of weight distribution on a truck or truck-tractor and gives the appearance of, but does not function as, a tandem axle drive configuration. The distance between the drive axle and the retractable axle must not exceed sixty inches.

(b) A retractable axle is used adjacent to a fixed axle on a trailing unit and distance between the two axles does not exceed sixty inches.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-290 Farm implements. (1) For purposes of issuing special permits and certain permit exemptions, what is considered a farm implement? A farm implement includes any device that directly affects the production of agricultural products, including fertilizer and chemical applicator apparatus (complete with auxiliary equipment). For purposes of this section, the implement must weigh less than forty-five thousand pounds, be less than twenty feet in width and not exceed fourteen feet high. If the implement is self-propelled, it must not exceed forty feet in length, or seventy feet overall length if being towed. The implement must move on pneumatic tires, or solid rubber tracks having protuberances that will not damage public highways. Implements exceeding any of these criteria must meet all appropriate requirements for special permits as referenced in other sections throughout this chapter.

(2) **What dimensional criteria must be met before a special permit is required to move extra-legal farm implements?** Self-propelled farm implements, including a farm

tractor pulling no more than two implements, that exceeds sixteen feet in width, but less than twenty feet wide, are required to get a special permit for movement of farm implements on state highways. Note: A tow vehicle capable of carrying a load (i.e., a truck of any kind) may not tow more than one trailing implement.

(3) Will the ability to acquire a special permit to move oversize farm implements be affected if the implement(s) is carried on another vehicle? The ability to use a special permit for farm implements as defined in subsection (1) of this section will not be affected unless one of the following circumstances occurs:

(a) The authorized users of the permit outlined in subsection ~~((4))~~ (5) of this section use a commercial for-hire service to move the implement(s); or

(b) The loaded farm implement creates a combined height that exceeds fourteen feet; or

(c) The loaded farm implement causes the hauling vehicle to exceed legal weight limits. The farm implement may weigh up to forty-five thousand pounds; however, the combined gross weight of implement and hauling unit may extend to the limits established in RCW 46.44.041 Maximum gross weights—Wheelbase and axle factors.

If any of the circumstances occur, the provisions of this subsection will not apply to the movement of the farm implement. The movement will be required to comply with the appropriate requirements for special permits as referenced in chapter 46.44 RCW and in other sections throughout this chapter.

(4) How does the application process for a special permit for farm implements differ from the process outlined in WAC 468-38-050? Due to the size of the implement and the potential for use in multiple jurisdictions, the written application must be submitted to the department's Olympia office for approval. Permits can be requested for a three-month period up to one year. Once approved, the special permit may be generated from the Olympia office by facsimile or a letter of authorization will be sent allowing the applicant to acquire a permit at the nearest permit sales location. If the movement of the farm implement(s) is confined to a single department maintenance area, the applicant may make direct written application to that maintenance area office in lieu of the Olympia office.

(5) Who is authorized to acquire this specific special permit? The acquisition and use of a special permit to move farm implements is restricted to a farmer, or anyone engaged in the business of selling, repairing and/or maintaining farm implements.

(6) Does the permit restrict the movement to a specific area? The special permit to move farm implements is generally restricted to six contiguous counties or less. With proper justification the area can be expanded.

(7) Are notifications of movement required? Movements of vehicles in excess of sixteen feet wide must be communicated to all department maintenance areas affected at least eight hours in advance. The communication is for the purpose of ensuring there will not be any planned activity that would restrict the move. Locations of maintenance area offices and phone listings are provided with each letter authorizing the purchase of the special permit.

(8) What safety precautions must be taken when moving extra-legal farm implements? The movement of extra-legal farm implements must comply with the following safety requirements:

(a) **Oversize load signs:** If the farm implement exceeds ten feet wide, it must display an "OVERSIZE LOAD" sign(s) visible to both oncoming traffic and overtaking traffic. Signs must comply with the requirements of WAC 468-38-155(7). If the implement is both preceded and followed by pilot/escort vehicles, a sign is not required on the implement itself.

(b) **Curfew/commuter hours:** Movement of a farm implement in excess of ten feet wide must comply with any published curfew or commuter hour restrictions.

(c) **Red flags:** If the farm implement is moving during daylight hours, and exceeds ten feet wide, the vehicle configuration must display clean, bright red flags. The flags must measure at least twelve inches square and be able to wave freely. The flags are to be positioned at all four corners, or extremities, of the overwidth implement and at the extreme ends of all protrusions, projections or overhangs. If a transported implement overhangs the rear of transporting vehicle or vehicle combination by more than four feet, one flag is required at the extreme rear. If the width of the rear overhang/protrusion exceeds two feet, there must be two flags positioned at the rear to indicate the maximum width of the overhang/protrusion.

(d) **Warning lights and slow moving emblem:** Lamps and other lighting must be in compliance with RCW 46.37.160. In addition to the lighting requirements, RCW 46.37.160 also requires the use of a "slow moving emblem" for moves traveling at twenty-five miles per hour or less.

(e) **Convoys:** Convoys, the simultaneous movement of two or more individually transported implements, are authorized when the following criteria are met:

(i) A minimum of five hundred feet is maintained between vehicles to allow the traveling public to pass safely;

(ii) If five or more vehicles are lined up behind any one of the implements, the operator must pull off the road at the nearest point wide enough to allow the vehicles to pass safely; and

(iii) The convoy is preceded and followed with properly equipped pilot/escort vehicles.

(9) Are there any unique requirements or exemptions regarding the use of pilot/escort vehicles with farm implements? Pilot/escort vehicles must comply with the requirements of WAC 468-38-100, except for the following specific exemptions related only to special permits for moving farm implements:

(a) A farmer, farm implement dealer, or agri-chemical dealer (including employees of each) is exempt from WAC 468-38-100(4) regarding operator certification, WAC 468-38-100 (8)(a) and (b) regarding escort vehicle physical description, WAC 468-38-100 (10)(f) regarding use of height measuring device, and WAC 468-38-100(11) regarding passengers, when moving a farm implement off the interstate and on the following interstate segments:

(i) I-90 between Exit 109 (Ellensburg) and Exit 270 (Four Lakes);

(ii) I-82 between Junction with I-90 (Ellensburg) and Exit 31 (Yakima);

(iii) I-82 between Exit 37 (Union Gap) and Washington/Oregon border;

(iv) I-182 between Junction with I-82 (West Richland) and Junction with SR-395; and

(v) I-5 between Exit 208 (Arlington) and Exit 250 (south of Bellingham).

(b) On two lane highways, one pilot/escort vehicle must precede and one must follow the implement(s) when the width exceeds twelve feet six inches. Implements up to twelve feet six inches wide are exempt from using pilot/escort vehicles.

(c) A flag person(s) may be used in lieu of a pilot/escort(s) for moves under five hundred yards. This allowance must be stated on any permit that may be required for the move.

(d) Posting a route may also be used in lieu of a pilot/escort vehicle(s) when the route is less than two miles. Signs must state, "OVERSIZE VEHICLE MOVING AHEAD" on a square at least three feet on each side (in diamond configuration), with black lettering on orange background. The signs must be placed at points before the oversize implement enters or leaves the highway, and at access points along the way. Signs must be removed immediately after the move has been completed.

WSR 06-03-126

PROPOSED RULES

UTILITIES AND TRANSPORTATION COMMISSION

[Docket No. UE-051106—Filed January 18, 2006, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-083.

Title of Rule and Other Identifying Information: New chapter 480-108 WAC, Electric companies—Interconnection with electric generators with a generating capacity of not more than 25 kilowatts (kW).

The proposed rule would establish standards for interconnection of consumer-owned power generation facilities up to 25 kW capacity to electric utility delivery systems. These regulations include standards for applications for interconnection, processing of such applications, technical and engineering standards for interconnections, safety standards, insurance and liability provisions, and other provisions.

Hearing Location(s): Commission Hearing Room, Second Floor, Chandler Plaza, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on February 22, 2006, at 2:30 p.m.

Date of Intended Adoption: February 22, 2006.

Submit Written Comments to: Carole Washburn, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@wutc.wa.gov, fax (360) 586-1150 by February 8, 2006. Please, include "Docket No. UE-051106" in your comments.

Assistance for Persons with Disabilities: Contact Mary DeYoung by February 17, 2006, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 80.28.025 establishes a state policy to encourage electric power resources from renewable sources through use of incentives.

SSB 5101, chapter 300, Laws of 2005, states that "the legislature intends to provide incentives for the greater use of locally created renewable energy technologies." SSB 5101 also provides that utilities, in return for a credit against the public utility excise tax, may supply an incentive payment to consumers for consumer-generated electricity from renewable energy systems. However, the incentive payments created by SSB 5101 are only available to customers connected to the distribution system of a light and power business if "uniform standards for interconnection to the electric distribution system" are in effect for light and power businesses serving 80% of total customer load in the state.

Establishing standards for interconnection of customer-owned power generation facilities to the delivery systems of the investor-owned utilities would constitute substantial progress toward meeting the threshold condition established by SSB 5101 for customer incentive payments. In addition, a rule would establish uniformity among the investor-owned utilities regarding technical and process standards as well as safety and liability standards for such interconnections.

In addition, recently enacted amendments to section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) require the commission to consider and determine whether to establish standards for interconnection.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule for interconnection of facilities up to 25 kW is the first work produced under the preproposal statement of inquiry referenced above. The inquiry will continue to consider rules for interconnection of facilities larger than 25 kW.

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Dick Byers, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1209; Implementation and Enforcement: Carole Washburn, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.020(1).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

January 18, 2006

Carole J. Washburn
Executive Secretary

Chapter 480-108 WAC

ELECTRIC COMPANIES—INTERCONNECTION WITH ELECTRIC GENERATORS WITH A GENERATING CAPACITY OF NOT MORE THAN 25 KILOWATTS

NEW SECTION

WAC 480-108-001 Purpose and scope. (1) The purpose of this chapter is to establish rules for determining the terms and conditions governing the interconnection of electric generating facilities with a nameplate generating capacity of not more than 25 kilowatts to the electric system of an electrical company over which the commission has jurisdiction.

(2) These rules are intended to be consistent with the requirements of chapter 80.60 RCW, Net metering of electricity; to partially comply with Section 1254 of the Energy Policy Act of 2005, Pub. L. No. 109-58 (2005); and to promote the purposes of Substitute Senate Bill No. 5101, chapter 300, Laws of 2005 (effective July 1, 2005).

NEW SECTION

WAC 480-108-005 Application of rules. (1) The rules in this chapter apply to any electrical company that is subject to the jurisdiction of the commission under RCW 80.04.010 and chapter 80.28 RCW. These rules also include various requirements applicable to the applicant and the generator.

(2) The tariff provisions filed by electrical companies must conform to these rules. If the commission accepts a tariff that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-100-008. Electrical companies shall modify, if necessary, any existing tariffs, including, but not limited to, tariffs implementing chapter 80.60 RCW, Net metering of electricity, which are currently on file and approved by the commission to conform to these rules.

NEW SECTION

WAC 480-108-010 Definitions. "Applicant" means any person, corporation, partnership, government agency, or other entity applying to interconnect a generating facility to the electrical company's electric system pursuant to this chapter.

"Application" means the written notice as defined in WAC 480-108-030 provided by the applicant to the electrical company that initiates the interconnection process.

"Certificate of completion" means the form as defined in WAC 480-108-050 completed by the applicant or generator and the electrical inspector having jurisdiction over the installation of the facilities indicating completion of installation and inspection of the interconnection.

"Commission" means the Washington utilities and transportation commission.

"Electric system" means all electrical wires, equipment, and other facilities owned or provided by the electrical company that are used to transmit electricity to customers.

"Electrical company" means any public service company as defined by RCW 80.04.010 engaged in the generation, distribution, sale or furnishing of electricity and which is subject to the jurisdiction of the commission.

"Generating facility" means a source of electricity owned by the applicant or generator that is located on the applicant's side of the point of common coupling, and all facilities ancillary and appurtenant thereto, including interconnection facilities, which the applicant requests to interconnect to the electrical company's electric system.

"Generator" means the entity that owns and/or operates the generating facility interconnected to the electrical company's electric system.

"Initial operation" means the first time the generating facility is in parallel operation with the electric system.

"In-service date" means the date on which the generating facility and any related facilities are complete and ready for service, even if the generating facility is not placed in service on or by that date.

"Interconnection" means the physical connection of a generating facility to the electric system so that parallel operation may occur.

"Interconnection facilities" means the electrical wires, switches and other equipment used to interconnect a generating facility to the electric system.

"Model interconnection agreement" means standardized terms and conditions that govern the interconnection of generating facilities pursuant to this chapter. The model interconnection agreement may be modified to accommodate terms and conditions specific to individual interconnections, subject to the conditions set forth in these rules.

"Net metering" means measuring the difference between the electricity supplied by an electrical company and the electricity generated by a generating facility that is fed back to the electrical company over the applicable billing period.

"Network distribution system (grid or spot)" means electrical service from a distribution system consisting of two or more primary circuits from one or more substations or transmission supply points arranged such that they collectively feed secondary circuits serving one (a spot network) or more (a grid network) electrical company customers.

"Parallel operation" or "operate in parallel" means the synchronous operation of a generating facility while interconnected with an electrical company's electric system.

"Point of common coupling" or "PCC" means the point where the generating facility's local electric power system connects to the electrical company's electric system, such as the electric power revenue meter or at the location of the equipment designated to interrupt, separate or disconnect the connection between the generating facility and electrical company.

NEW SECTION

WAC 480-108-020 Technical standards for interconnection. The technical standards listed in this section shall apply to all generating facilities to be interconnected to the electrical company under this chapter.

(1) General interconnection requirements.

(a) Any generating facility desiring to interconnect with the electrical company's electric system or modify an existing interconnection must meet all minimum technical specifications applicable, in their most current approved version, as set forth in this chapter.

(b) The specifications and requirements in this section are intended to mitigate possible adverse impacts caused by the generating facility on electrical company equipment and personnel and on other customers of the electrical company. They are not intended to address protection of the generating facility itself, generating facility personnel, or its internal load. It is the responsibility of the generating facility to comply with the requirements of all appropriate standards, codes, statutes and authorities to protect its own facilities, personnel, and loads.

(c) The specifications and requirements in this section shall apply generally to the nonelectrical company-owned electric generation equipment to which this standard and agreement(s) apply throughout the period encompassing the generator's installation, testing and commissioning, operation, maintenance, decommissioning and removal of said equipment. The electrical company may verify compliance at any time, with reasonable notice.

(d) The generator shall comply with the requirements in (d)(i), (ii) and (iii) of this subsection. However, at its sole discretion, the electrical company may approve alternatives that satisfy the intent of, and/or may excuse compliance with, any specific elements of these requirements.

(i) Code and standards. Applicant shall conform to all applicable codes and standards for safe and reliable operation. Among these are the National Electric Code (NEC), National Electric Safety Code (NESC), the Institute of Electrical and Electronics Engineers (IEEE), American National Standards Institute (ANSI), and Underwriters Laboratories (UL) standards, and local, state and federal building codes. The generator shall be responsible to obtain all applicable permit(s) for the equipment installations on its property.

(ii) Safety. All safety and operating procedures for joint use equipment shall be in compliance with the Occupational Safety and Health Administration (OSHA) Standard 29, CFR 1910.269, the NEC, Washington Administrative Code (WAC) rules, the Washington Industrial Safety and Health Administration (WISHA) Standard, and equipment manufacturer's safety and operating manuals.

(iii) Power quality. Installations will be in compliance with all applicable standards including IEEE Standard 519-1992 Harmonic Limits.

(2) Specific interconnection requirements.

(a) Applicant shall furnish and install on applicant's side of the meter, a UL-approved safety disconnect switch which shall be capable of fully disconnecting the applicant's generating facility from electrical company's electric system. The disconnect switch shall be located adjacent to electrical company meters and shall be of the visible break type in a metal enclosure which can be secured by a padlock. The disconnect switch shall be accessible to electrical company personnel at all times.

(b) The requirement in (a) of this subsection may be waived by the electrical company if:

(i) Applicant provides interconnection equipment that applicant can demonstrate, to the satisfaction of electrical company, performs physical disconnection of the generating equipment supply internally; and

(ii) Applicant agrees that its service may be disconnected entirely if generating equipment must be physically disconnected for any reason.

(c) The electrical company shall have the right to disconnect the generating facility at the disconnect switch under the following circumstances: When necessary to maintain safe electrical operating conditions; if the generating facility does not meet required standards; or if the generating facility at any time adversely affects or endangers any person, the property of any person, the electrical company's operation of its electric system or the quality of electrical company's service to other customers.

(d) Nominal voltage and phase configuration of applicant's generating facility must be compatible to the electrical company system at the point of common coupling.

(e) Applicant must provide evidence that its generation will never result in reverse current flow through the electrical company's network protectors. All instances of interconnection to secondary spot distribution networks shall require review and written preapproval by electrical company. Interconnection to distribution secondary grid networks is not allowed. Closed transition transfer switches are not allowed in secondary network distribution systems.

(3) Specifications applicable to all inverter-based interconnections. Any inverter-based generating facility desiring to interconnect with the electrical company's electric system or modify an existing interconnection must meet the technical specifications, in their most current approved version, as set forth below.

(a) IEEE Standard 1547-2003, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(b) UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems. Equipment must be UL listed.

(c) IEEE Standard 929-2000, IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.

(4) Requirements applicable to all noninverter-based interconnections. Noninverter-based interconnection requests may require more detailed electrical company review, testing, and approval, at applicant cost, of the equipment proposed to be installed to ensure compliance with applicable technical specifications, in their most current approved version, including:

(a) IEEE Standard 1547-2003, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(b) ANSI Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(c) Applicants proposing such interconnection may also be required to submit a power factor mitigation plan for electrical company review and approval.

NEW SECTION

WAC 480-108-030 Application for interconnection.

(1) When an applicant requests interconnection from an elec-

trical company, the applicant shall be responsible for conforming to the rules and regulations that are in effect and on file with the commission. The electric utility will designate a point of contact and publish a telephone number or web site address for this unique purpose. The applicant seeking to interconnect a generating facility under these rules must fill out and submit a signed application form to the electrical company. Information must be accurate, complete, and approved by the electrical company prior to installing the generating facility. The electrical company shall file a form of application with the commission.

(2) Application fees. The electrical company may require a nonrefundable interconnection application fee of no more than one hundred dollars.

(3) Application prioritization. All generation interconnection requests pursuant to this chapter will be prioritized by the electrical company in the same manner as any new load requests. Preference will not be given to either request type. The electrical company will process the application and provide interconnection in a time frame consistent with the average of other service connections.

(4) Application evaluation. All generation interconnection requests pursuant to this chapter will be reviewed by the utility for compliance with the rules of this chapter. If the utility in its sole discretion finds that the application does not comply with this chapter, the utility may reject the application. If the utility rejects the application, it shall provide the applicant with written notification stating its reasons for rejecting the application.

NEW SECTION

WAC 480-108-040 General terms and conditions of interconnection. The general terms and conditions listed in this section shall apply to all generating facilities interconnecting to the electrical company under this chapter.

(1) Any electrical generating facility with a maximum electrical generating capacity of 25 kW or less must comply with these rules to be eligible to interconnect and operate in parallel with the electrical company's electric system. The rules under this chapter shall apply to all interconnecting generating facilities that are intended to operate in parallel with an electrical company's electric system irrespective of whether the applicant intends to generate energy to serve all or a part of the applicant's load; or to sell the output to the electrical company or any third party purchaser.

(2) In order to ensure system safety and reliability of interconnected operations, all interconnected generating facilities shall be constructed and operated by generator in accordance with this chapter and all other applicable federal, state, and local laws and regulations.

(3) Prior to initial operation, all generators must submit a completed certificate of completion to the electrical company, execute an appropriate interconnection agreement and any other agreement(s) required for the disposition of the generating facility's electric power output as described in WAC 480-108-040(14). The interconnection agreement between the electrical company and generator outlines the interconnection standards, cost allocation and billing agree-

ments, and on-going maintenance and operation requirements.

(4) Applicant or generator shall promptly furnish the electrical company with copies of such plans, specifications, records, and other information relating to the generating facility or the ownership, operation, use, or maintenance of the generating facility, as may be reasonably requested by the electrical company from time to time.

(5) For the purposes of public and working personnel safety, any nonapproved generation interconnections discovered will be immediately disconnected from the electrical company system.

(6) To ensure reliable service to all electrical company customers and to minimize possible problems for other customers, the electrical company will review the need for a dedicated-to-single-customer distribution transformer. Interconnecting generating facilities under 25 kW may require a separate transformer. If the electrical company requires a dedicated distribution transformer, the applicant or generator shall pay for all costs of the new transformer and related facilities.

(7) Metering.

(a) Net metering for solar, wind, hydropower and fuel cells as set forth in chapter 80.60 RCW: The electrical company shall install, own and maintain a kilowatt-hour meter, or meters as the installation may determine, capable of registering the bi-directional flow of electricity at the point of common coupling at a level of accuracy that meets all applicable standards, regulations and statutes. The meter(s) may measure such parameters as time of delivery, power factor, voltage and such other parameters as the electrical company shall specify. The applicant shall provide space for metering equipment. It will be the applicant's responsibility to provide the current transformer enclosure (if required), meter socket(s) and junction box after the applicant has submitted drawings and equipment specifications for electrical company approval. The electrical company may approve other generating sources for net metering but is not required to do so.

(b) Production metering: The electrical company may require separate metering for production. This meter will record all generation produced and may be billed separately from any net metering or customer usage metering. All costs associated with the installation of production metering will be paid by the applicant.

(8) Common labeling furnished or approved by the electrical company and in accordance with NEC requirements must be posted on meter base, disconnects, and transformers informing working personnel that generation is operating at or is located on the premises.

(9) As currently set forth for qualifying generation under chapter 80.60 RCW, for solar, wind, hydro or fuel cells, no additional insurance will be necessary. For other generating facilities permitted under these standards but not contained within chapter 80.60 RCW, additional insurance, limitations of liability and indemnification may be required by the electrical company.

(10) Prior to any future modification or expansion of the generating facility, the generator will obtain electrical company review and approval. The electrical company reserves

the right to require the generator, at the generator's expense, to provide corrections or additions to existing electrical devices in the event of modification of government or industry regulations and standards.

(11) For the overall safety and protection of the electrical company system, chapter 80.60 RCW currently limits interconnection of generation for net metering to 0.1% of the electrical company's peak demand during 1996. Additionally, interconnection of generating facilities to individual distribution feeders will be limited to 10% of the feeder's peak capacity. However, the electrical company may, in its sole discretion, allow additional generation interconnection beyond these stated limits.

(12) It is the responsibility of the generator to protect its facilities, loads and equipment and comply with the requirements of all appropriate standards, codes, statutes and authorities.

(13) Charges by the electrical company to the applicant or generator in addition to the application fee, if any, will be compensatory and applied as appropriate. Such costs may include, but are not limited to, transformers, production meters, and electrical company testing, qualification, and approval of non-UL 1741 listed equipment. The generator shall be responsible for any costs associated with any future upgrade or modification to its interconnected system required by modifications in the electrical company's electric system.

(14) This chapter governs the terms and conditions under which the applicant's generating facility will interconnect with, and operate in parallel with, the electrical company's electric system. This chapter does not govern the settlement, purchase or delivery of any power generated by applicant's generating facility. The purchase or delivery of power, including net metering of electricity pursuant to chapter 80.60 RCW, and other services that the applicant may require will be covered by separate agreement or pursuant to the terms, conditions and rates as may be from time to time approved by the commission. Any such agreement shall be complete prior to initial operation and filed with the commission.

(15) Generator may disconnect the generating facility at any time; provided, that the generator provide reasonable advance notice to the electrical company.

(16) Generator shall notify the electrical company prior to the sale or transfer of the generating facility, the interconnection facilities or the premises upon which the facilities are located. The applicant or generator shall not assign its rights or obligations under any agreement entered into pursuant to these rules without the prior written consent of electrical company, which consent shall not be unreasonably withheld.

NEW SECTION

WAC 480-108-050 Certificate of completion. All generating facilities must obtain an electrical permit and pass electrical inspection before they can be connected or operated in parallel with the electrical company's electric system. Generator shall provide to electrical company written certification that the generating facility has been installed and inspected in compliance with the local building and/or electrical codes.

NEW SECTION

WAC 480-108-060 Required filings—Exceptions. (1)

The electrical company shall file, as part of its tariff, and maintain on file for inspection at its place of business, the charges, terms and conditions for interconnections pursuant to this chapter and must be consistent with these rules. Such filing shall include model forms of the following documents and contracts:

- (a) Application.
- (b) Model interconnection agreement.
- (c) Certificate of completion.

(2) The commission may grant such exceptions to these rules as may be appropriate in individual cases.

WSR 06-03-127

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket No. UE-030423—Filed January 18, 2006, 10:07 a.m.]

Supplemental Notice to WSR 05-20-094.

Preproposal statement of inquiry was filed as WSR 03-09-070.

Title of Rule and Other Identifying Information: Chapter 480-107 WAC, Electric companies—Purchases of electricity from qualifying facilities and independent power producers and purchases of electrical savings from conservation suppliers. These rules state requirements that electric companies must follow when acquiring new resources. The supplemental notice would revise rules noticed at WSR 05-20-094, relating to purpose and scope of chapter, definitions, the solicitation process, contents of the solicitation, pricing and contracting procedures, avoided cost schedules, obligations of generating facilities to the utility, interconnection costs, and conditions for purchase of electrical power or savings from a utility, a utility's subsidiary or affiliated interest.

Hearing Location(s): Commission Hearing Room, Second Floor, Chandler Plaza, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on February 22, 2006, at 2:30 p.m.

Date of Intended Adoption: February 22, 2006.

Submit Written Comments to: Carole Washburn, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@wutc.wa.gov, fax (360) 586-1150 by February 8, 2006. Please include "Docket No. UE-030423" in your comments.

Assistance for Persons with Disabilities: Contact Mary DeYoung by February 17, 2006, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This supplemental proposal would revise most sections in chapter 480-107 WAC, see sections below.

Reasons Supporting Proposal: Language is proposed that would constitute a substantial change from the supplemental CR-102 proposal at WSR 05-20-094. The revisions proposed in this supplemental CR-102 would include correction of the table of contents to make it consistent with the

chapter, deletion of the obligation of an electric utility to adjust price by operating performance adjustments if a qualifying or generating facility agrees to operate under economic dispatch, substituting estimated avoided cost schedules for avoided cost schedules, eliminating the requirement that for projects of one megawatt or less the basis for the price offered will be the avoided cost specified in the current utility tariff, and establishing that the obligations of generating facilities to utilities listed in proposed WAC 480-107-085 are minimum obligations.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Graciela Etchart, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1310; Implementation and Enforcement: Carole Washburn, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed corrections and changes to rules will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

January 18, 2006
Carole J. Washburn
Executive Secretary

AMENDATORY SECTION (Amending Docket No. A-030832, General Order No. R-509, filed 10/29/03, effective 11/29/03)

WAC 480-107-001 Purpose and scope. (1) ~~((The purpose of this chapter is to establish rules for determining rates, terms, and conditions governing the following purchases by electric utilities: Electricity from qualifying facilities; the electrical savings associated with eligible conservation measures pursuant to these rules; electricity from independent power producers; and, at the utility's election, utility subsidiaries, and other electric utilities. These rules are intended to provide an opportunity for conservation and generating resources to compete on a fair and reasonable basis to fulfill a utility's new resource needs. It is the commission's intent that bids under these rules shall include the costs of compliance by the project with environmental laws, rules, and regulations in effect at the time of the bid and those reasonably anticipated to be in effect during the term of the project.~~

~~These))~~ The rules in this chapter require utilities to solicit bids, rank project proposals, and identify any bidders that meet the minimum selection criteria. The rules in this chapter do not establish the sole procedures utilities must use to acquire new resources. Utilities may construct electric resources, operate conservation programs, purchase power

through negotiated contracts, or take other action to satisfy their public service obligations.

(2) The commission will consider the information obtained through these bidding procedures when it evaluates the performance of the utility in rate and other proceedings.

(3) The rules in this chapter are consistent with the provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA), Title II, sections 201 and 210, and related regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292. To the extent of any conflict between these rules and PURPA, or the related rules promulgated by FERC in 18 C.F.R. Part 292, PURPA and those related rules control. Purchase of electric power under these rules ((shall satisfy an electric)) satisfies a utility's obligation to purchase power from qualifying facilities under section 210 of PURPA.

~~((These rules do not preclude electric utilities from constructing electric resources, operating conservation programs, purchasing power through negotiated purchase contracts, or otherwise taking action to satisfy their public service obligations. Information about the price and availability of electric power obtained through the bidding procedures described in these rules may be used, in conjunction with other evidence, in general rate cases and other cost recovery proceedings pertaining to resources not acquired through these bidding procedures.~~

~~(2) The provisions of this chapter shall apply to any electric utility which has submitted to the commission a least cost plan as provided in WAC 480-100-238 (Least cost planning).))~~

NEW SECTION

WAC 480-107-002 Application of rules. (1) The rules in this chapter apply to any utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(2) Any affected person may ask the commission to review the interpretation or application of these rules by a utility or customer by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleading—General.

(3) No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable statutes. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.

NEW SECTION

WAC 480-107-004 Additional requirements. (1) These rules do not relieve any utility from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains its authority to impose additional or different requirements on any utility in appropriate circumstances, consistent with the requirements of law.

NEW SECTION

WAC 480-107-006 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION

WAC 480-107-007 Definitions. "Affiliate" means a person or corporation that meets the definition of an "affiliated interest" in RCW 80.16.010.

"Avoided costs" means the incremental costs to a utility of electric energy, electric capacity, or both, that the utility would generate itself or purchase from another source, but for purchases to be made under these rules. A utility's avoided costs are the prices, terms and conditions, including the period of time and the power supply attributes, of the least cost final contract entered into as a result of the competitive bidding process described in these rules. If no final contract is entered into in response to a request for proposal (RFP) issued by a utility under these rules, the utility's avoided costs are the lesser of:

(1) The price, terms and conditions set forth in the least cost project proposal that meets the criteria specified in the RFP; or

(2) Current projected market prices for power with comparable terms and conditions.

"Back-up power" means electric energy or capacity supplied by a utility to replace energy ordinarily supplied by utility-owned generation or purchased through contracts that is unavailable due to an unscheduled outage.

"Commission" means the Washington utilities and transportation commission.

"Conservation" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production or distribution, or from demand response, load management or efficiency measures that reduce peak capacity demand.

"Conservation supplier" means a third party supplier or utility affiliate that provides equipment or services that save capacity or energy.

"Economic dispatch" means modifying the scheduling of power purchases from a generating facility within contractually specified limits to minimize the costs of delivering electricity.

"Generating facilities" means plant and other equipment used to generate electricity purchased through contracts entered into under these rules.

"Independent power producers" means an entity that owns generating facilities or portions thereof that are not included in a utility's rate base and that are not qualifying facilities as defined in this section.

"Integrated resource plan" or "IRP" means the filing made every two years by a utility in accordance with WAC 480-100-238 Integrated resource planning.

"Interruptible power" means electric energy or capacity supplied to a utility by a generating facility, the availability of which may be interrupted under certain conditions.

"Maintenance power" means electric energy or capacity supplied by a utility during scheduled outages of a generating facility.

"Project developer" means an individual, association, corporation, or other legal entity that can enter into a power or conservation contract with the utility.

"Project proposal" means a project developer's document containing a description of a project and other information responsive to the requirements set forth in a request for proposal, also known as a bid.

"Qualifying facilities" means generating facilities that meet the criteria specified by the FERC in 18 C.F.R. Part 292 Subpart B.

"Request for proposals" or "RFPs" means the documents describing a utility's solicitation of bids for delivering electric capacity, energy, or capacity and energy, or conservation.

"Resource block" means the deficit of capacity and associated energy that the IRP shows for the near term.

"Subsidiary" means any company in which the utility owns directly or indirectly five percent or more of the voting securities, and that may enter a power or conservation contract with that electric utility. A company is not a subsidiary if the utility can demonstrate that it does not control that company.

"Supplementary power" means electric energy or capacity supplied by a utility that is regularly used by a generating facility in addition to that which the facility generates itself.

"Utility" means an electrical company as defined by RCW 80.04.010.

NEW SECTION

WAC 480-107-015 The solicitation process. (1) Any owner of a generating facility, developer of a potential generating facility, marketing entity, or provider of energy savings may participate in the RFP process. Bidders may propose a variety of energy resources including: Electrical savings associated with conservation; electricity from qualifying facilities; electricity from independent power producers; and, at the utility's election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property. Qualifying facility producers with a generation capacity of one megawatt or less may choose to participate in the utilities' standard tariffs without filing a bid.

(2) A utility may participate in the bidding process as a power supplier, or may allow a subsidiary or affiliate to participate in the bidding process as a power supplier, on conditions described in WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. The utility's RFP submittal must declare the utility's or affiliate's participation and must demonstrate how the utility will satisfy the requirements of WAC 480-107-135.

(3) Timing of the solicitation process.

(a) The rules in this section do not apply when a utility's integrated resource plan, prepared pursuant to WAC 480-100-238, demonstrates that the utility does not need additional capacity within three years.

(b) A utility must submit to the commission a proposed request for proposals and accompanying documentation no later than one hundred thirty-five days after the utility's integrated resource plan is due to be filed with the commission. Interested persons will have sixty days from the RFP's filing date with the commission to submit written comments to the commission on the RFP. The commission will approve or suspend the RFP within thirty days after the close of the comment period.

(c) A utility must solicit bids for electric power and electrical savings within thirty days of a commission order approving the RFP.

(d) All bids will remain sealed until expiration of the solicitation period specified in the RFP.

(4) In addition to the solicitation process required by these rules, a utility may, at its own discretion, issue an RFP that limits project proposals to resources with specific characteristics. In addition, a utility, at its own discretion, may issue RFPs more frequently than required by this rule.

(5) Persons interested in receiving commission notice of a specific utility's RFP filings can request the commission to place their names on a mailing list for notification of future RFP filings by that utility.

NEW SECTION

WAC 480-107-025 Contents of the solicitation. (1)

The RFP must identify the resource block, consisting of the overall amount and duration of power the utility is soliciting, the initial estimate of avoided cost schedule as calculated in WAC 480-107-055 Avoided cost schedule, and any additional information necessary for potential bidders to make a complete bid.

(2) The RFP must document that the size of the resource block is consistent with the range of estimated new resource needs identified in the utility's integrated resource plan.

(3) The RFP must explain general evaluation and ranking procedures the utility will use in accordance with WAC 480-107-035 Project ranking procedure. The RFP must also specify any minimum criteria that bidders must satisfy to be eligible for consideration in the ranking procedure.

(4) The RFP must specify the timing of process including the solicitation period, the ranking period, and the expected selection period.

(5) The RFP must identify all security requirements and the rationale for them.

(6) Utilities are encouraged to consult with commission staff during the development of the RFP. Utilities, at their own discretion, may submit draft RFPs for staff review prior to formally submitting an RFP to the commission.

NEW SECTION

WAC 480-107-035 Project ranking procedure. (1)

The procedures and criteria the utility will use in its RFP to evaluate and rank project proposals are subject to commission approval.

(2) At a minimum, the ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the

risks imposed on ratepayers, public policies regarding resource preference adopted by Washington state or the federal government and environmental effects including those associated with resources that emit carbon dioxide. The ranking criteria must recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, and contract provisions. The ranking process must complement power acquisition goals identified in the utility's integrated resource plan.

(3) After the project proposals have been opened for ranking, the utility must make available for public inspection at the utility's designated place of business a summary of each project proposal and a final ranking of all proposed projects.

(4) The utility may reject any project proposal that does not specify, as part of the price bid, the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid.

(5) The utility may reject all project proposals if it finds that no proposal adequately serves ratepayers' interests. The commission will review, as appropriate, such a finding together with evidence filed in support of any acquisition in the utility's next general rate case or other cost recovery proceeding.

(6) When the utility, the utility's subsidiary or an affiliate submits a bid in response to an RFP, one or more competing bidders may request the commission to appoint an independent third party to assist commission staff in its review of the bid. Should the commission grant such a request, the fees charged by the independent third party will be paid by the party or parties requesting the independent review.

NEW SECTION

WAC 480-107-045 Pricing and contracting procedures. (1)

Once project proposals have been ranked in accordance with WAC 480-107-035 Project ranking procedure, the utility must identify the bidders that best meet the selection criteria and that are expected to produce the energy, capacity, and electrical savings as defined by that portion of the resource block to which the project proposal is directed.

(2) The project proposal's price, pricing structure, and terms are subject to negotiation.

NEW SECTION

WAC 480-107-055 Schedules of estimated avoided cost. (1)

A utility must file annually a schedule of estimated avoided cost for the energy and capacity associated with the resource block the utility solicited in its most recent RFP filed pursuant to WAC 480-07-025 Contents of the solicitation.

(2) Schedules of estimated avoided cost are to be based upon:

(a) The most recent project proposals received pursuant to an RFP issued under these rules;

(b) Estimates included in the utility's current integrated resource plan filed pursuant to WAC 480-100-238;

(c) The results of the utility's most recent bidding process; and

(d) Current projected market prices for power.

The utility must file documentation supporting its schedule of estimated avoided cost.

(3) Utilities may revise a schedule of estimated avoided cost at any time. Such revisions must be filed with the commission along with documentation supporting the revision.

(4) The schedule of estimated avoided cost provides only general information to potential bidders about the costs of new power supplies; it does not provide a guaranteed contract price for electricity. For discussion of such guarantee, see WAC 480-107-095.

NEW SECTION

WAC 480-107-065 Eligibility for long-run conservation purchase rates. (1) Any conservation supplier may participate in the bidding process. A utility may allow a utility subsidiary to participate as a conservation supplier, on conditions described in WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. A decision to allow a utility subsidiary to participate must be explained in the utility's RFP submittal.

(2) All conservation measures included in a project proposal must:

(a) Produce electrical savings over a time period greater than five years, or a longer period if specified in the utility's RFP. A measure with an expected life that is shorter than the contract term must include replacements through the contract term;

(b) Be consistent with the utility's integrated resource plan; and

(c) Produce savings that can be reliably measured or estimated with accepted engineering methods.

NEW SECTION

WAC 480-107-075 Contract finalization. (1) Unless otherwise prohibited by law, a utility has discretion to decide whether to enter into a final contract with any project bidder that meets the selection criteria of the RFP. Any such bidder may petition the commission to review a utility's decision not to enter into a final contract.

(2) Any project bidder and utility may negotiate changes to the selected project proposal for the purpose of finalizing a particular contract consistent with the provisions of this chapter.

(3) The utility may sign contracts for any appropriate time period specified in a selected project proposal for up to a twenty-year term. The utility may sign longer-term contracts if such provisions are specified in the utility's RFP.

(4) If material changes are made to the project proposal after project ranking, including material price changes, the utility must suspend contract finalization with that party and rerank projects according to the revised project proposal. If the material changes cause the revised project proposal to rank lower than projects not originally selected, the utility must instead pursue contract finalization with the next ranked project.

(5) A project developer must provide evidence that the developer has obtained or will obtain a generation site (e.g., letter of intent) before signing a contract with the purchasing utility.

NEW SECTION

WAC 480-107-085 Obligations of generating facilities to the utility. (1) The owner or operator of a generating facility purchasing or selling electricity under this chapter must execute a written agreement with the utility stating at a minimum that:

(a) The owner or operator will construct and operate all interconnected generating facilities and interconnection facilities within its control in accordance with all applicable federal, state, and local laws and regulations to ensure system safety and reliability of interconnected operations;

(b) The generating facility will furnish, install, operate, and maintain in good order and repair, and without cost to the utility, such relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus determined by the utility to be necessary for the safe and reliable operation of the generating facility in parallel with the utility's system; and

(c) The utility will be able to gain access at all times to all switching equipment capable of isolating the generating facility from the utility's system.

(2) The utility may choose to operate the switching equipment described in subsection (1)(c) of this section if, in the sole opinion of the utility, continued operation of the customer's generating facility in connection with the utility's system may create or contribute to a system emergency. Such a decision by the utility is subject to commission verification in accordance with WAC 480-107-115 System emergencies. The utility must endeavor to minimize any adverse effects of such operation on the customer.

(3) Any agreement between a generating facility and a utility must state the extent to which the generating facility will assume responsibility for the safe operation of the interconnection facilities. The generating facility may not be required to assume responsibility for negligent acts of the utility.

NEW SECTION

WAC 480-107-095 Obligations of the utility to qualifying facilities. (1) A utility must purchase electric energy, electric capacity, or both from a qualifying facility on terms that do not exceed the utility's avoided costs for such electric energy, electric capacity, or both.

(2) All utilities must file a standard tariff for purchases from qualifying facilities rated at one megawatt or less. Such standard tariff may be based upon market prices and include incremental costs associated with purchasing small quantities of power. Qualifying facility developers proposing projects with a design capacity of one megawatt or less may choose to receive a purchase price for power that is set forth in such standard tariff.

(3) A utility must sell to any qualifying facilities, in accordance with WAC 480-107-105 Rates for sales to qualifying facilities, any energy and capacity requested by the qualifying facilities on the same basis as available to other customers of the utility in the same class.

(4) Any utility must make all the necessary interconnections with any qualifying facilities to accomplish purchases or sales under this section. The obligation to pay for any

interconnection costs will be determined in accordance with WAC 480-107-125 Interconnection costs.

(5) At the request of a qualifying facility, a utility that would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit energy or capacity to any other utility at the option of the utilities involved. Nothing in this section obligates the utility connected with the qualifying facility to transmit to other utilities. Nothing in this section obligates other utilities to purchase from the qualifying facility.

(6) Each utility may offer to operate in parallel with a qualifying facility if the qualifying facility complies with all applicable standards established in WAC 480-107-095 Obligations of generating facilities to electric utilities.

NEW SECTION

WAC 480-107-105 Rates for sales to qualifying facilities. (1) General rules:

(a) Rates must be just and reasonable, and in the public interest; and

(b) Rates must not discriminate between qualifying facilities and other customers served by the utility.

(2) Rates for sales that are based on accurate data and consistent system-wide costing principles will not be considered to discriminate against any qualifying facilities if those rates apply to the utility's other customers with similar load or other cost-related characteristics.

(3) Additional services to be provided to qualifying facilities:

(a) Upon request by a qualifying facility, each utility will provide:

- (i) Supplementary power;
- (ii) Back-up power;
- (iii) Maintenance power; and
- (iv) Interruptible power.

(b) The commission may waive any requirement of (a) of this subsection if, after notice in the area served by the utility and after opportunity for public comment, the utility demonstrates and the commission finds that compliance with such requirement will:

(i) Impair the utility's ability to render adequate service to its customers; or

(ii) Place an undue burden on the utility.

(4) The rate for sale of back-up power or maintenance power:

(a) May not be based on an assumption that forced outages or other reductions in electric output by all qualifying facilities on a utility's system will occur simultaneously, or during the system peak, or both unless such an assumption is supported by factual data; and

(b) Must take into account the extent to which scheduled outages of the qualifying facilities can be coordinated with scheduled outages of the utility's facilities.

NEW SECTION

WAC 480-107-115 System emergencies. (1) A generating facility entering into a power contract under these rules is required to provide energy or capacity to a utility during a system emergency only to the extent:

(a) Provided by agreement between such generating facility and utility; or

(b) Ordered under section 202(c) of the Federal Power Act.

(2) During any system emergency, a utility may discontinue or curtail:

(a) Purchases from a generating facility if such purchases would contribute to such emergency; and

(b) Sales to a generating facility, if such discontinuance or curtailment:

(i) Does not discriminate against a generating facility; and (ii) Takes into account the degree to which purchases from the generating facility would offset the need to discontinue or curtail sales to the generating facility.

(3) System emergencies resulting in utility action under this chapter are subject to verification by the commission upon request by either party to the power contract.

NEW SECTION

WAC 480-107-125 Interconnection costs. (1) Any costs of interconnection are the responsibility of the owner or operator of the generating facility entering into a power contract under this chapter. The utility must assess all reasonable interconnection and necessary system or network upgrade costs the utility incurs against a generating facility on a non-discriminatory basis.

(2) The owner or operator of the generating facility must reimburse the utility for any reasonable interconnection costs the utility may incur. Such reimbursement shall be made, at the utility's election:

(a) At the time the utility invoices the owner or operator of the generating facility for interconnection costs incurred by the utility; or

(b) Over an agreed period of time not greater than the length of any contract between the utility and the generating facility.

NEW SECTION

WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility, a utility's subsidiary or affiliate. (1) The utility, its subsidiary or affiliate may participate in the utility's bidding process. In these circumstances, the solicitation and bidding process will be subject to additional scrutiny by the commission to ensure that no unfair advantage is given to the utility's subsidiary or affiliate. Commission scrutiny will ensure that ratepayer interests are protected.

(2) As part of its RFP, a utility must include specific notice if it intends to submit a bid or intends to allow its subsidiaries and affiliates to participate in its bidding process. The utility must indicate in its RFP how it will ensure that its subsidiary or affiliate, through association with the utility, will not gain an unfair advantage over potential nonaffiliated competitors. A utility's disclosure of the contents of an RFP or competing project proposals to its own personnel involved in developing the utility's bid, or to its subsidiary or affiliate prior to such information being made public will be construed to constitute an unfair advantage.

(3) The commission may not allow a utility to recover in its rates all or part of the costs associated with the utility's project, or a subsidiary's or affiliate's project(s), if any unfair advantage was given to any bidder.

NEW SECTION

WAC 480-107-145 Filings—Investigations. (1) The commission retains the right to examine project proposals as originally submitted by potential developers. The utility must keep all documents supplied by project bidders or on their behalf, and all documents created by the utility relating to each bid, for at least seven years from the close of the bidding process, or the conclusion of the utility's next general rate case, whichever is later.

(2) The utility must file with the commission and maintain on file for inspection at its place of business, the current rates, prices, and charges established in accordance with this chapter.

NEW SECTION

WAC 480-107-999 Adoption by reference. In WAC 480-107-001, Purpose and scope, the commission refers to the provisions of the Public Utilities Regulatory Policies Act of 1978 (PURPA), Title II, sections 201 and 210, and related regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292. The versions referenced are those current on the day the commission adopted the rule that includes the reference, consistent with the requirements of WAC 480-07-180.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-107-005	Definitions.
WAC 480-107-010	Filing requirements for prototype contracts.
WAC 480-107-020	Eligibility for long-run generating facility purchase rates.
WAC 480-107-030	Eligibility for long-run conservation purchase rates.
WAC 480-107-040	Size of resource block.
WAC 480-107-050	Avoided cost schedules.
WAC 480-107-060	The solicitation process.
WAC 480-107-070	Project ranking procedure.
WAC 480-107-080	Pricing and contracting procedures.
WAC 480-107-090	Security considerations.
WAC 480-107-100	Contract finalization.
WAC 480-107-110	Obligations of generating facilities to electric utility.

WAC 480-107-120	Obligations of electric utility to qualifying facilities.
WAC 480-107-130	Rates for sales to qualifying facilities.
WAC 480-107-140	System emergencies.
WAC 480-107-150	Interconnection costs.
WAC 480-107-160	Special conditions for purchase of electrical power or savings from a utility subsidiary.
WAC 480-107-170	Filings—Investigations—Exceptions.

WSR 06-03-130

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket No. T-051359—Filed January 18, 2006, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-20-093 and 05-23-175.

Title of Rule and Other Identifying Information: This rule making would consider amending sections of chapter 480-31 WAC, Private, nonprofit transportation providers and chapter 480-70 WAC, Solid waste collection companies, to reflect recent changes to chapters 81.66, 81.77, and 81.84 RCW, relating to notice and opportunity for hearing prior to suspension or revocation of a certificate, and in conjunction with a request for a certificate to operate in a territory served by an existing certificate holder and to consider adding new language or sections to implement the statutory amendments.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on February 22, 2006, at 2:30 p.m.

Date of Intended Adoption: February 22, 2006.

Submit Written Comments to: Carole J. Washburn, Secretary, P.O. Box 47250, Olympia, WA 98504, e-mail records@wutc.wa.gov, fax (360) 586-1150, by February 8, 2006. Please include Docket No. UT-040015 in your communication.

Assistance for Persons with Disabilities: Contact Mary DeYoung by Monday, February 17, 2006, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to codify SSB 5105 that states the commission is no longer required to hold a hearing before it can suspend or revoke a certificate, or consider a request for a certificate to operate in a territory served by an existing certificate holder. Instead, the commission is only required to provide notice and an opportunity for a hearing. It would also make minor corrections and make grammar changes.

Affected WACs are:

WAC 480-31-050 Certificates, amend to remove language in subsection (7) and add to new section WAC 480-31-052.

WAC 480-31-052 Suspending and canceling certificates, new section codifies requirements for suspending and canceling certificates.

WAC 480-31-054 Certificates, reinstatement, new section codifies requirements for reinstating certificates.

WAC 480-31-070 Insurance, grammar changes and amend to remove language in subsection (5) and added to new section WAC 480-31-052.

WAC 480-31-080 Fees and annual report, grammar changes and amend to remove unnecessary language.

WAC 480-70-161 Suspending and canceling certificates, amend to add language from deleted WAC 480-70-166.

WAC 480-70-166 Canceling certificates, repeal to add requirement language in WAC 480-70-161 to make consistent with chapter 480-31 WAC.

Reasons Supporting Proposal: To put into rule the statutory language amended in SSB 5105.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Sharyn Bate, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1295; Implementation and Enforcement: Carole J. Washburn, Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed corrections and changes to rules will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

January 18, 2006

Carole J. Washburn
Executive Secretary

AMENDATORY SECTION (Amending Docket No. A-010827, General Order No. R-491, filed 9/28/01, effective 10/29/01)

WAC 480-31-050 Certificates. (1) The commission will issue a certificate to any corporation which files a completed application, as provided by the commission, which provides:

(a) Satisfactory proof of its status as a private, nonprofit corporation;

(b) Information sufficient to determine the particular service to be provided;

(c) Satisfactory proof of insurance or surety bond, in accordance with WAC 480-31-070 (Insurance);

(d) The number and type of vehicles to be operated, together with satisfactory proof that the vehicles are adequate for the proposed service, that the vehicles are or will be licensed in compliance with the laws of the state, and that drivers of such vehicles will be adequately trained and qualified.

(2) Applications for certificates must be on forms to be furnished by the commission, giving all information requested and accompanied by a fifty dollar application fee.

(3) Remittances will be made by money order, bank draft, personal check or certified check, made payable to the Washington utilities and transportation commission.

(4) No provider may operate, establish, or begin operation of any business for the purpose of transporting persons with special transportation needs on the public highways of this state, without first having obtained from the commission a certificate.

(5) No certificate will be issued to persons operating under a trade name, unless a certificate of said trade name is filed in accordance with the provisions of RCW 19.80.010, and a copy thereof filed with the commission.

(6) Each vehicle operated by a provider must carry a copy of the company's certificate, and will be subject at all times to inspection by an authorized representative of the commission.

~~(7) ((Any certificate to operate as a private, nonprofit transportation provider obtained by any false affidavit or representation will be subject to cancellation by the commission.~~

~~(8))~~ No certificate will be sold, assigned, leased, acquired, or transferred except upon authorization of the commission.

NEW SECTION

WAC 480-31-052 Suspending and canceling certificates. (1) **Cause for suspension.** The commission may suspend a certificate for cause. Cause includes, but is not limited to:

(a) Failure to maintain evidence of required liability insurance coverage for all areas of a private, nonprofit transportation provider's operations;

(b) Failure to file an annual report or pay required regulatory fees;

(c) Failure or refusal to comply with operating standards that protect the public health, safety, or welfare;

(d) Allowing others to operate under a provider's certificated authority without having first obtained commission approval;

(e) Operating in a manner that violates the rights of customers and/or constitutes an unfair or deceptive business practice; or

(f) Repeated failure or refusal to comply with laws and rules pertaining to operations of private, nonprofit transportation providers.

(2) **Cause for cancellation.** The commission may cancel a certificate for cause. Cause includes, but is not limited to:

- (a) Operating without proper insurance;
- (b) Failure to file an annual report or pay required fees;
- (c) Failure to correct within the time specified in a suspension order all conditions listed in the suspension order that led to the certificate's suspension;
- (d) Continued violations of laws and rules affecting the public health, safety, or welfare when the commission has reason to believe the private, nonprofit transportation provider will not comply with those laws and rules following a specified period of suspension;
- (e) Failure to supply requested information needed by the commission in the performance of its regulatory functions; or
- (f) Submission of false, misleading or inaccurate information.

(3) **Notice of pending suspension and cancellation.** When the commission believes cause exists to suspend or cancel a certificate, it will issue a notice to the private, nonprofit transportation provider of the commission's intention to suspend or cancel the authority.

(4) **Contest of suspension and cancellation.** A private, nonprofit transportation provider may contest the pending suspension and/or cancellation of its certificate by requesting a hearing or brief adjudicative proceeding within ten days following the date of the notice.

NEW SECTION

WAC 480-31-054 Certificates, reinstatement. (1) The commission may reinstate a certificate canceled for cause under the provisions of WAC 480-31-052 (Suspending and canceling certificates) if the private, nonprofit transportation provider:

- (a) Corrects all conditions leading to the cancellation;
- (b) Provides a written statement explaining the circumstances surrounding the cancellation and commits that it is unlikely to recur; and
- (c) Files an application to reinstate authority with the proper application fee.

(2) The commission may reinstate a certificate suspended under the provisions of WAC 480-31-052 (Suspending and canceling certificates) if the provider satisfies the terms of the suspension and all conditions leading to the suspension are corrected.

AMENDATORY SECTION (Amending Order R-440, Docket No. TC 961102, filed 3/27/97, effective 4/27/97)

WAC 480-31-070 Insurance. (1) Evidence of liability and property damage insurance or a surety bond must be on file before a certificate will be issued to a private, nonprofit transportation provider. The insurance or surety bond must have been written by a company authorized to write such insurance in the state of Washington. The combined bodily injury and property damage liability insurance or surety bond must not be less than:

Five hundred thousand dollars combined single limit for vehicles with a passenger capacity of less than sixteen passengers, including the driver;

One million dollars combined single limit for vehicles with a passenger capacity of sixteen or more passengers, including the driver.

~~((Failure to file and keep such insurance or surety bond in full force and effect will be cause for dismissal of an application or cancellation of a certificate.))~~

(2) A provider's insurance agency or company must submit evidence of insurance ~~((must be submitted))~~ on a "uniform motor carrier bodily injury and property damage liability certificate of insurance" (form E).

(3) All liability and property damage insurance policies issued to providers must carry a "uniform motor carrier bodily injury and property damage liability endorsement."

(4) Insurance termination. All insurance policies issued must provide that the same will continue in full force and effect until canceled by at least thirty days' written notice served on the insured and the commission by the insurance company. The thirty-day notice will commence to run from the date notice is actually received by the commission, except for binders which may be canceled on ten days' written notice.

A provider's insurance agency or company must submit notice of cancellation or expiration ~~((must be submitted))~~ in duplicate on forms prescribed by the commission and must not ~~((be submitted))~~ submit the notice more than sixty days before the desired termination date, except binders which may be canceled by ten days' written notice from the insurance agency or company.

(5) No provider may operate upon the public highways of this state without insurance as required by this section. ~~((The permit of any provider who fails to maintain evidence on file that its insurance is in current effect will be suspended by operation of law beginning with the time of the failure, until the permit is canceled or the cause of the suspension is cured and the permit is reinstated. The commission will make a good faith effort to notify providers of impending suspension for failure to maintain evidence of insurance and enter a timely order of suspension, but failure to do so will not invalidate the suspension.))~~

AMENDATORY SECTION (Amending Order R-440, Docket No. TC 961102, filed 3/27/97, effective 4/27/97)

WAC 480-31-080 Fees and annual report. (1) A private, nonprofit transportation provider must pay to the commission the sum of ten dollars annually for each vehicle operated. The provider must pay the annual fee ~~((must be paid))~~ with the filing of the annual report ~~((of the provider))~~.

(2) At the close of each calendar year, every provider must secure from the commission the proper forms and file with the commission its annual report as soon as possible after the close of the calendar year, but no later than May 1st of the succeeding year. ~~((Failure to file such report will be sufficient cause for the commission, in its discretion to revoke a certificate.))~~

AMENDATORY SECTION (Amending Docket No. TG-990161, General Order No. R-479, filed 3/23/01, effective 4/23/01)

WAC 480-70-161 Suspending and canceling certificates. (1) **Cause for suspension.** The commission may suspend a certificate for cause. Cause includes, but is not limited to:

- (a) Failure to maintain evidence of required liability insurance coverage for all areas of a company's operations;
- (b) Failure to file an annual report or pay required regulatory fees;
- (c) Failure to comply with the rates and rules contained in the company's filed tariff;
- (d) Failure or refusal to comply with operating standards that protect the public health, safety or welfare;
- (e) Allowing others to operate under a company's certificated authority without having first obtained commission approval; or
- (f) Operating in a manner that violates the rights of customers and/or constitutes an unfair or deceptive business practice.

(2) ~~(Notice of suspension. The commission will issue an order notifying the company of the commission's action to suspend a certificate. Suspension is effective on the date the commission mails the suspension order (service date).)~~

~~(3))~~ **Cause for cancellation.** The commission may cancel a certificate for cause. Cause includes, but is not limited to:

- (a) Operating without proper insurance;
- (b) Failure to file an annual report or pay required regulatory fees;
- (c) Failure to correct within the time specified in a suspension order all conditions listed in the suspension order that led to the certificate's suspension;
- (d) Continued violations of applicable laws and rules affecting the public health, safety, or welfare when the commission has reason to believe the company will not comply with those laws and rules following a specified period of suspension;
- (e) Repeated failure or refusal to comply with applicable laws and rules pertaining to operations of solid waste collection companies;
- (f) Failure to supply requested information needed by the commission in the performance of its regulatory functions;
- (g) Submission of false, misleading, or inaccurate information; or
- (h) Allowing others to operate under a company's certificated authority without having first obtained commission approval.

(3) Notice of pending suspension and cancellation. When the commission believes cause exists to suspend or cancel a certificate, it will issue a notice to the company of the commission's intention to suspend or cancel the authority.

(4) Contest of suspension and cancellation. A company may contest the pending suspension and/or cancellation of its certificate by requesting a hearing or brief adjudicative proceeding within ten days following the date of the notice.

~~((4) Suspension without opportunity for prior hearing. The commission may suspend a certificate without providing an opportunity for prior hearing if there is imminent danger to~~

~~the public health, safety, or welfare, and there is insufficient time to conduct a hearing. If the commission invokes this suspension clause, the commission will, as soon as is practical, schedule a hearing or brief adjudicative proceeding to determine if the suspension should continue in force and effect.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-70-166 Canceling certificates.

WSR 06-03-131
PROPOSED RULES
HORSE RACING COMMISSION

[Filed January 18, 2006, 10:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-024.

Title of Rule and Other Identifying Information: Chapter 260-84 WAC, Penalties.

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

Date of Intended Adoption: March 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 March 6, 2006.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 9, 2006, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to: (1) Remove errors in the existing language of WAC 260-84-060; (2) remove the human drug and alcohol penalties from WAC 260-84-060 and move them to new WAC 260-84-065 Licensees—Drug and alcohol penalties; and (3) make minor format changes to WAC 260-84-090 and add two subsection to this rule. The first would allow the stewards to impose the maximum penalty if the stewards determine a greater penalty is appropriate and refer the matter to the commission. The second authorizes the stewards to set a penalty for a violation of chapter 260-70 WAC if a penalty has not otherwise been determined.

Reasons Supporting Proposal: Removes errors and clarifies the intend [intent] to the commission regarding penalties for equine medication violations.

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 18, 2006
 R. M. Lechner
 Executive Secretary

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

WAC 260-84-060 Penalty matrixes. (1) The imposition of reprimands, fines and suspensions shall be based on the following penalty matrixes:

Class A (&B) and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$25	\$50	\$100
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel (trainer's responsibility) WAC 260-28-230	\$500		
Licensing - failure to divulge a felony WAC 260-36-120	\$100 or possible denial of license		
Licensing - failure to divulge a gross misdemeanor or misdemeanor WAC 260-36-120	Warning to \$50		
Licensing - providing false information on application WAC 260-36-120	\$50 to \$250 or possible denial of license		
Licensing - nonparticipation WAC 260-36-080	License canceled		
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Use of improper, profane or indecent language to a racing official WAC 260-80-130	\$50	\$100	\$250
Unsafe vehicle operation WAC 260-20-020	Warning to \$50	\$100 and recommend racing association revoke vehicle pass	
Financial responsibility WAC 260-28-030	Resolve <u>within</u> 30 days or before the end of the meet (whichever is sooner) (to resolve) or suspension		
Failure to appear - (hearing) <u>for ruling conference</u> WAC 260-24-510	Suspension ((pending appearance))		
Failure to honor riding engagements (call) - agents WAC 260-32-400	\$75	\$100	\$200
Reporting incorrect weight - jockeys WAC 260-32-150	\$50	\$100	\$200
Failure to appear for films - jockeys WAC 260-24-510	\$50	\$100	\$200
Failure to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Easing mount without cause WAC 260-52-040	\$250	\$250 and/or suspension	\$500 and/or suspension

Class A ((&)) and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
Use of stimulating device (may include batteries) WAC 260-52-040	1 year suspension plus mandatory referral to commission for revocation		
Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	1 year suspension plus mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	1 year suspension plus mandatory referral to commission for revocation		
Entering ineligible horse WAC <u>260-40-140 and 260-80-030</u>	\$50	\$100	\$100
Arriving late to the paddock WAC 260-28-200	Warning to \$50	Warning to \$50	\$50 to \$100
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50 to \$100	\$100	\$100
Failure to (handle business properly - late equipment change, etc.) <u>obtain permission for equipment changes</u> WAC 260-44-010	Warning to \$50	\$100	\$100
Failure to report (the correct name of a horse working) <u>performance records</u> WAC 260-40-100	Warning to \$50	\$100	\$150
Insufficient workouts - resulting in scratch WAC 260-40-100	\$50 to \$100	\$100	\$100

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$25	\$50	\$100
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel (trainer's responsibility) WAC 260-28-230	\$100		
Licensing - failure to divulge a felony WAC 260-36-120	\$100 or possible denial of license		
Licensing failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120	Warning to \$25		

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Licensing - providing false information on application WAC 260-36-120	\$50 to \$250 or possible denial of license		
Licensing - nonparticipation WAC 260-36-080	License canceled		
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Use of improper, profane or indecent language to a racing official WAC 260-80-130	\$50	\$100	\$250
Unsafe vehicle operation WAC 260-20-020	Warning to \$50		
Financial responsibility WAC 260-28-030	Resolve 30 days or before the end of the fall meet (whichever is sooner) to resolve or suspension		
Failure to appear((--hearing)) for ruling conference WAC 260-24-510	Suspension (((pending appearance)))		
Failure to honor riding engagements (call) - agents WAC 260-32-400	\$25	\$50	\$100
Reporting incorrect weight - jockeys WAC 260-32-150	\$25	\$50	\$100
Failure to appear for films - jockeys WAC 260-24-510	\$25	\$50	\$100
Failure to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
Use of stimulating device (may include batteries) WAC 260-52-040	1 year suspension plus mandatory referral to commission for revocation		
Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	1 year suspension plus mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	1 year suspension plus mandatory referral to commission for revocation		
Entering ineligible horse WAC 260-40-140 and 260-80-030	\$25	\$50	\$50
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	\$50
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50	\$100	\$100

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to ((handle business properly - late equipment change, etc.)) obtain permission for equipment changes WAC 260-44-010	Warning to \$50	\$50	\$50

Class A, B (&) and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
((Engaging in the illegal sale or distribution of alcohol WAC 260-34-045	30 day suspension	1 year suspension plus mandatory referral to commission for revocation	
Using an illegal controlled substance other than marijuana WAC 260-34-045	30 day suspension	1 year suspension plus mandatory referral to commission for revocation	
Being under the influence of alcohol and/or drugs WAC 260-34-045	Warning to 1 day suspension	3 day suspension	30 day suspension (1 year suspension plus mandatory referral to the commission for revocation for 4th offense)
Possession or use of marijuana WAC 260-34-045	3 day suspension	30 day suspension	1 year suspension plus mandatory referral to commission for revocation
Illegal possession of any felony drug or controlled substance WAC 260-34-045	1 year suspension plus mandatory referral to commission for revocation		
Refusal to submit to a drug or alcohol test WAC 260-34-045 and 260-34-060	1 year suspension plus mandatory referral to commission for revocation		
Possession of any equipment or material used for the manufacture or distribution of any drug or controlled substance, or engaging in the sale, manufacture or distribution of any drug or controlled substance on the grounds WAC 260-08-150	Immediate ejection from the grounds and mandatory referral to the commission for revocation))		
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$50	\$100	\$250 plus possible suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$25	\$50	\$100
Failure to follow instructions of the outrider WAC ((260-12-690)) 260-24-690	\$50	\$100	\$200
Failure to complete provisional license application within fourteen days WAC 260-36-200	Warning to \$100 and denial of license	\$250 and denial of license	\$500 and denial of license

Class A, B ((C)) and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to pay or default on L&I payment WAC ((260-28-220)) <u>260-28-235</u>	Suspension until paid plus \$25 for each quarter payment is late		
Failure to ((maintain employee L&I records for grooms and assistant trainers)) <u>register employees with the commission</u> (trainer's responsibility) WAC 260-28-230	Warning to \$50		
Unlicensed person on the backside WAC 260-20-040 <u>and 260-20-090</u>	Report violation to the racing association		

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee shall include violations, which occurred in Washington as well as any other recognized racing jurisdiction. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column shall apply to each violation.

(3) For any other violation not specifically listed above, the stewards shall have discretion to impose the penalties as provided in WAC 260-24-510 (3)(b). For violations considered minor, the fine can be up to \$500 and/or suspension for up to sixty days. Fines for violations considered major can be up to \$2,500 and/or suspension up to one year.

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty shall include, but are not limited to, the following:

- (a) The past record of the licensee or applicant;
- (b) The impact of the offense on the integrity of the parimutuel industry;
- (c) The danger to human and/or equine safety;
- (d) The number of prior violations of ((~~the~~)) these rules of racing or violations of racing rules in other jurisdictions; and/or
- (e) The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards shall follow the penalty guidelines as set forth in WAC 260-84-090.

(6) The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a stewards' referral shall not preclude commission action in any matter. A stewards' ruling shall not prevent the commission from imposing a more severe penalty.

NEW SECTION

WAC 260-84-065 Licensees—Drug and alcohol penalties. (1) Engaging in the sale or distribution of alcohol, first offense - thirty-day suspension, second offense - one-year suspension and referral to the commission for revocation.

(2) Use or possession of an illegal controlled substance, other than marijuana.

- (a) First offense - thirty-day suspension; and
- (b) Second offense - one-year suspension and referral to the commission for revocation.

(3) Possession or use of marijuana.

- (a) First offense - three-day suspension;
- (b) Second offense - thirty-day suspension; and
- (c) Third or subsequent offenses - one-year suspension and referral to commission for revocation.

(4) Performing duties while impaired by alcohol and/or drugs prescribed by a physician.

- (a) First offense - warning to one-day suspension;
- (b) Second offense - three-day suspension;
- (c) Third offense - thirty-day suspension; and
- (d) Subsequent offenses - one-year suspension and referral to commission for revocation.

(5) Refusal to submit to a drug or alcohol test, one-year suspension plus referral to commission for revocation.

(6) Possession of any equipment or material used to manufacture or distribute any drug or controlled substance, or engaging in the sale, manufacturing or distribution of any drug or controlled substance on the grounds, immediate ejection from the grounds and referral to the commission for revocation.

(7)(a) For violations of WAC 260-34-020 (1), (2), and (4), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during this time a licensee or applicant violates the provisions of this chapter, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to the following conditions:

- (i) Remain in compliance with the rehabilitation and/or treatment program.
- (ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission security investigators for a period of five years.

(iii) Have no further incidents of violating this chapter within the next twelve calendar months.

(b) If the board of stewards, after a conference, finds that the licensee or applicant failed to comply with the conditions of the stay, the original suspension may be imposed. Failure to remain in compliance with the rehabilitation and/or treatment program shall be considered a failure to comply with the conditions of the stay.

(c) Upon successful completion of a drug or alcohol rehabilitation or treatment program, a licensee or applicant can request the board of stewards lift the suspension.

AMENDATORY SECTION (Amending WSR 05-07-064, filed 3/11/05, effective 4/11/05)

WAC 260-84-090 Equine medication and prohibited substances—Penalties—Guidelines. (1) Upon a finding of a violation of the medication and prohibited substances rules in chapter 260-70 WAC, the stewards shall consider the classification level of the medication, drug or substance (~~as established in WAC 260-70-680~~) prior to imposing a penalty. The stewards shall also consult with an official veterinarian to determine the nature and seriousness of the laboratory finding or the medication violation and whether the violation was a result of the administration of a therapeutic medication as documented in a veterinarian's report received per WAC 260-70-540.

(2) A lesser penalty than that established in WAC 260-84-110 may be imposed if a majority of the stewards determine that mitigating circumstances warrant a lesser penalty. If a majority of the stewards determine a greater penalty is appropriate or that a penalty in excess of the authority granted them is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action. In determining if there are mitigating circumstances surrounding a medication violation for substances referred to in chapter 260-70 WAC, at least the following shall be considered:

- ~~((1))~~ (a) The past record of the trainer and/or veterinarian in medication/drug cases;
- ~~((2))~~ (b) The potential of the medication/drug to influence a horse's racing performance;
- ~~((3))~~ (c) The availability of the medication/drug;
- ~~((4))~~ (d) Whether there is reason to believe the responsible party knew of the administration of the medication/drug used;
- ~~((5))~~ (e) The steps taken by the trainer to safeguard the horse;
- ~~((6))~~ (f) The probability of environmental contamination or inadvertent exposure due to human drug use;
- ~~((7))~~ (g) The purse of the race;
- ~~((8))~~ (h) Whether the medication found was one for which the horse was receiving a treatment as determined by the veterinarian report(s);
- ~~((9))~~ (i) Whether there was any suspicious betting pattern in the race; and
- ~~((10))~~ (j) Whether the presence of the medication/drug in urine was confirmed in serum or plasma.

(3) If a majority of the stewards determine a penalty greater than established in these rules is appropriate, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action.

(4) If the penalty is not otherwise established for a violation of chapter 260-70 WAC, the penalty shall be determined by the board of stewards.

WSR 06-03-132

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed January 18, 2006, 11:20 a.m.]

Original Notice.

Title of Rule and Other Identifying Information: Hops, chapter 16-532 WAC, the Washington hop commission marketing order.

Hearing Location(s): Washington Hop Growers Office, 301 West Prospect Place, Moxee, WA 98936, on February 23, 2006, at 1:00 p.m.

Date of Intended Adoption: July 17, 2006.

Submit Written Comments to: Deborah Axelson, Commodity Commission Coordinator, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, e-mail daxelson@agr.wa.gov, fax (360) 902-2092, by February 23, 2006, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Rochelle Painter at (360) 902-2060 by February 17, 2006, TTY (360) 902-1996.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state hop commission has petitioned the director to amend its marketing order. The commission has proposed that inspection requirements be clarified to ensure that all baled hops are officially sampled by a Washington state department of agriculture inspector. This proposed amendment would be consistent with current industry practice.

The commission has also proposed an increase of \$0.32 per bale in the annual assessment rate, which will allow the hop commission to continue to fund critical research and other programs for the hop industry. This equates to a 17.8% assessment increase, the first increase since 1991.

The following marketing order sections are affected by the proposed amendments: WAC 16-532-035 Inspection required and 16-532-040 Assessments and collections.

Reasons Supporting Proposal: To implement the petition received from the Washington state hop commission in accordance with RCW 15.65.050.

Statutory Authority for Adoption: RCW 15.65.050, 15.65.330, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Any rule proposal that results from this rule-making process will not be adopted unless the proposed rules are also approved in a referendum of affected hop producers pursuant to RCW 15.65.170.

Name of Proponent: Washington hop commission, governmental.

Name of Agency Personnel Responsible for Drafting: Deborah Axelson, Washington State Department of Agriculture, Olympia, (360) 902-2012; Implementation and Enforcement: Washington Hop Commission, Moxee, (509) 453-4749 and the Department of Agriculture, Olympia, (360) 902-2012.

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

amendments to chapter 16-532 WAC would ultimately be determined by a referendum vote of the affected parties. A formal small business economic impact statement under chapter 19.85 RCW is not required because of the exemption granted in RCW 15.65.570(2).

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington hop commission are not named agencies in RCW 34.05.-328 (5)(a)(i).

January 18, 2006
William E. Brookreson
Deputy Director

AMENDATORY SECTION (Amending Order 5077, filed 8/23/95, effective 9/23/95)

WAC 16-532-035 Inspection required. (1) Before marketing or processing, all varieties of hops produced in the state of Washington (~~shall~~) must be inspected and certified by the Federal/State Hop Inspection Service for quality and condition of seed, leaf and stem (~~(prior to marketing or processing, pursuant)~~) according to the standards established by the Federal Grain Inspection Service of the United States Department of Agriculture.

(2) Any hops that are baled on a producer's farm must be officially sampled by a Washington state department of agriculture inspector.

AMENDATORY SECTION (Amending WSR 05-15-098, filed 7/15/05, effective 8/15/05)

WAC 16-532-040 Assessments and collections. (1) **Assessments.**

(a) The annual assessment on all varieties of hops shall be (~~(one dollar and eighty)~~) two dollars and twelve cents per affected unit.

(b) For the purpose of collecting assessments the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(iii) Require the person subject to the assessment to remit assessments for any hops which are processed prior to the first sale; or

(iv) Require the person subject to the assessment to remit an inventory report for any hops which are not processed or sold prior to December 31 of the year in which they are produced.

(c) Subsequent to the first sale or processing, no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped or sold, both inside and outside the state.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of the order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of

such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of such marketing agreement or order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate such policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and the order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

WSR 06-03-136

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 05-15—Filed January 18, 2006, 11:29 a.m.]

Continuance of WSR 05-22-057.

Preproposal statement of inquiry was filed as WSR 05-18-044.

Title of Rule and Other Identifying Information: Amendment to chapter 173-503 WAC, Lower and Upper Skagit Water Resources Inventory Area (WRIA 3 and 4).

Date of Intended Adoption: May 15, 2006.

Submit Written Comments to: Jacque Klug, 3190 160th Avenue S.E., Bellevue, WA 98008, e-mail jklu461@ecy.wa.gov, fax (425) 649-7098, by January 31, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To extend public comment period to January 31, 2006, as announced at the public hearings.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jacqueline Klug, Ecology Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, (425) 649-7124; and Enforcement: Dan Swenson, Ecology Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, (425) 649-7270.

January 18, 2006

Jerome D. Thielen

Agency Rules Coordinator