

WSR 06-10-001
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed April 19, 2006, 1:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-24-007.

Title of Rule and Other Identifying Information: WAC 139-05-200 Requirement of basic law enforcement training, tribal police officers in Washington state, natural resource investigators employed by the Washington department of natural resources, special agents employed by the Washington state gambling commission, and liquor enforcement officers employed by the Washington state liquor control board (officers/investigators/agents) who attend the basic training or basic equivalency training are not recognized in the same manner as Washington peace officers who meet the same training requirements. When they return to their agency, they may be cross-commissioned by local law enforcement agencies to enforce Washington laws and laws pertaining to their agency. Their law enforcement service is not recognized as on-going law enforcement service. This means that if they leave their agency and are employed as a Washington peace officer, the time served at their agency is considered a break in law enforcement service for the purpose of this WAC. This requires the officer/investigator/agent to complete another equivalency academy before they are eligible to be certified. This change will recognize their law service with their agency as on-going law enforcement service if the officer/investigator/agent completes a basic law enforcement academy or the basic law enforcement equivalency academy.

Hearing Location(s): Criminal Justice Training Commission, 19010 1st Avenue South, Burien, WA 98148, on June 14, 2006, at 10:00 a.m.

Date of Intended Adoption: June 14, 2006.

Submit Written Comments to: Cheryl Price, Criminal Justice Training Commission, 19010 1st Avenue South, Burien, WA 98148, e-mail cprice@cjtc.state.wa.us, fax (206) 835-7924, by April 19 [June 7], 2006.

Assistance for Persons with Disabilities: Contact Cheryl Price by May 31, 2006, (206) 835-7358.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this change is to recognize certain law enforcement officers with limited authority or tribal commissions, who meet the same basic training requirements that fully commissioned peace officers do in the same or similar manner. Only officers who are mandated to attend the academy have their law enforcement service recognized as on-going law enforcement service. Law enforcement officers who are not mandated to attend, but whose employers have made it a practice to have those officers attend the same basic training, do not have their law enforcement service counted as on-going, but rather as a break in law enforcement service. This means that a law enforcement officer who attended the basic or equivalency academy, with a limited or tribal commission, would have to attend the equivalency academy after twenty-four months of employment with that limited authority agency if they were

to become employed as a Washington peace officer. The majority of the work done by these agents, officers and investigators is the enforcement of all state laws within their jurisdictional limits.

The anticipated effect of this change is that officers, agents and investigators whose service is recognized by the Washington state criminal justice training commission as on-going, will not have to attend the basic equivalency academy if they were to become employed by an agency that mandates attendance to a basic academy or equivalency as a condition of continued employment. This change does not affect the authority, or commission of the officer, however, it will recognize the officer's, agent's or investigator's training accomplishments and continued service as not being a break in law enforcement service.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state criminal justice training commission staff, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Doug Blair, Burien, (206) 835-7352; and Implementation: Michael D. Parsons, Burien, (206) 835-7347.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025(2); therefore, a small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 19.85.025(2), this chapter does not apply to a rule proposed for expedited adoption under RCW 34.05-230 (1) through (8), unless a written objection is timely filed with the agency and the objection is not withdrawn.

April 19, 2006

Cheryl A. Price

Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

WAC 139-05-200 Requirement of basic law enforcement training. (1) All fully commissioned law enforcement officers of a city, county, or political subdivision of the state of Washington, except volunteers and reserve officers, whether paid or unpaid, and officers of the Washington state patrol, unless otherwise exempted by the commission must, as a condition of continued employment, successfully complete a basic law enforcement academy or an equivalent basic academy sponsored or conducted by the commission. Basic law enforcement training must be commenced within the initial six-month period of law enforcement employment, unless otherwise extended by the commission.

(2) Law enforcement personnel exempted from the requirement of subsection (1) of this section include:

(a) Individuals holding the office of sheriff of any county on September 1, 1979; and

(b) Commissioned personnel:

(i) Whose initial date of full-time, regular and commissioned law enforcement employment within the state of Washington precedes January 1, 1978; ((or))

(ii) Who have received a certificate of completion in accordance with the requirement of subsection (1) of this section, and thereafter have engaged in regular and commissioned law enforcement employment without break or interruption in excess of twenty-four months duration; or

(iii) Who are employed as tribal police officers in Washington state, natural resource investigators employed by the Washington department of natural resources, special agents employed by the Washington state gambling commission, and liquor enforcement officers employed by the Washington state liquor control board who have received a certificate of successful completion from the basic law enforcement academy or the basic law enforcement equivalency and thereafter engage in regular and commissioned law enforcement employment with that agency without break or interruption in excess of twenty-four months duration.

(3) Each law enforcement agency of the state of Washington, or any political subdivision thereof, must immediately notify the commission by approved form of each instance where a commissioned officer begins continuing and regular employment with that agency.

(4) Failure to comply with any of the above requirements of basic law enforcement training will result in notification of noncompliance by the commission to:

- (a) The individual in noncompliance;
- (b) The head of his/her agency; and
- (c) Any other agency or individual, as determined by the commission.

**WSR 06-10-005
PROPOSED RULES**

CASCADIA COMMUNITY COLLEGE

[Filed April 20, 2006, 10:28 a.m.]

Continuance of WSR 06-08-091.

Preproposal statement of inquiry was filed as WSR 05-15-141.

Title of Rule and Other Identifying Information: New WAC 132Z-141-010 - 132Z-141-060, use of joint Cascadia Community College and University of Washington Bothell facilities.

Hearing Location(s): Room LB1 205, Library/Media Center, Cascadia Community College/University of Washington, Bothell, Washington, on May 17, 2006, at 12:00 noon.

Date of Intended Adoption: June 21, 2006.

Submit Written Comments to: Dede Gonzales, Cascadia Community College, 18345 Campus Way N.E., Bothell, WA 98011, e-mail dgonzales@cascadia.ctc.edu, fax (425) 352-8313, by May 17, 2006.

Assistance for Persons with Disabilities: Contact Enrollment Services at (425) 352-8359, by May 5, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Cascadia Community College (CCC) and the University of Washington Bothell (UWB) share Washington state's only colocated

higher education campus. The colocation agreement provides that the institutions have dedicated and joint building spaces. Cascadia Community College will govern operations of its dedicated campus facilities use under WAC 132Z-140-050 - 132Z-140-110, use of college facilities, but there are currently no rules to govern the use of spaces shared with UWB. These new rules would allow the institutions to improve the efficiency and effectiveness of shared campus space.

Reasons Supporting Proposal: Cascadia Community College and the University of Washington are coordinating the effort to promulgate these rules jointly, under separate agency authority.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

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

Name of Proponent: Cascadia Community College, public.

Name of Agency Personnel Responsible for Drafting and Enforcement: Mr. Terence Hsiao, 18345 Campus Way N.E., (425) 352-8810; and Implementation: Dr. William Christopher, 18345 Campus Way N.E., (425) 352-8810.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 132Z-141 WAC does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 132Z-141 WAC is not considered significant legislative rules by Cascadia Community College.

April 19, 2006

Dede Gonzales

Executive Assistant

to the President

Rules Coordinator

**WSR 06-10-006
PROPOSED RULES**

CASCADIA COMMUNITY COLLEGE

[Filed April 20, 2006, 10:31 a.m.]

Continuance of WSR 06-08-092.

Preproposal statement of inquiry was filed as WSR 05-15-142.

Title of Rule and Other Identifying Information: New WAC 132Z-140-010 - 132Z-140-110, use of college facilities.

Hearing Location(s): Room 260, Board Room, Cascadia Community College, Bothell, Washington, on May 15, 2006, at 1:00 p.m.

Date of Intended Adoption: June 21, 2006.

Submit Written Comments to: Dede Gonzales, Cascadia Community College, 18345 Campus Way N.E., Bothell, WA 98011, e-mail dgonzales@cascadia.ctc.edu, fax (425) 352-8313, by May 15, 2006.

Assistance for Persons with Disabilities: Contact Enrollment Services at (425) 352-8359, by May 5, 2006.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Cascadia Community College will govern operations of its dedicated campus facilities use under WAC 132Z-140-050 - 132Z-140-110, use of college facilities.

Reasons Supporting Proposal: To ensure efficiently [efficiency] and equity, Cascadia Community College wishes to establish this chapter.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

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

Name of Proponent: Cascadia Community College, public.

Name of Agency Personnel Responsible for Drafting and Enforcement: Mr. Terence Hsiao, 18345 Campus Way N.E., (425) 352-8810; and Implementation: Dr. William Christopher, 18345 Campus Way N.E., (425) 352-8810.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 132Z-141 WAC does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 132Z-141 WAC is not considered significant legislative rules by Cascadia Community College.

April 19, 2006
Dede Gonzales
Executive Assistant
to the President
Rules Coordinator

WSR 06-10-011
PROPOSED RULES
GAMBLING COMMISSION

[Filed April 21, 2006, 2:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-05-054.

Title of Rule and Other Identifying Information: Amending sections WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related services—Authorized transactions and 230-20-244 Electronic bingo card daubers—Definition—Operating restrictions—Standards.

Hearing Location(s): Hilton Hotel, 301 West 6th Street, Vancouver, WA 98660, (360) 993-4500, on July 14, 2006, at 9:30 a.m.

Date of Intended Adoption: July 14, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by July 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, manufacturers and distributors must base fees on the number of

times an electronic bingo dauber is used, or the number of sessions it is used at. Bingo operators are not billed if the electronic bingo dauber is not used.

The petitioner is requesting that manufacturers and distributors be allowed to lease electronic bingo daubers based on the number of bingo cards sold to a device.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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: Policy considerations: This is a significant departure from the commission's application of RCW 9.46.120, which has not allowed billings to be based on a percentage of sales. The petitioner has not provided information necessary to determine if this change would increase the overall profitability of the gambling activity and comports with WAC 230-02-108 which states "expenses are deemed to be necessary when ... they improve the overall profitability of the activity by increasing gross gambling receipts more than the corresponding increase in expenses."

Name of Proponent: GameTech International, Inc., licensed manufacturer, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 and/or the proposed rule does not impose more than minor, if any, costs to businesses and no disproportionate impact to small businesses has been identified.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 20, 2006
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 451, filed 9/9/05, effective 10/10/05)

WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related services—Authorized transactions. Manufacturers and distributors must not offer credit to operators in the sale of gambling equipment, devices, related supplies or paraphernalia, and services. Manufacturers and distributors must conduct all sales of such to operators on a cash basis. "**Cash basis**" means full payment is received by the seller on or before actual delivery of the product or service to the purchaser.

Capital leases.

(1) All licensed manufacturers and distributors may sell gambling equipment such as dispensers, bingo blowers, roulette wheels, etc., and gambling-related support equipment

through capital lease agreements or other financing arrangements to operators subject to the following conditions and requirements:

- (a) The cost of a single item, or group of similar and related items included in the sale, exceeds one thousand dollars;
- (b) The term of the contract does not exceed forty-eight months;
- (c) All terms of the contract are in writing and copies of such agreements are provided to the commission within thirty days of execution;
- (d) The manufacturer or distributor retains only a security interest in the item sold and cannot obtain any ownership interest in the licensee, or exercise any control over the use of the item in the licensed activity;
- (e) The amount of payments is not based on the size or level of gambling activity and is determined by use of a standard amortization schedule for the term and stated interest rate;
- (f) The interest rate charged by the contract is set at the time of sale and does not vary during the term of the contract; and
- (g) The contract does not require the purchaser to directly or indirectly purchase any other products or services from the seller.

Rental or license agreements.

(2) Except for punch boards, pull-tabs, bingo paper, bingo supplies, playing cards, and other consumable gambling-related equipment or devices, manufacturers and distributors may lease or rent gambling equipment to operators. Manufacturers may also enter into license agreements with operators for use of the manufacturer's patented, copyrighted, or trademarked games.

(3) Manufacturers and distributors may only base fee structures for electronic bingo equipment on the number of times a device is used, the number of bingo cards sold to a device or the number of bingo sessions in which devices are used. Fees must not be determined by a percentage of sales, ~~((the number of bingo cards sold through the device,))~~ or the average amount a player spends on a device.

Check or credit card purchases.

(4) Operators may purchase goods and services from manufacturers or distributors when paid for by checks, or credit card issued by a state and/or federally regulated financial institution that meet the requirements of WAC 230-12-350.

Exceptions.

(5) All transactions between manufacturers or distributors and tribal governments or companies certified to manage class III gambling activities operated under a tribal/state compact are exempt from all provisions of this section;

(6) Charitable or nonprofit organizations licensed to conduct bingo may purchase bingo cards and bingo supplies from distributors and/or manufacturers and receive such without making immediate payment if payment is made, by check or cash, no later than thirty days after delivery of the product.

AMENDATORY SECTION (Amending Order 409, filed 2/22/02, effective 7/1/02)

WAC 230-20-244 Electronic bingo card daubers—Definition—Operating restrictions—Standards. The commission deems that any device, apparatus, or scheme that allows a player in any gambling activity a material advantage over other players is against public policy and restriction of such is in the public's interest. Electronic bingo card marking devices or daubers are deemed to provide a player a material advantage unless operated in accordance with subsection (2) of this section. For purposes of this title, the following definitions, restrictions, and standards apply to such devices:

Definition.

(1) Electronic bingo card daubers are defined as electronic appliances used by players to identify bingo cards that contain numbers or symbols input by a player. These devices electronically store preprinted bingo cards purchased by a player, provide a means for players to input numbers or symbols called by the operator, compare the numbers or symbols input by the player to bingo cards previously stored in an electronic data base, and identify to the player those stored bingo cards that contain the numbers or symbols input by the player: Provided, That player-owned devices, which are not directly interfaced with or connected to equipment used to conduct bingo games or the electronic data base in which electronically generated bingo cards are stored in any manner, are not "electronic bingo card daubers" for purposes of this title;

Operating restrictions.

(2) Electronic bingo card daubers will not be deemed to provide players a material advantage and may be used by players in bingo games when operated in the following manner:

Player responsibilities.

(a) The player must perform at least the following functions:

(i) Input each number or symbol called by the operator into the memory of the dauber unit by use of a separate input function for each number symbol. Automatic or global marking of numbers or symbols is prohibited;

(ii) Notify the operator when a winning pattern or "bingo" occurs by means that do not utilize the dauber unit or the associated system; and

(iii) Identify the winning card and display the card to the operator;

Maximum number of cards to be played during each game.

(b) Each electronic dauber unit shall not allow a player to play more than sixty-six cards at one time.

(c) Each player shall not use more than one electronic dauber at any point in time. Provided, That a player can play an unlimited amount of disposable or hard bingo cards in addition to using one electronic dauber unit.

Reserving electronic bingo card daubers.

(d) Operators shall not reserve electronic daubers for any player. An operator must devise and disclose to players a scheme for assignment of dauber units to players during each session. Such schemes shall allow all players an equal opportunity to utilize the available dauber units. If a drawing is used to assign dauber units to players, the operator shall ensure that each player participating in the drawing has an equal chance to win: Provided, That operators that offer electronic dauber units shall reserve at least one device for players with disabilities that would restrict their ability to mark cards and such disabilities are consistent with definitions set forth in the Americans with Disabilities Act (ADA). If there are no requests for use of this unit prior to fifteen minutes before the scheduled start of the session, it may be made available for use by any players;

Fees.

(e) If operators charge players a fee for use of the electronic daubers, such fees must be a flat fee and shall not be based on the number or dollar value of cards purchased. Rental fees shall be considered bingo receipts for purposes of WAC 230-12-020: Provided, That players with disabilities that would restrict their ability to mark cards and such disabilities are consistent with the ADA shall not be required to pay a rental fee or to comply with minimum purchase requirements imposed on all players utilizing electronic daubers. Such players are required to comply with any minimum purchase requirement imposed on all players by an operator;

Card requirements.

(f) Each player utilizing an electronic dauber must have in their possession cards that meet all requirements of WAC 230-20-240 and 230-20-106. Electronic images of cards or faces stored in such devices are for player convenience only and are not bingo cards for purposes of this title;

Leasing by an operator.

(g) If the electronic daubers are leased to an operator, the lease cannot be based in whole or part on the amount of (~~bingo card sales or~~) rental income derived from such devices; and

Discounts and marketing schemes.

(h) The use of electronic daubers is prohibited when a licensee utilizes any marketing scheme for cards that results in a decrease in the per unit price of each card as the number of cards purchased increases: Provided, That a single discount level is authorized for each type of card sold if:

- (i) The licensee has a minimum purchase requirement;
- (ii) The discount applies to all additional cards purchased; and
- (iii) "All you can play" schemes are prohibited;

Standards.

(3) Electronic bingo card daubers must meet the following standards:

- (a) Be manufactured by licensed manufacturers;

(b) Be sold, leased, and serviced by licensed distributors or manufacturers: Provided, That operators may perform routine maintenance on devices under their control;

(c) Not be capable of accessing the electronic computer system in any manner that would allow modification of the program which operates and controls the dauber units or the cards stored in the electronic data base; and

(d) Be capable of complying with applicable requirements of WAC 230-20-106.

WSR 06-10-012
PROPOSED RULES
GAMBLING COMMISSION

[Filed April 21, 2006, 2:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-055.

Title of Rule and Other Identifying Information: Repealed sections WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related services—Authorized transactions and 230-12-350 Use of checks and credit cards to purchase gambling equipment, products, and services—Restrictions.

Hearing Location(s): Hilton Hotel, 301 West 6th Street, Vancouver, WA 98660, (360) 993-4500, on July 14, 2006, at 9:30 a.m.

Date of Intended Adoption: July 14, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by July 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, manufacturers and distributors must not offer credit to operators in the sale of gambling equipment, devices, related supplies or paraphernalia, and services. Manufacturers must conduct all sales to operators on a cash basis. Cash basis means full payment is received by the seller on or before actual delivery of the product or service to the operator. WAC 230-12-340 was amended effective October 10, 2005, to allow credit at the manufacturer and distributor level. Prior to then, the use of credit was prohibited in the sale of gambling equipment, devices, related supplies or paraphernalia, and services. As such, the agency is no longer involved in monitoring debt for manufacturers. At the September 2005, meeting, the commission asked staff to look into removing credit restrictions between operators and distributor/manufacturers.

The proposed rule change would remove restrictions on manufacturers and distributors which currently prohibit them from selling gambling equipment and services to operators on credit. It will apply the same rules relating to the purchase of equipment on credit now in place between manufacturers and distributors to operators. This proposed repealer will remove restrictions on operators' use of checks and credit cards to purchase gambling equipment, products, and services. It will apply the same rules relating to the purchase of

equipment using checks and credit cards now in place between manufacturers and distributors to operators.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 and/or the proposed rule does not impose more than minor, if any, costs to businesses and no disproportionate impact to small businesses has been identified.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 20, 2006
Susan Arland
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-12-340	Sale of gambling equipment, devices, supplies, paraphernalia, and related services—Authorized transactions.
WAC 230-12-350	Use of checks and credit cards to purchase gambling equipment, products, and services—Restrictions.

WSR 06-10-026 PROPOSED RULES GAMBLING COMMISSION

[Filed April 26, 2006, 1:46 p.m.]

Continuance of WSR 05-17-205.

Preproposal statement of inquiry was filed as WSR 05-17-205.

Title of Rule and Other Identifying Information: New section WAC 230-02-101 Cash defined.

Hearing Location(s): Hilton Hotel, 301 West 6th Street, Vancouver, WA 98660, (360) 993-4500, on July 14, 2006, at 9:30 a.m.

Date of Intended Adoption: July 14, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susanaa@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by July 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A petition for rule change submitted by Harmon Consulting Inc., was filed at the October 2005, meeting. The petitioner is requesting that cash be defined in our rules. This new definition of cash would expand the methods players could use to participate in gambling activities and/or receive their winnings.

The petitioner has indicated to staff that the intent of the change is to allow patrons to use "guest cards" to purchase pull-tabs and allow pull-tab winnings to be added to "guest cards." However, if this proposal is approved it would apply to all gambling activities. The petitioner states in his petition the change would modernize the industry and take advantage of current security benefits of prepaid cashless systems.

At their April 2006 meeting, the commission held the petition over for final action at their July 14, 2006, commission meeting. As such, this continuance is being filed to accommodate this timeline.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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: Staff opposes the petition for the following reasons: (1) This new rule would require the commission to approve accounting systems, but does not set forth standards for the system. (2) The commission does not currently approve accounting systems. If we begin approving accounting systems, additional regulatory oversight would be required. (3) The term "cash" is used in sixty-one commission rules and there is no ambiguity on what this term means in these rules, as such there is no need to define the term "cash." (4) The petition does not contain a dollar limit on gift cards, which could facilitate money laundering. (5) Players are more likely to spend additional money gambling at a licensee's business when a gift card is issued, compared to if cash was given as a prize. (6) The term "other cashless systems" is referred to in the petitioner's rule. This term contemplates something other than gift cards, but it is not defined or otherwise explained by the petitioner. (7) It would apply to all gambling activities, not just pull-tabs, and would allow winnings to be credited to "guest cards." (8) It is unclear how the gift cards, if approved, would relate to pull-tab dispensing devices or other similar devices.

Name of Proponent: Monty Harmon, Harmon Consulting, Inc., private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 and/or the proposed rule does not impose

more than minor, if any, costs to businesses and no disproportionate impact to small businesses has been identified.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 20, 2006
Susan Arland
Rules Coordinator

NEW SECTION

WAC 230-02-101 Cash defined. "Cash" is any currency, check, or debit card transaction valued in terms of the U.S. dollar. For purposes of these rules, Canadian currency shall be converted in accordance with the published exchange rates for financial reporting purposes but may be recorded in terms of Canadian or U.S. dollars as long as the records clearly identify the currency used.

In addition, licensees with accounting systems approved by the gambling commission may use transactions on "guest cards" and other "cashless" systems as cash transactions for purposes of conducting their business and gambling operations. The systems cannot be used for credit transactions and would operate in the same manner as a debit card. Customer purchases would reduce their account balance and their winnings could be added to their balance. Licensees using a "guest card" or "cashless" system must maintain the system so that customer balances could never go below a zero balance even for nongambling purchases or transactions.

**WSR 06-10-027
PROPOSED RULES
GAMBLING COMMISSION**

[Filed April 26, 2006, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-050.

Title of Rule and Other Identifying Information: Amending section WAC 230-40-610 Player-supported jackpots—Restrictions—Manner of conducting—Approval.

Hearing Location(s): Hilton Hotel, 301 West 6th Street, Vancouver, WA 98660, (360) 993-4500, on July 14, 2006, at 9:30 a.m.

Date of Intended Adoption: July 14, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsge.wa.gov, fax (360) 486-3625, by July 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by July 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change would prohibit on-duty card room employees from contributing to player-supported jackpots (PSJ), which they are not eligible to win. Currently, owners, custodians, and on-duty card room employees may participate in card games

that offer a PSJ but may not share in the PSJ winnings. This prohibition has been in existence since PSJ's were authorized. Any PSJ winnings an owner or on-duty card room employee may be entitled to under game rules must be divided equally among the other players at the table. Off-duty card room employees may participate in card games that offer a PSJ and may share in the PSJ winnings. Card rooms often require card room employees to play in poker games while on-duty in order to keep games going when there are not enough players.

The petitioner states that employees, at times, are required by licensees to play while on-duty and to contribute (up to two dollars per hand) to PSJ prizes that are ineligible to win. The petitioner feels that if on-duty card room employees are not eligible to win the PSJ prize, they should not be forced to contribute to the PSJ prize fund.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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 petitioner requests that the PSJ rake be returned to on-duty employees or that they be eligible to win a PSJ. On the surface the petitioner's request may seem fair and simple. However, it is more complicated than it first appears: (1) The on-duty card room employee does not contribute the entire amount of the PSJ rake. The amount raked from the pot for the PSJ prize, up to \$2 per pot, is a small part of the total pot and the on-duty card room employee's portion is a small fraction of the PSJ funds collected. (2) The petitioner has not identified a way to track and account for an on-duty card room employee's share of the PSJ rake and staff is not aware of an efficient and cost effective way to do this. (3) WAC 230-40-610(6) was written to protect the integrity of card games and allow players to win PSJs. (4) This may be more of an employer/employee decision, rather than a regulatory issue.

Name of Proponent: Cory Thompson, licensed card room employee, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 and/or the proposed rule does not impose more than minor, if any, costs to businesses and no disproportionate impact to small businesses has been identified.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 25, 2006
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 452, filed 11/21/05, effective 1/1/06)

WAC 230-40-610 Player-supported jackpots—Restrictions—Manner of conducting—Approval. A player-supported jackpot (PSJ) is a separate contest of chance directly related to the play and/or outcome of authorized non-house-banked card games but which is not the card game itself. Card rooms with a Class F or house-banked license may establish a prize fund for the purpose of operating a PSJ for nonhouse-banked card games. Any PSJ must be approved in writing by the director or the director's designee prior to play. A PSJ must meet the following requirements:

Funding a PSJ.

(1) A licensee may provide house funds to establish a PSJ. The licensee shall issue a check from the general business account into the PSJ account to start the prize fund. Recouping of start up funds shall be done by issuing a check from the PSJ account to the business general account. Electronic bank transfers shall satisfy this requirement. Start up funds shall not exceed five thousand dollars per PSJ.

Using a rake to fund a PSJ.

(2) A licensee may assess a portion of players' wagers for a jackpot prize. Such amount shall not exceed two dollars per hand or game for each PSJ. This assessment shall be separately collected using the rake method.

PSJ funds are player funds - exception from administrative fee.

(3) The licensee acts only as the custodian of the PSJ funds, including any interest earned on this money, and maintains no legal right to the funds. All PSJ funds shall be awarded as prizes, based upon a format approved by commission staff. An administrative fee not to exceed ten percent of the amount collected for a PSJ may be imposed by the licensee. This administrative fee includes all expenses incurred by the licensee, including banking fees. No other expenses beyond the ten percent administrative fee shall be deducted from the PSJ account.

Prize fund custodian.

(4) Each licensee shall designate at least one "prize fund custodian" who shall be responsible for safeguarding and disbursing funds to winners. A prize fund custodian may be an owner, partner, officer, or licensed individual designated by a card room owner, partner, or officer. The custodian shall have signature authority for prize fund bank accounts and ensure accountability of all funds collected for use in a PSJ. The licensee shall meet the deposit requirements of WAC 230-40-608.

Payout of prizes.

(5) Prize amounts paid in cash shall not exceed two thousand five hundred dollars. Prize amounts not awarded in cash shall be paid within twenty-four hours, by check, the type which provides a duplicate copy. A record of all prizes paid shall be maintained in the format prescribed by commission staff and shall include:

(a) For prizes less than one hundred dollars, a system of accounting denoting each individual prize may be utilized.

(b) For prizes one hundred dollars and above, the following information shall be recorded on a prize record:

- (i) Full printed name;
- (ii) Date of birth;
- (iii) Street address;
- (iv) Type of identification reviewed;
- (v) Amount of the prize awarded;
- (vi) Description of the winning hand;
- (vii) Time and date awarded; and
- (viii) The supervisor's and dealer's initials.

(c) When awarding a prize of five hundred dollars or more, the dealer must, in view of the surveillance camera, display the value and suit of each card in the winning hand, and the remaining cards in the deck must be counted and put in numerical order by suit to confirm a complete deck. The hand shall be collected and sealed with the prize record. The winning hand and remaining deck shall be maintained on the premises as part of daily card room records for a period of seven days, unless released by a commission agent.

Owners and employees competing for a PSJ.

(6) Owners, custodians and on-duty card room employees may participate in card games that offer a PSJ, but may not contribute to or share in the winnings of any prize awarded. Any prize winnings an owner or on-duty employee may be entitled to under game rules, must be divided equally among the other players at the table: Provided, That off-duty employees may participate in card games that offer a PSJ and share in the prize winnings.

Owners and employees showing cards.

(7) Owners and on-duty card room employees must turn their cards face up at the end of each game so they may be observed by other players at the table and surveillance if:

- (a) Playing in a game with a PSJ;
- (b) The prize is not based upon a predetermined hand; and
- (c) There is a qualifying hand at the end of a game (such as a "bad beat" hand).

House dealer required.

(8) All card games offering a PSJ must utilize a house dealer.

Security requirements.

(9) Each gaming table offering a PSJ shall be required to install a closed circuit television system as outlined in WAC 230-40-625: Provided, That licensees operating any house-banked card games shall follow the security requirements set forth in WAC 230-40-825 for all tables in the card room, including those offering a PSJ.

Removing a PSJ from play.

(10) The following procedures shall be followed for all discontinued player-supported jackpots:

Discontinued.

(a) In the event a licensee elects to discontinue a PSJ, the balance, less any nonrecouped seed money, shall be distributed to players within sixty days of discontinuance by offering an approved promotion or card tournament of the same game under which the PSJ was originally accrued.

Closure of business.

(b) In the event a licensee ceases to operate a card room, or fails to maintain a valid card room license, all funds associated with the PSJ shall be distributed to the Washington state council on problem gambling.

Posting rules.

(c) The licensee shall conspicuously post a sign stating how PSJ money will be distributed in the event the PSJ is discontinued or the business closes. The sign must be posted at the inception of the PSJ.

House rules.

(11) House rules, to include administrative fees shall be posted in a location readily visible by all players and disclose the conditions under which prizes may be won, the prize amount, cost to participate, and any other conditions which may affect the outcome of the game.

Dispute resolution.

(12) If a dispute arises involving the outcome of a PSJ, the licensee shall preserve the video recording, the winning hand and remaining deck, and all records for the game where the dispute occurred and shall notify commission staff within twenty-four hours. The licensee shall document all information pertaining to the dispute including:

- (a) The names, addresses, and phone numbers of all players, card room staff, and any witnesses involved;
- (b) Amount of the advertised PSJ; and
- (c) A full description of the circumstances surrounding the dispute.

(13) All disputes involving a PSJ will be investigated by commission staff, with a report submitted to the director. A written decision will be issued by the director, or the director's designee, and such decision shall be final.

(14) During the course of dispute resolution, the commission may become the temporary custodian of any and all prize funds. The PSJ will be suspended until the dispute is resolved.

WSR 06-10-032**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed April 27, 2006, 4:22 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 388-78A-2020 Definitions (boarding home licensing rules).

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 Alhedeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 6, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 7, 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., June 6, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by June 2, 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 to amend the definitions of "adult day services" and "nonresident individual" to be consistent with RCW 18.20.020 as amended by ESSB 6391. The proposed rule will clarify, consistent with statute, that licensed boarding homes may provide adult day services, limited to a period not to exceed ten continuous hours and not involving an overnight stay.

Reasons Supporting Proposal: The department is proposing the amendment in order to make the rule consistent with the statute.

Statutory Authority for Adoption: RCW 18.20.090.

Statute Being Implemented: RCW 18.20.020.

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: There is no fiscal impact on the department as a result of the proposed amendment.

A preproposal statement of inquiry (CR-101) notice was not filed and is not required under RCW 34.05.310 (4)(c). The proposed rule incorporates language from state statute (chapter 18.20 RCW as amended by ESSB 6391) without material change.

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

Name of Agency Personnel Responsible for Drafting: Denny McKee, 640 Woodland Square Loop S.E., Lacey, WA 98503, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2590; Implementation and Enforcement: Joyce Stockwell, 640 Woodland Square Loop S.E., Lacey, WA 98503, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2401.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.025(3) and 34.05.310 (4)(c) say that rules that adopt/incorporate Washington statutes without change do not require a small business economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) says that rules that

adopt/incorporate Washington statutes without change do not require a cost benefit analysis.

April 24, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another;

(5) **"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Adult day services" means care and services provided to a nonresident individual(s) by the boarding home on the boarding home premises, for a period of ~~((less than twenty-four))~~ time not to exceed ten continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual;

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing hands-on personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly supervised. Direct supervision means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded

from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

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

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

"Enforcement remedy" means one or more of the department's responses to a boarding home's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackage food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

(1) Blood glucose testing;

(2) Puree diets;

(3) Calorie controlled diabetic diets;

(4) Dementia care;

(5) Mental health care; or

(6) Developmental disabilities care.

"Independent living unit" means:

(1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) Boarding home unit where domiciliary services are not provided; or

(4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the boarding home license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Majority owner" means any person that owns:

(1) More than fifty percent interest; or

(2) If no one person owns more than fifty percent interest, the largest interest portion; or

(3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Maximum facility capacity" means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is a least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in a boarding home and may receive one or more of the services listed in WAC 388-78A-2030 (2)(a) through (g)(~~but~~). A nonresident individual may not receive domiciliary care as defined in this section, directly or indirectly by the ((facility)) **boarding home**, and may not receive the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section, except during the time the person is receiving adult day services as defined in this section.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's

compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

- (a) There has been a violation of a WAC or RCW; and
- (b) Significant harm has actually occurred to a resident;

or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that

is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed under general responsibility for the safety and well-being of the resident, and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"**Special needs**" means a developmental disability, mental illness, or dementia.

"**Staff person**" means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"**State fire marshal**" means the director of fire protection under the direction of the chief of the Washington state patrol.

"**Toilet**" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"**Volunteer**" means an individual who interacts with residents without reimbursement.

"**Vulnerable adult**" means "vulnerable adult" as defined in chapter 74.34 RCW. For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"**WAC**" means Washington Administrative Code.

"**WISHA**" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

WSR 06-10-037

PROPOSED RULES

BOARD OF

PILOTAGE COMMISSIONERS

[Filed April 28, 2006, 9:13 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 363-116-185 Tariffs, and pilotage rates for the Grays Harbor pilotage district.

Hearing Location(s): 2901 Third Avenue, 4th Floor Rainier Conference Room, Seattle, WA 98121, on June 8, 2006, at 9:30 a.m.

Date of Intended Adoption: June 8, 2006.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by June 1, 2006.

Assistance for Persons with Disabilities: Contact Judy Bell by June 5, 2006, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a 2006-2007 annual tariff for the Grays Harbor pilotage district.

The proposed rule reflects a 3% increase in the vessel draft charge, the vessel tonnage charge, the minimum net registered tonnage charge, and the charge per vessel movement calling at Terminal No. 2.

A new provision is proposed that will allow a vessel to berth at Terminal No. 4 (without loading or discharging cargo) in the case that Terminal No. 2 is not available upon arrival.

It is proposed that the charge for an extra vessel (in case of tow) is increased by .68%.

It is also proposed that the pension charge be decreased by \$9 per pilotage assignment, including cancellations.

All other tariff charges remain the same.

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

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Grays Harbor pilotage district expire on July 31, 2006. New rates must be set accordingly.

All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met.

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

Name of Proponent: Port of Grays Harbor, public.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual revision to the rates charged for pilotage services and the application of the rate changes is clear in the attached proposed tariff.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adoption. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

April 27, 2006

Peggy Larson

Administrator

AMENDATORY SECTION (Amending WSR 05-14-029, filed 6/24/05, effective 8/1/05)

WAC 363-116-185 Tariffs, and pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours August 1, ((2005)) 2006, through 2400 hours July 31, ((2006)) 2007.

CLASSIFICATION OF PILOTAGE SERVICE RATE

Fees for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:

Draft and tonnage fees:

Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district. The draft charges shall be ((~~\$90.00~~)) \$92.70 per meter (or ((~~\$27.43~~)) \$28.25 per foot) and the tonnage charge

shall be (~~(\$0.2583)~~) \$0.266 per net registered ton. The minimum net registered tonnage charge is (~~(\$903.79)~~) \$930.00. The charge for an extra vessel (in case of tow) is (~~(\$516.48)~~) \$520.00.

Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged (~~(\$5,000)~~) \$5,150.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage fees listed above.

Boarding fee:

Per each boarding/deboarding from a boat or helicopter \$1000.00

Harbor shifts:

For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage \$647.88
Delays per hour \$154.49
Cancellation charge (pilot only) \$258.22
Cancellation charge (boat or helicopter only) \$774.69

Pension charge:

Charge per pilotage assignment, including cancellations (~~(\$180.00)~~) \$171.00

Travel allowance:

Transportation fee per assignment \$55.00
Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$903.82 for each day or fraction thereof, and the travel expense incurred \$903.82

Bridge transit:

Charge for each bridge transited \$283.61
Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam \$785.22

Miscellaneous:

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

WSR 06-10-041
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 05-18—Filed April 28, 2006, 2:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-02-017.

Title of Rule and Other Identifying Information: Chapter 173-153 WAC, Water conservancy boards, this rule provides administrative direction for the formation of water conservancy boards within geographic areas of the state. The rule establishes training requirements for water conservancy board commissioners and procedures for ecology, boards and the public to follow concerning the implementation of chapter 90.80 RCW. Chapter 90.80 RCW provides for the establishment of water conservancy boards and vests boards with certain powers related to the processing of water right change applications.

Hearing Location(s): Moses Lake Fire Department, 701 East 3rd Avenue, Moses Lake, WA, phone (509) 765-2204, on June 6, 2006, at 7:00 p.m.; and at the Ecology Headquarters Building, 300 Desmond Drive, Lacey, WA, phone (360) 407-6000, on June 8, 2006, at 7:00 p.m.

Date of Intended Adoption: July 7, 2006.

Submit Written Comments to: Fred Rajala, Department of Ecology, Eastern Regional Office, 4601 North Monroe Street, Spokane, WA 99205-1295, e-mail fraj461@ecy.wa.gov, fax (509) 329-3529, by June 16, 2006.

Assistance for Persons with Disabilities: Contact Judy Beitel by May 30, 2006, TTY (800) 833-6388 or (360) 407-6878.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making would amend chapter 173-153 WAC to reflect the legislative amendments to chapters 90.80 and 90.03 RCW adopted during the last two legislative sessions and provide additional information concerning the crediting of training credit to board commissioners during their term of service. SHB 2307, chapter 104, Laws of 2004, entitled Water conservancy board—Commissioner eligibility, provided a definition of a "water right holder" for the purpose of determining representation requirements of board commissioners. This definition differs from the definition within the rule proposed to be amended. ESSB 6125, chapter 10, Laws of 2004, entitled Water conservancy board—Alternate, defined the position of "alternate commissioner" and authorized certain conditions under which an alternate may serve in the place of an absent commissioner. The adopted definition and conditions for service as a commissioner differs from that contained within the rule. ESHB 2309, Laws of 2005, entitled Water right fees, modified the fees associated with the examination of water right change applications and eliminated the collec-

tion of a fee to ecology for applications filed with water conservancy boards. The proposed rule amendment eliminates the requirement that boards forward a fee to the department and clarifies other application processing issues related to a departmental fee within the rule. The proposed rule will also clarify reporting and documentation requirements and evaluation criteria for training credit of commissioners during their term of service.

Statutory Authority for Adoption: RCW 90.80.040, authorizes the director to adopt rules in accordance with chapter 34.05 RCW necessary to carry out chapter 90.80 RCW.

Statute Being Implemented: Chapter 90.80 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Fred Rajala, Spokane, Washington, (509) 329-3446; and Enforcement: Ken Slattery, Olympia, Washington, (360) 407-6602.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The amendments to chapter 173-153 WAC are made primarily to conform the existing rule to the statute as amended. The amendment of this rule will not impose a cost upon business that would require a small economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. The amendments to the existing rule do not constitute a significant legislative rule and therefore a cost-benefit analysis is not required.

April 27, 2006

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order 01-13, filed 12/9/02, effective 1/9/03)

WAC 173-153-030 How are terms defined in this rule? For the purposes of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

~~("Alternate" means an individual who:~~

~~(1) May serve as an alternate commissioner of a board at the request of the board or the legislative authority or authorities of the county or counties;~~

~~(2) Serves a board in a nonvoting capacity;~~

~~(3) Is not considered for the purpose of satisfying a quorum; and~~

~~(4) Cannot take the place of a commissioner on a temporary basis.)~~

"Application" means an application made on an ecology form identified as an Application for Change/Transfer to Water Right, form number 040-1-97 for a transfer of a water right, including those transfers proposed under authority of RCW 90.03.380, 90.03.390 and 90.44.100. A board may supplement the application with additional forms or requests for additional documentation. These forms and documentation become a part of the application.

"Board" means a water conservancy board pursuant to chapter 90.80 RCW.

"Bylaws" means the internal operating procedures, policies, or other guidance adopted by a board and designated as the board's bylaws.

~~("Commissioner" means an individual appointed to serve as a voting member on a water conservancy board through a written statement by the legislative authority or authorities of the county or counties.)~~

"Consumptive use" means use of water whereby there is a diminishment of the water source.

"Director" means the director of the department of ecology.

"Ecology" means the department of ecology.

"Ecology regional office" means the water resources program at the ecology regional office designated to a board as the office where the board shall interact as identified within this chapter.

"Geographic area" means an area within the state of Washington in which an established board would have authority to process water right transfer applications. This area is identified by the legislative authority or authorities of the county or counties seeking to establish the water conservancy board. The area may be a single county, more than one county, a single water resource inventory area, or more than one water resource inventory area. If the identified geographic area contains all or part of more than one county, the counties involved must identify a "lead county" for certain administrative purposes.

"Lead county" means the county legislative authority with which ecology will communicate for administrative purposes in cases where a water conservancy board's geographic area includes more than one county legislative authority.

"Nonwater right holder" means, solely for the purpose of satisfying RCW 90.80.050(2) in regard to determining whether a potential water conservancy board commissioner is a "nonwater right holder," any party who:

(1) Does not meet the criteria of a water right holder as defined in this section; or

(2) Receives water solely through a water distributing entity.

"Record of decision" means the written conclusion reached by a water conservancy board regarding a transfer application, with documentation of each board commissioner's vote on the decision. The record of decision must be on a form provided by ecology and identified as a Record of Decision, form number 040-105.

"Report of examination" means the written explanation, factual findings, and analysis that support a board's record of decision. The report of examination is an integral part of the record of decision. The report of examination must be on a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106.

"Source" means the water body from which water is or would be diverted or withdrawn under an existing water right which an applicant has proposed to be transferred.

"Transfer" means a transfer, change, amendment, or other alteration of part or all of a water right, as authorized under RCW 90.03.380, 90.03.390 or 90.44.100.

"Trust water right" means any water right acquired by the state under chapter 90.38 or 90.42 RCW, for management in the state's trust water rights program.

"Water conservancy board coordinator" means the person designated by the director or his or her designee to coordinate statewide water conservancy board activities, communication, and training, and to advocate for consistent statewide implementation of chapter 90.80 RCW and chapter 173-153 WAC.

"Water right holder" means, solely for the purpose of satisfying RCW 90.80.020 (2)(d) and 90.80.050(2) in regard to determining whether the qualifications of petitioners to create a board and a potential water conservancy board commissioner are "water right holders," and as used within this rule, any individual who asserts that he or she has a water right and can provide appropriate documentation of a privately owned water right which is appurtenant to the land that they individually or through marital community property own or in which they have a majority interest. Exception to the definition of a water right holder for the purpose of determining a person's eligibility to be appointed as a commissioner is found in RCW 90.80.050(5).

AMENDATORY SECTION (Amending Order 01-13, filed 12/9/02, effective 1/9/03)

WAC 173-153-042 How are water conservancy board commissioners and alternates appointed and the length of their terms determined? How do counties notify ecology of board commissioner's and alternate's appointments and terms?

(1) Upon approval of a new board by ecology, or upon approval of restructuring the number of commissioners on an existing board, the legislative authority of the county or the lead county shall submit to ecology's water conservancy board coordinator a written statement identifying the individuals appointed to the board. The statement must include:

(a) The name, mailing address, and phone number or other contact information of the commissioners and/or alternates;

(b) The terms of office of the commissioners; these terms of office must be staggered as described in RCW 90.80.050(1).

What happens when a board commissioner's term expires or a board position becomes vacant?

(2) Upon the expiration of a board commissioner's or alternate's term, the appropriate legislative authority or authorities of the county or counties shall either:

(a) Reappoint the incumbent commissioner or alternate; or

(b) Appoint a new commissioner or alternate to the board. A written statement including the information as described in subsection (1) of this section shall be submitted to ecology's water conservancy board coordinator.

(3) In the event a board position becomes vacant, the legislative authority or authorities of the county or counties shall appoint a new commissioner in accordance with RCW 90.80.050(2). A statement as described in subsection (1) of this section must be submitted to ecology's water conservancy board coordinator. The new commissioner or alternate

shall fill the vacancy only for the remainder of the unexpired term and, upon completion of the unexpired term, may be reappointed, as described in subsection (2) of this section, to serve a full six-year term.

(4) If a board commissioner or alternate is reappointed to a position previously held by that commissioner or alternate within one year of resigning the position or within one year of the expiration of the commissioner's or alternate's term of service, then the original appointment date will be considered as the appointment date of record.

What are the terms of board commissioners and alternates?

~~((4))~~ (5) Initial terms of commissioners appointed to a newly created board shall be staggered as described in RCW 90.80.050. All alternate positions shall be for six-year terms.

~~((5))~~ (6) Upon the expiration of the initially appointed commissioners' terms, all subsequent appointments shall be for six-year terms.

~~((6))~~ (7) The initial terms of office of board commissioners on a restructured board shall be staggered as set forth in RCW 90.80.050. As each of the commissioners' term of office expires, newly or reappointed commissioners shall all be appointed to six-year terms. ~~((However, in order to maintain staggered terms, regardless of the date on which such commissioners may be appointed or reappointed, the expiration of all commissioners' terms shall be the same day and month as the expiration of the term of office of the first commissioner appointed to the board, varying only in the year of expiration.))~~

How would an appointed board ~~((member))~~ commissioner or alternate resign the position?

~~((7))~~ (8) A board commissioner or alternate may resign the board position by submitting a letter of resignation to the appointing county or counties. A copy of the resignation letter must be submitted to the water conservancy board coordinator by either the resigning board ~~((member))~~ commissioner or alternate or by the board.

What is the responsibility of a board in notification of board vacancies?

~~((8))~~ (9) It is the responsibility of the board to notify the appointing county(ies) and the water conservancy board coordinator that there is a board commissioner vacancy.

~~((9))~~ (10) The appointing county(ies) and the board will determine and conduct a process to fill the commissioner vacancy in accordance with subsection (3) of this section.

AMENDATORY SECTION (Amending Order 01-13, filed 12/9/02, effective 1/9/03)

WAC 173-153-045 What is the process for restructuring a board? (1) A board may be restructured as to the number of commissioners on the board and the geographic area of its jurisdiction.

(2) A board, a county legislative authority, or a lead county legislative authority may request to restructure an existing board within its geographical jurisdiction. It is suggested that the legislative authority or authorities of the county or counties and the existing board communicate and work cooperatively during the board restructuring process.

(3) If a request is made to restructure an existing board to a multicounty board, WRIA board, or multi-WRIA board, the county legislative authority with the existing board must determine if the restructured board would include geographic areas within an additional county or counties. If the restructure includes a geographic area of another county, the county legislative authority or all county legislative authorities of the affected counties must agree:

(a) To the number of board commissioners serving on the board;

(b) Whether the commissioners and alternates currently appointed to and serving on the existing board or boards shall continue in that capacity;

(c) That areas within the county may be included within the geographic jurisdiction of the multicounty, WRIA, or multi-WRIA board.

(4) If the county legislative authorities included in the restructuring cannot agree to the terms of the restructure using an existing board, the county or counties in which a county legislative authority already has an established board must dissolve the existing board and work cooperatively with the other county legislative authority or county legislative authorities to establish a new board.

(5) The legislative authority or authorities of the pertinent county or counties shall hold a public hearing and adopt a resolution including:

(a) The manner of restructuring and the need for restructuring the board;

(b) The number of commissioners to serve on the board;

(c) The proposed geographic area of jurisdiction of the board;

(d) If the proposed geographic area of jurisdiction is restructured to include more than one county legislative authority, the legislative authorities of each county included within the restructuring shall identify a lead county; and

(e) A summary of the public testimony presented during the public hearing(s) conducted by the legislative authority or authorities of the county or counties in response to the resolution to restructure a board. The summary shall be clearly identified and include the date of the hearing.

~~((4))~~ (6) Upon submission to the water conservancy board coordinator of the required documentation pursuant to subsection (3) of this section, the director will determine whether the restructuring of a board will further the purposes of the law and be in the public interest as described in WAC 173-153-040(10).

~~((5))~~ (7) The director's determination to approve or deny restructuring of the board shall be made within forty-five days of receiving all items listed in subsection ~~((3))~~ (5) of this section.

~~((6))~~ (8) If the board restructuring is approved, ecology will include in its notice of approval any unique conditions or provisions under which the approval is made, if any, and shall identify the date the restructuring of the board will take effect. The director shall also identify any additional training required of the board if it assumes jurisdiction of a new geographic area.

AMENDATORY SECTION (Amending Order 01-13, filed 12/9/02, effective 1/9/03)

WAC 173-153-050 What are the training requirements for board commissioners and alternates?

What training is required for newly appointed board commissioners and alternates?

(1) Every commissioner and alternate of a board shall complete a training program provided by ecology.

(a) Before participating in any decision concerning a water right transfer application being considered by the board:

(b) Within one year of appointment to the board by the county legislative authority. If the training program is offered and is not completed within one year of appointment to the board, ecology may inform the county and request the county to seek the commissioner's resignation;

(c) Not more than one year prior to the commissioner's or alternate's appointment to the board by the county legislative authority. If the training program is completed by board administrative staff or other participating noncommissioners more than one year prior to subsequent appointment to the board, the commissioner will be required to repeat the training.

(2) Attendance at a training session for new commissioners shall be limited to board commissioners, their administrative staff, board alternates, and individuals providing training. Due to the complexity of the training and the need to provide adequate time to focus on questions from board commissioners, the number of participants attending each training session shall be left to the discretion of the water conservancy board coordinator. Training for new commissioners shall be ~~((held at least once in the spring and once in the fall))~~ scheduled depending on, but not limited to:

(a) Whether ecology has sufficient staffing resources to provide the necessary training; and/or

(b) Whether there are sufficient numbers of board commissioners and/or alternates needing training.

~~((2))~~ (3) Successful completion of the training program will ~~((consist of))~~:

(a) ~~((Receiving))~~ Consist of at least thirty-two hours of instruction, from or sponsored by ecology, regarding hydrology, state water law, state water policy, administrative and judicial case law developments, field practices, evaluation of existing water rights, and practical experience working with ecology staff on applications for water right transfers; ~~((and))~~

(b) Require demonstrating an understanding of course materials during training, and demonstrating sufficient mastery of the training curriculum through an examination administered by an ecology employee upon completion of training; and

(c) Only be recognized and tracked by ecology for appointed commissioners and alternates.

~~((3))~~ (4) If a board is restructured to modify the geographic area, the director may require additional training of all board commissioners~~((;))~~.

~~((4))~~ (5) Upon a water conservancy board commissioner's or alternate's successful completion of the training, ecology will certify such completion in writing to the county or lead county of the geographic area served by the board. A copy of this letter shall also be sent to the board.

Are there continuing education requirements for board commissioners and alternates?

~~((5))~~ (6) After completing one year of service on a water conservancy board, each following year prior to the anniversary of their appointment date to the board, commissioners and alternates must complete an additional eight hours of continuing education provided or approved by ecology. Each commissioner and alternate shall complete the minimum continuing education requirement before participating in any decision concerning a water right transfer application being considered by a board. ~~((Continuing education may include, but is not limited to, readings, a seminar or conference, or field experience regarding, but not necessarily limited to, subjects such as state water law, state water policy, administrative and judicial case law developments, field practices, evaluation of existing water rights, and hydrology.~~

~~(6))~~ (7) The anniversary date for a board commissioner or alternate serving on more than one board concurrently will be determined by the earliest of all combined board appointment dates.

(8) If less than six months has passed between the termination of service as a commissioner or alternate and appointment to any board as a commissioner or alternate, any current continuing education credit received during the last twelve months of the period of service with the previous board will apply to the new term under the new date of appointment in accordance with WAC 173-153-042. If a period of greater than six months has passed between the termination of service as a commissioner or alternate and appointment to any other board as a commissioner or alternate, any current continuing education credit received during the period of service with the previous board will not apply to the new term under the new date of appointment.

(9) Each board commissioner and alternate must ensure his or her own eligibility and remain current on continuing education. Eligibility of a board commissioner or alternate could become a basis for ecology's reversal of a record of decision or an appeal by a third party of ecology's final administrative order.

(10) Ecology may, at its discretion, and in response to requests, provide continuing education training periodically. Ecology may also combine training for more than one board. Attendance at continuing education sessions provided by ecology water resources program shall generally be limited to board commissioners, administrative staff to boards, board alternates, and individuals providing training. Ecology may, at its discretion, and in response to requests, invite other identified entities to participate in continuing education sessions.

How can a board commissioner or alternate receive credit for continuing education not provided or sponsored by ecology water resources program?

~~((7))~~ (11) Continuing education training requirements ~~((under subsection (5) of this section))~~ may be fulfilled through training not provided or sponsored by ecology's water resources program. However, such training will be accepted only if it is reported to ecology on a form provided by ecology and identified as the Water Conservancy Board Training Credit Request Form, form number 040-104, and approved ~~((by))~~ at ecology's ~~((as appropriate training))~~ discretion.

~~((8))~~ (12) To receive continuing education credit for participating in a training activity sponsored by another entity other than ecology water resources program, a Water Conservancy Board Training Credit Request Form, form number 040-104:

(a) Must be used:

(b) Must be submitted to the water conservancy board coordinator at ecology:

(c) Must include all required information. If the form is incomplete, it will be returned to the commissioner or alternate requesting the credit:

(d) Must include documentation of course attendance. If attendance documentation is not provided, a written summary of the training activity and information learned must be included:

(e) Must provide enough information to justify the hours requested:

(f) Will only be accepted by ecology after completion of the commissioner's or alternate's participation in the training activity.

(13) The complete training credit request form identified under subsection (12) of this section will be reviewed as expeditiously as possible by ecology. The hours credited to the commissioner or alternate will be documented by ecology in a letter to the commissioner or alternate requesting the training credit. A copy of the letter will be sent to the ecology designated regional representative and the water conservancy board.

(14) The approved credit hours count toward a commissioner's or alternate's eligibility only upon the receipt by the commissioner or alternate of written confirmation from ecology.

(15) The hours credited in subsection (13) of this section are effective based on the date of the letter issued by ecology approving the training.

(16) Training means that the commissioner or alternate participates in a forum specifically intended for learning from another person such as an author, instructor, speaker, or presenter.

(17) Reasonable and appropriate continuing education subjects that directly relate to water conservancy board authorities and responsibilities include, but are not limited to:

(a) State water law;

(b) State water policy;

(c) Administrative and judicial case law developments;

(d) Field practices;

(e) Evaluation of existing water rights;

(f) Hydrology;

(g) Technical writing;

(h) Other related topics.

(18) Reasonable and appropriate continuing education activities that directly relate to water conservancy board authorities and responsibilities include, but are not limited to:

(a) Seminars;

(b) Conferences;

(c) Classes;

(d) Presentations given by others;

(e) Readings. Readings may include books on water resource issues or law, proceedings and papers associated

with conferences related to subjects included in subsection (17) of this section;

(f) Field experiences; and

(g) Research completed for a presentation, speech, or instruction given by the board commissioner or alternate.

(19) Examples of activities not considered reasonable and appropriate continuing education include, but are not limited to:

(a) Meetings in which the commissioner or alternate acts as a member of a committee, or integral participant in proceedings, appeals, or litigation;

(b) Presentations, speeches, or instruction personally made by, or readings authored by, the commissioner or alternate requesting the training credit;

(c) Work done by a commissioner or alternate as part of the direct responsibilities of the water conservancy board such as:

(i) Field examinations;

(ii) Investigation of a water right change application;

(iii) Discussions of applications;

(iv) Technical assistance received specific to an application; and

(v) Litigation initiated by a water conservancy board, or a board commissioner or alternate or litigation initiated by an entity against the water conservancy board or board commissioner or alternate;

(d) Topics that do not directly relate to water conservancy board authorities and responsibilities.

(20) Board commissioners are encouraged to report to the water conservancy board coordinator all relevant continuing education received. Ecology will track all training received and reported by board commissioners and alternates as required in subsections (11) through (19) of this section. Any continuing education hours received and reported beyond the required eight hours annually will be documented and kept on file at ecology. Continuing education in excess of the required eight hours cannot be carried over to the next year.

AMENDATORY SECTION (Amending Order 01-13, filed 12/9/02, effective 1/9/03)

WAC 173-153-070 What does an applicant need to know about filing an application for transfer of a water right?

How are applications accepted for processing by a board?

(1) Ecology will provide water right transfer application forms and applicant instructions to boards, which will make them available to the public upon request. All applications to a board must be made using the water right application for change/transfer form supplied by ecology, form number 040-1-97.

(2) Boards and ecology shall inform all applicants that the decision to file a transfer application with a board rather than directly with ecology is solely at the discretion of the applicant, provided a board is active in the area addressed by the transfer application.

(3) A water right transfer application is considered filed when it is received by a board commissioner, or a designated

administrative support person for a board at the location designated by the board.

(4) A separate application must be filed for each water right that is proposed to be transferred.

(5) A majority vote of a quorum of a board is required to accept a complete application for processing.

What must a complete application include?

(6) Boards shall require that applications submitted directly to them are complete and legible. A complete application shall:

(a) ~~((Include the minimum ten dollar examination fee required by RCW 90.03.470(1)-~~

~~(b)))~~ Contain the information requested on the application form as applicable.

(b) Include all required signatures.

(c) Be accompanied by such maps and drawings, in duplicate, and such other data or fees, as may be required by the board. Such accompanying data shall be considered as part of the application as described in RCW 90.03.260.

(7) A board may request that an applicant provide additional information as part of the application by requiring, for example, that the applicant complete additional forms supplemental to the standard application or that applicant prepare and/or provide specific reports regarding aspects of the application.

How is an application number assigned to a water right transfer application filed with a board?

(8) The board shall assign a unique number to a water right transfer application upon acceptance of the application by the board.

(9) The number assigned by the board to the water right transfer application shall be written in ink within the "office use only" space provided on the application for the application number.

(10) The water right transfer application, public notice, record of decision, and report of examination produced by the board in processing the application shall reference the board-assigned number.

(11) The unique application number is assigned in accordance with the following three-part format:

(a) The first part of the board-assigned application number will identify the board that has accepted the application as follows:

(i) Boards having jurisdiction within a geographic area that is based upon a county boundary or the boundary of multiple counties will begin all application numbers with the first four letters of the name of the county or of the lead county. For example, a board with jurisdiction within Kittitas County will begin each application number with the letters "KITT."

(ii) Boards that have jurisdiction within a geographic area that is based upon a water resource inventory area (WRIA) or multiple WRIsAs will use the number of the WRIA of jurisdiction or, in the case of multi-WRIA boards, the WRIA of jurisdiction associated with the water right.

(b) The second part of the board-assigned application number will be the last two digits of the year in which the application was accepted. For example, applications that are accepted during the year 2003 will use the digits "03."

(c) The third part of the board-assigned application number will be a sequential two-digit number beginning with the

number "01" for the first application accepted after the effective date of this rule and beginning with number "01" for the first application accepted by the board during each subsequent calendar year.

(d) A dash (-) will be used to separate the three parts of the application number as provided within (a), (b), and (c) of this subsection. For instance, the first application accepted by the Kittitas County water conservancy board during the year 2003 will be assigned number KITT-03-01.

((Are)) Can applications before a board also be considered ((dual-)) filed with ecology?

(12) The board must forward the complete original application form upon which the board has legibly written the board-assigned application number in the "office use only" space ~~((provided for that purpose and the statutory state application fee))~~ to the ecology ~~((regional office))~~ designated regional representative within five business days of the date the board accepts the application for processing.

(13) Within thirty business days from the date ecology receives the application from the board, ecology will assign a state water right change application number to the application and inform the board of the assigned number. The number assigned by ecology will be used for ecology's internal administrative purposes, including the recording of the application within the state water right record. The ecology-assigned number need not be used by the board in processing the application, including within the public notice.

(14) Ecology will open and maintain a file regarding the application for permanent recordkeeping. ~~((Ecology will inform the applicant if additional state fees are due. The board may not continue processing the application if notified by ecology that statutorily required application fees are due. Within three days of receipt of such fees, ecology shall inform the board of satisfaction of fee payment regarding any application in which ecology notified the board of outstanding fees.))~~ The application will not be considered as part of ecology's active application processing workload while the application is being processed by the board, but upon receipt of the application by ecology, the application is considered to be dual-filed with both the board and ecology. The application will retain a place in line with ecology based upon the date of acceptance by the board without payment of state examination fees as long as the board is processing the application.

(15) ~~((Upon acceptance of the application by ecology, the application is considered to be filed with both the board and ecology. However.))~~ Ecology shall not act on the application unless it is notified by the board that the board has declined to process the application and upon receiving a written request from the applicant that ecology process the application. Upon written request from the applicant that ecology process the application, the required state examination fee will be due. Ecology shall notify the applicant that examination fees are due to ecology. The applicant must submit the required state examination fee within thirty days after the written request to ecology to process the application. Ecology will not process an application until all fees are paid.

(16) The applicant may voluntarily withdraw the application from the board by making such request to the board in written form. The board shall forward a copy of the appli-

cant's request to withdraw the application to the ecology designated regional representative. The application is considered withdrawn from ecology upon the withdrawal of the application from the board. Ecology will remove the application from its line and reject the application.

How can responsibility for processing an application previously filed with ecology be transferred to a board?

~~((16) If an applicant makes a request to a board that an application previously filed with ecology be considered for processing by that board, the board may request that ecology forward a copy of the application file to the board.))~~ (17) If an application has previously been filed with ecology, the applicant may make a written request that ecology convey the application to the board with geographic jurisdiction. A copy of the written request to ecology must be sent to the board at the same time. Ecology will comply with the request ((and)) by providing all related file documents to the appropriate board. The original application will continue to be on file and maintained at ecology but will not be considered as part of ecology's active workload while the application is being processed by the board.

~~((17))~~ (18) The board shall notify ecology if it accepts the application for processing. Upon acceptance for processing by the board, the application will retain its place in line at ecology and be considered dual-filed with both the board and ecology. Ecology will remove the application from its active workload. The board will assign an application number in accordance with subsection ~~((10))~~ (11) of this section and inform the ecology designated regional ~~((office))~~ representative in writing of the board's application number within five business days of accepting the application.

(19) If an application previously filed directly with ecology is accepted for processing by a board, the board shall ensure that a public notice of the application consistent with WAC 173-153-080 is made, regardless of whether the application was previously subject to public notice by ecology.

Can a board decide not to accept an application for processing, or decide to discontinue processing an application?

~~((18))~~ (20) By a majority vote of a quorum of a board, a board may decline to process or may discontinue processing an application at any time. The board must inform the applicant of its decision in writing within fourteen business days of making the decision. The board must, at the same time, send the ecology regional office a copy of the board's written notice to the applicant. If the basis of the board's decision to decline processing the application is not sufficiently clear from the written notice, and the applicant filed a written request that ecology process the application, ecology may request a further written explanation regarding the board's decision not to process or finish processing the application. The board must provide this additional written explanation within thirty days of ecology's request.

~~((19))~~ (21) If a board declines to process or discontinue processing an application, it must return the application to the applicant and must inform the applicant that the application may be filed with ecology and advise the applicant of the appropriate ecology office where the application should be filed.

Who must receive copies of applications being processed by a board?

~~((20))~~ (22) Boards must ensure that copies of applications accepted by them for processing are provided to interested parties in compliance with existing laws. To assist the boards in this, ecology will provide a list of parties which have identified themselves to ecology as interested in the geographic area of the board. Additional interested parties, including Indian tribes, may request copies of applications from boards.

~~((21))~~ (23) A notice of each application accepted by a board shall be provided to any Indian tribe that has reservation lands or trust lands contiguous with or encompassed within the geographic area of the board's jurisdiction.

AMENDATORY SECTION (Amending Order 01-13, filed 12/9/02, effective 1/9/03)

WAC 173-153-080 What public notice is given on a water right transfer application before a board? (1) Upon acceptance by a board of a water right transfer application in accordance with ~~((WAC 173-153-070(2)))~~ this chapter, the board shall publish a public notice of the proposed water right transfer in accordance with RCW 90.03.280. This notice must be published at least once a week for two consecutive weeks in the legal notice section of a newspaper of general circulation in the project area of the county or counties where the application proposes to use, divert, withdraw and/or store water. Ecology must provide the board with a list of newspapers generally acceptable for the publication of public notices. The board should consider publishing an additional public notice in other areas that could be affected by the transfer proposal. The public notice of each individual application for transfer must include the following information, in the following order:

- (a) The applicant's name and city or county of residence;
- (b) The board's assigned water right change application number;
- (c) The water right priority date;
- (d) A description of the water right to be transferred, including the number of any water right document, that embodies the water right such as a permit, certificate or claim filed under chapter 90.14 RCW, the location of the point of diversion or withdrawal; the place of use; the purpose(s) of use; the period of use; if for irrigation purposes, the total acres irrigated; and the instantaneous rate and annual quantities as stated on the water right document;
- (e) A description of the proposed transfer(s) to be made, including, when applicable, the proposed location of point(s) of diversion or withdrawal; the proposed place(s) of use; the proposed purpose(s) of use; if for irrigation purposes, the total number of acres to be irrigated; and the instantaneous rate and annual quantities of water associated with the proposed water right transfer including the description of a transfer that includes only a portion of a water right;
- (f) The manner and time limit for filing protests with ecology under RCW 90.03.470 and WAC 508-12-170; and
- (g) The manner for providing written and oral comments or other information to the board, including the board's mailing address and the place, date, and time of any public meet-

ing or hearing scheduled to consider, discuss, or decide the application.

(2) The board may require the applicant to review and confirm the information in the public notice prior to publication. If the board does so, the applicant assumes responsibility for any errors contained in the description of the application published in the public notice.

How does the board verify that proper public notice of the application was made?

(3) The board must send a copy of the public notice to the ecology designated regional ~~((office))~~ representative at the same time the public notice is submitted for publication.

(4) Before ~~((acting))~~ issuing a decision on an application, the board must first receive a notarized affidavit of publication from each newspaper in which the public notice regarding the application was published, and the board must verify that publication occurred correctly. The board must also allow at least thirty days following the last date of publication of the notice, to allow for protests or objections to be filed with ecology before the board issues a record of decision.

How are errors or omissions in the public notice corrected? When does a public notice need to be republished?

(5) The public notice must be republished in all newspapers of original publication when an applicant substantively amends an application for a transfer of a water right subsequent to publication of the notice, or when the publication contains a substantive error or omission occurs in the publication. All parties who were sent the original application as required by WAC 173-153-070(22) and/or the original public notice ~~((as required by WAC 173-153-070(20)))~~ must be sent corrected copies of any amended transfer application ~~((if necessary to keep ecology and all interested parties accurately informed))~~ and/or an amended public notice. For the purposes of this subsection, the term "substantive error ~~((in publication))~~ or omission" for publication purposes, refers to ~~((, but is not limited to,))~~ any item identified in subsection (1) of this section that is omitted from or inadequately characterized in the public notice. An application is considered substantively amended if it expands the intent of the original proposal.

AMENDATORY SECTION (Amending Order 01-13, filed 12/9/02, effective 1/9/03)

WAC 173-153-090 How can protests and letters of concern or support on a water right transfer application be submitted to a board?

Where is a protest submitted regarding a water right transfer application before a board?

(1) A protest against granting a proposed water right change or transfer, as identified in RCW 90.03.470(12), must be received by ecology, with the statutory ~~((two-dollar))~~ protest fee, within thirty days of the last date of publication of the public notice.

(2) Ecology shall provide a copy of the protest to the appropriate board within five days of receipt of the protest.

(3) In accordance with WAC 508-12-170 and 508-12-220, a board will thoroughly investigate all pertinent protests of a transfer application before the board.

(4) Ecology shall consider all pertinent protests during its review of the board's record of decision on the application.

(5) Persons inquiring of the board or ecology regarding protest procedures shall be directed to file the protest with ecology.

(6) A board must immediately forward to ecology any protests it receives including the ~~((two-dollar))~~ statutory protest fee.

What is included in a valid protest?

(7) A protest must include:

(a) The name, address and phone number (if any) of the protesting party;

(b) Clear identification of the transfer application being protested; and

(c) A statement identifying the basis for the protest.

(d) The statutory ~~((two-dollar))~~ protest fee.

What is the difference between a protest and a letter of concern or support?

(8) Any protest received more than thirty days after the last date of publication of the public notice, or without the required fee, will be filed as a letter of concern.

(9) A letter of support is any comment addressing the benefit of the project proposed in an application.

(10) A party who provides a letter of concern or support regarding an application to a water conservancy board is not considered to be a protesting party unless the party has also filed a valid protest with ecology in compliance with this section.

Will a protest or letter of concern be considered?

(11) Boards must accept and consider any oral or written comments or protests in evaluating an application, in accordance with chapter 90.80 RCW, this chapter, and board bylaws.

AMENDATORY SECTION (Amending Order 01-13, filed 12/9/02, effective 1/9/03)

WAC 173-153-130 How are records of decision and reports of examination made by a water conservancy board? (1) Records of decision and reports of examination are adopted by a majority vote of a board, pursuant to RCW 90.80.070(4). A board's record of decision and report of examination must be in writing, and the record of decision and report of examination become part of the public record.

(2) When a board proposes to deny an application, in whole or in part, the board must issue to both the applicant and ecology a record of decision and report of examination denying the transfer, or a portion of the transfer, subject to review and final determination by ecology.

(3) When a board proposes to approve an application, the board must issue to both the applicant and ecology a record of decision and a report of examination approving the transfer, subject to review and final approval by ecology.

What is included in a record of decision?

(4) The record of decision must be prepared on a form provided by ecology and identified as the Record of Decision, form number 040-105, and must include the conclusion of the board as to whether the application is denied or approved and a record of the individual vote or abstention of

each participating commissioner or that a commissioner has recused him or herself.

What is included in a report of examination?

(5) It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination.

(6) The report of examination will consist of a form provided by ecology and identified as Water Conservancy Board Report of Examination, form number 040-106, documenting and summarizing the basic facts associated with the decision. This shall include:

(a) Within a section entitled "background":

(i) A description of the water right proposed for transfer, including the board-assigned water right change application number, and the board's tentative determination as to the validity and quantification of the right, as well as the historical water use information that was considered by the board;

(ii) An explanation of how the board complied with the State Environmental Policy Act; and

(iii) A description of any previous change decisions associated with the water right.

(b) Within a section entitled "comments and protests": A description of any protests, and written or oral comments, including:

(i) The names and addresses of the protestors or commenters;

(ii) A description of the issues raised; and

(iii) The board's analysis regarding each issue raised.

(c) Within a section entitled "investigation":

(i) A description of the project proposed by the applicant, including any issues related to development, such as the applicant's proposed development schedule and an analysis of the effect of the proposed transfer on other water rights, pending applications for changes or transfers, and instream flows established under state law;

(ii) A narrative description of any other water rights or other water uses associated with both the current and proposed place of use and an explanation of how those other rights or uses will be exercised in conjunction with the right proposed to be transferred;

(iii) If the proposed transfer is authorized under RCW 90.44.100, an analysis of the transfer as to whether it is detrimental to the public interest, including impacts on any watershed planning activity. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively;

(iv) Any information indicating that an existing water right or portion of a water right has been relinquished or abandoned due to nonuse and the basis for the determination;

(v) A description of the results of any geologic, hydrogeologic, or other scientific investigations that were considered by the board and how this information contributed to the board's conclusions;

(d) Within a section entitled "conclusions": A list of conclusions that the board drew from the information com-

piled regarding the transfer proposal. Conclusions must, at a minimum, describe:

- (i) Whether, and to what extent, a valid water right exists;
 - (ii) Any relinquishment or abandonment of the water right associated with the water right transfer application as discussed in subsection (6)(d)(i) of this section;
 - (iii) The result, as adopted by the board, of any hydraulic analysis done related to the proposed water right transfer;
 - (iv) The board's conclusions of issues raised by any comments and protests received;
 - (v) Whether the transfer proposal will impair existing rights of others; and
 - (vi) If the proposed transfer is authorized pursuant to RCW 90.44.100, whether it is detrimental to the public interest. Public interest shall not be considered if the proposed transfer is authorized pursuant to RCW 90.03.380 exclusively;
 - (e) Within a section entitled "decision": A complete description of the board's decision, fully and comprehensively addressing the entire application proposal;
 - (f) Within a section entitled "provisions":
 - (i) Any conditions and limitations recommended as part of an approved transfer, and/or any other corrective action necessary to maintain the water use in compliance with state laws and regulations;
 - (ii) Any requirement to mitigate adverse effects of the project. Mitigation may be proposed by the applicant or the board and be required in the board's decision; and
 - (iii) A schedule for development and completion of the water right transfer, if approved in part or in whole, that includes a definite date for completion of the transfer and application of the water to an authorized beneficial use.
- (7) Ecology may request additional information from the ~~((applicant or))~~ water conservancy board regarding the application and the board's decision, in addition to the requirements of subsection (6) of this section.
- (8) A board's record of decision must clearly state that the applicant is not permitted to proceed to act on the proposal until ecology makes a final decision affirming, in whole or in part, the board's recommendation. However, if ecology does not act on a board's recommendation within the time frame established in RCW 90.80.080, the applicant is allowed to initiate the water right transfer pursuant to the board's record of decision after that period of time has expired. It is advised that the applicant not proceed until the appeal period of ecology's decision is complete, in compliance with WAC 173-153-180.

AMENDATORY SECTION (Amending Order 01-13, filed 12/9/02, effective 1/9/03)

WAC 173-153-140 What is the process for notifying parties of a record of decision and report of examination?

Who is notified of a board's record of decision and report of examination?

(1) Ecology shall identify to all boards the ecology designated regional ~~((office designated))~~ representative for receipt of each board's records of decision. Boards shall hand

deliver or send by mail records of decision and reports of examination to:

- (a) The applicant;
- (b) The ecology regional office;
- (c) Any person who protested the transfer;
- (d) Any person who requested notice of the board's record of decision;
- (e) Any tribe with reservation or trust lands contiguous with or wholly or partly within the area of jurisdiction of the board; and
- (f) Any commenting agency or tribe.

How is the record of decision and report of examination transmitted?

(2) Within ~~((five))~~ fifteen business days of a board's decision, the board shall simultaneously mail a copy of the record of decision and the report of examination to all parties identified in subsection (1) of this section. A paper copy of the following shall simultaneously be mailed or delivered to the ecology designated regional representative:

- (a) The record of decision;
- (b) The report of examination;
- (c) The application;
- (d) Public notices; and
- (e) Attachments to the application.

The board shall state to the parties receiving the record of decision and report of examination that it has been simultaneously sent to ecology. Whenever boards have the capacity to do so, they must transmit a signed electronic copy of the record of decision and report of examination to the ecology regional office on the same day that copies of the decision are mailed or hand-delivered.

(3) As stated in WAC 173-153-130, boards must fully document their process of arriving at a record of decision regarding water right transfer applications. Once the board has concluded its work on a water right transfer application, the board must submit to ecology, within fourteen days after the completion of ecology's review period, any remaining original documents not previously submitted to ecology in accordance with subsection (2) of this section, and any documents received or developed by the board related to its deliberations regarding the application upon which it has made a decision. All documents submitted shall be clearly marked with the board-assigned water right change application number on the water right transfer application pursuant to WAC 173-153-070(7). As noted, the original versions of these documents must be provided to ecology; copies are not acceptable for submission. These documents must be sent to the ecology regional office designated by ecology. The board may retain a copy of all of the above-mentioned documents. After the board completes its business on a water right transfer application, and upon submission to ecology of all records related to the application file, ecology shall be responsible for public records requests related to that file.

(4) Any comments received by a board regarding its record of decision within thirty days after ecology's final decision must be forwarded to ecology within five business days of the board's receipt of such comments by the board. For the purposes of this subsection, the term "receipt" refers to the act of a board commissioner or designated administrative support person for the board picking up the board's mail.

These comments must be submitted by the board to the ecology regional office.

AMENDATORY SECTION (Amending Order 01-13, filed 12/9/02, effective 1/9/03)

WAC 173-153-150 What is ecology's review process of a board's record of decision? (1) Upon receipt of a record of decision and report of examination, ecology shall document and acknowledge the date of receipt of such documents in writing to the issuing board. Ecology will post on its internet site, generally within five business days, the record of decision, documenting the vote and signature of all board commissioners who participated in the decision, and the report of examination. For boards with the capacity to send signed documents electronically, ecology will post the record of decision and the report of examination generally within three business days of receiving the electronic version. The posted document will be referenced by both the board-assigned application number and by the ecology-assigned application number.

How does ecology review the record of decision?

(2) Ecology will review all records of decisions made by water conservancy boards. Upon receipt of a record of decision made by a board, ecology will review:

(a) The record of decision for compliance with state water laws and regulations;

(b) The record developed by the board in processing the application; and

(c) Any other relevant information.

(3) In reviewing a board's decision, ecology may consider any letters of concern or support received within thirty days of the date ecology receives the board's record of decision.

(4) Ecology will not evaluate the internal operations of a board as it reviews a board's record of decision. Exceptions are to the extent that such review is necessary to determine whether the board's decision was in compliance with state laws and regulations concerning water right transfers, including possible cases of a conflict of interest as identified in RCW 90.80.120.

What are ecology's potential review responses and how are the responses made?

(5)(a) Ecology may affirm, reverse, or modify the records of decision ~~((made))~~ based upon the report of examination issued by boards.

(b) If ecology determines that a board's submitted decision was not adopted in accordance with WAC 173-153-130(1), which addresses the adoption of a decision by the board; WAC 173-153-050 (1) and (6), which address training requirements of board commissioners; or RCW 90.80.055, which addresses additional board powers, the submitted record of decision, report of examination, and supporting documents shall be returned to the board without action. Ecology's forty-five-day review period shall not begin until the board has satisfied all requirements in the adoption of a record of decision listed in this subsection and resubmitted the decision in accordance with WAC 173-153-140.

(c) Ecology's decision will be made in the form of a written administrative order and must be issued within forty-five

days of receipt of the board's record of decision by the ecology regional office, except that the forty-five-day time period may be extended an additional thirty days by ecology's director, or his or her designee, or at the request of the board or applicant in accordance with RCW 90.80.080. If ecology does not act on the record of decision within the forty-five-day time period, or within the extension period, the board's record of decision becomes final.

(6) Ecology may issue an order affirming a board's decision. If ecology modifies the record of decision made by a board, ecology shall issue and send to the applicant and the board an order containing its modification of the record of decision. The order shall specify which part(s) of the record of decision ecology has modified. If ecology reverses the record of decision by the board, ecology shall send the applicant and the board an order reversing the record of decision with a detailed explanation of the reasons for the reversal.

Under what conditions may ecology remand a record of decision to a board?

(7) Ecology may consider conflict of interest issues during its final review of a board's record of decision. In accordance with chapter 90.80 RCW, if ecology determines that a commissioner should have been disqualified from participating in a decision on a particular application under review, the director, or his or her designee, must remand the record of decision to the board for reconsideration and resubmission of the record of decision. Upon ecology's remand, the disqualified commissioner shall not participate in any further board review of that particular application.

(8) Ecology's decision on whether to remand a record of decision under this section may only be appealed at the same time and in the same manner as an appeal of ecology's decision to affirm, modify, or reverse the record of decision after remand.

Can a board withdraw its record of decision from ecology?

(9) If ecology has not yet formally acted on a record of decision by a board, a board may withdraw the record of decision during the period allowed for ecology's review. If a board withdraws a record of decision, ecology shall remove the record of decision from its internet site and post a notice that the decision has been withdrawn. All of the associated documents submitted to ecology by the board with the record of decision will be returned to the board. A board may withdraw the record of decision under the following conditions:

(a) The board must follow chapter 42.30 RCW, the Open Public Meetings Act, in making a decision to withdraw the record of decision; ~~((and))~~

(b) The decision to withdraw the record of decision must be adopted by a majority of the quorum of the board; and

(c) The board must send a notice of withdrawal of a record of decision to ecology on a form provided by ecology and identified as Decision to Withdraw a Record of Decision, form number 040-107.

Who is notified of ecology's order relating to a record of decision?

(10) Ecology will send its order to all parties on the same day. The order must be sent by mail, within five business days of ecology reaching its decision, to:

(a) The board;

- (b) The applicant;
- (c) Any person who protested;
- (d) Persons who requested notice of ecology's decision;
- (e) The Washington department of fish and wildlife;
- (f) Any affected Indian tribe; and
- (g) Any affected agency.

What is the process should ecology fail to act on a record of decision?

(11) Except as specified in subsection (5) of this section, if ecology fails to act within the specified time after receipt of the board's record of decision, the board's record of decision becomes the final order of ecology. If a board concludes that the time allowed for ecology to issue its order has lapsed, the board shall notify ecology, the applicant, any protestors, and any parties that have expressed interest to the board about the application that the time period has lapsed. If ecology agrees that the review period has lapsed, ecology will send an order to the board, and all entities listed in subsection (10) of this section, stating that the record of decision is final. If ecology disagrees with the board's conclusion, ecology shall work with the board to establish the beginning date of the review period based upon the date of receipt of the record of decision and report of examination by the ecology regional office.

WSR 06-10-048
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
 [Filed May 1, 2006, 11:38 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation III, Section 4.03 (Asbestos).

Hearing Location(s): Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on June 22, 2006, at 9:15 a.m.

Date of Intended Adoption: June 22, 2006.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, e-mail lynns@psc Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by June 21, 2006.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by June 15, 2006, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency annually reviews fees collected and proposes appropriate fee adjustments to collect sufficient fees to support the program. Adjustments to the notification fee schedule are being proposed to ensure the program costs are covered and the agency does not collect more fees than required to operate the program.

Also being proposed are two minor clarifications that address notification procedures and do not affect technical requirements for asbestos projects or demolition work. One clarification addresses the ability to include multiple asbestos

projects on one notification. The proposal clarifies that this notification option must be for structures in a contiguous area. The second clarification proposed is language stating that additional structures cannot be added to a notification through an amendment. An additional structure subject to an asbestos project will need a separate notification.

Reasons Supporting Proposal: This proposal should align the asbestos program costs with the projected operating expenses, and it clarifies language that could be a source of confusion.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

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

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

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

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

April 28, 2006
 Steve Van Slyke
 Supervisory Engineer

AMENDATORY SECTION

REGULATION III SECTION 4.03 ASBESTOS NOTIFICATION REQUIREMENTS

(a) General Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Agency on approved forms, in accordance with the advance notification period requirements contained in Section 4.03(d) of this Regulation.

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects involving less than 10 linear feet of friable, asbestos-containing material on pipes or 48 square feet of friable, asbestos-containing material on other components (per structure, building, or vessel, per calendar year).

(3) Notification is not required for removal and disposal of nonfriable, asbestos-containing material.

(4) Notification is required for all demolitions involving structures with a projected roof area greater than 120 square feet, even if no asbestos-containing material is present.

(5) The written notification shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this Regulation unless prior arrangements for payment have been made with the Agency.

(6) A copy of the notification, all amendments to the notification, and the asbestos survey shall be available for inspection at all times at the asbestos project or demolition site.

(7) A property owner may file notification for multiple asbestos projects or demolitions on one form if all the following criteria are met:

(A) The work will be performed continuously by the same contractor; ~~((and))~~

~~((B))~~ (B) The structures are located in a contiguous area; and

~~((C))~~ (C) A work plan is submitted that includes: a map of the structures involved in the project including the site address for each structure; the amount and type of friable, asbestos-containing material in each structure; and the schedule for performing asbestos project and demolition work. For projects where a detailed work schedule cannot be provided, the asbestos contractor and/or the demolition contractor shall participate in the Agency's work schedule fax program and will continue to participate in the program throughout the duration of the project.

(8) Annual Notification

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(A) The annual notification shall be filed with the Agency before commencing work on any asbestos project included in an annual notification;

(B) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section is less than 260 linear feet on pipes or less than 160 square feet on other components; and

(C) The property owner submits quarterly written reports to the Control Officer on Agency-approved forms within 15 days after the end of each calendar quarter.

(b) **Amendments**

(1) Mandatory Amendments

An amendment shall be submitted to the Control Officer for the following changes in a notification and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this Regulation unless prior arrangements for payment have been made with the Agency:

(d) **Notification Period and Fees**

(A) Increases in the project type or job size category that increase the fee;

(B) Changes in the type of friable, asbestos-containing material that will be removed; or

(C) Changes in the start date, completion date, or work schedule, including hours of work. Asbestos contractors or property owners participating in the Agency work schedule fax program are not required to submit amendments for work schedule changes occurring between the start and completion dates.

(2) Optional Amendments

(A) An amendment may be submitted to the Control Officer for any other change in a notification and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 4.03(d) of this Regulation unless prior arrangements for payment have been made with the Agency.

(B) Contractors and property owners participating in the Agency work schedule fax program may, within 45 days after the last completion date on record, submit an amendment to the Control Officer for the removal of additional, friable, asbestos-containing material not identified during the asbestos survey. If more than 45 days have lapsed since the last completion date on record, the requirements of Section 4.03(a), including notification periods and fees, shall apply.

(3) Additional structures may not be added to a notification by amendment.

(c) **Emergencies**

The Control Officer may waive the advance notification period, if the property owner submits a written request that demonstrates to the Control Officer that an asbestos project or demolition must be conducted immediately because of any of the following:

(1) There was a sudden, unexpected event that resulted in a public health or safety hazard;

(2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

(3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

(4) The project must proceed to avoid imposing an unreasonable burden.

Project	Notification Period	Non-Refundable Fee	Demolition Surcharge**
Single-Family Residence Asbestos Project*	prior notice	\$25	
Demolition (with or without asbestos project)	10 days	\$50	
All Other Demolitions (without asbestos project)	10 days	(\$100) <u>\$50</u>	
All Other Asbestos Projects			
10 - 259 linear ft* and/or 48 - 159 square ft	prior notice (asbestos only)		
	10 days (demolition)	(\$100) <u>\$50</u>	(\$100) <u>\$50</u>
260 - 999 linear ft and/or 160 - 4,999 square ft	10 days	\$200	(\$100) <u>\$50</u>

Project	Notification Period	Non-Refundable Fee	Demolition Surcharge**
1,000+ linear ft and/or 5,000+ square ft	10 days	\$600	(\$100) <u>\$50</u>
Emergency - 4.03(c)***	prior notice	applicable fees + \$50	
Amendment - 4.03(b)	prior notice	\$25	
Annual Notice - 4.03 (a)(8)	prior notice	(\$1,500) <u>\$1,000</u>	

*Contractors participating in the Agency work schedule fax program are not required to file a Notice of Intent for asbestos removals in this project category and no fee will be assessed.

**Additional fee for demolitions. All demolitions require a Notice of Intent and a 10-day notification period unless waived per Section 4.03(c).

***The 10-day notification period may be waived per Section 4.03(c) and with payment of the applicable fees + \$50. Single-family residences are exempt from the emergency fee; however, property owners must still provide a written request per Section 4.03(c).

The Control Officer may waive the asbestos project fee and notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) friable, asbestos-containing material.

**WSR 06-10-049
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY**
[Filed May 1, 2006, 11:40 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation I, Section 5.07 (Registration Fees).

Hearing Location(s): Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on June 22, 2006, at 9:15 a.m.

Date of Intended Adoption: June 22, 2006.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by June 21, 2006.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by June 15, 2006, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency annually reviews the registration program fee structure to determine if the fees collected are adequate to cover the costs incurred by the program. A slight fee increase is being proposed to cover an increase in program costs attributable to cost-of-living and inflationary impacts to other operational costs.

Also, the agency board of directors recently approved the registration of small coffee roasters (maximum rated capacity ten lbs/batch or less) through the notification process, and this proposal places these coffee roasters into their proper fee category.

Reasons Supporting Proposal: This proposal aligns the registration program costs with the projected operating expenses, and it identifies the registration fee category for small coffee roasters.

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

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

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

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

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

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

April 28, 2006
Steve Van Slyke
Supervisory Engineer

AMENDATORY SECTION

REGULATION I SECTION 5.07 ANNUAL REGISTRATION FEES

(a) The Agency shall assess annual fees as set forth in Section 5.07(c) of this regulation for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the program, which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration

program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program. Payment of these fees by the owner or operator of a source shall maintain its active registration status (even if it is not actively operating).

(b) Upon assessment by the Agency, registration fees are due and payable within 45 days of the date of the invoice. They shall be deemed delinquent if not fully paid within 45 days of the date of the invoice and shall be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$1,000. Persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(c) Except as specified in Section 5.07 (d) and (e) of this regulation, registered sources shall be assessed a fee of (~~(\$850)~~) \$935, plus the following fees:

(1) Sources subject to a federal emission standard as specified in Section 5.03 (a)(1) of this regulation shall be assessed \$1,750 per subpart of 40 CFR Parts 60-63;

(2) Sources subject to a federally enforceable emission limitation as specified in Section 5.03 (a)(2) or meeting the emission thresholds specified in Section 5.03 (a)(3) of this regulation shall be assessed \$2,000;

(3) Sources subject to the emission reporting requirements under Section 5.05(b) of this regulation shall be assessed \$23 for each ton of CO and \$46 for each ton of NOx, PM₁₀, SOx, HAP, and VOC, based on the emissions reported during the previous calendar year;

(4) Sources with more than one coffee roaster installed on-site that are approved under a Notice of Construction Order of Approval shall be assessed \$2,000; and

(5) Sources of commercial composting with raw materials from off-site shall be assessed \$5,000.

(d) Gasoline dispensing facilities shall be assessed the following fees based on their gasoline throughput during the previous calendar year (as certified at the time of payment):

- | | |
|--|-------------------------------------|
| (1) More than 6,000,000 gallons | \$(3,000) <u>3,300</u> ; |
| (2) 3,600,001 to 6,000,000 gallons . . . | \$(1,500) <u>1,650</u> ; |
| (3) 1,200,001 to 3,600,000 gallons . . . | \$(1,000) <u>1,100</u> ; |
| (4) 840,001 to 1,200,000 gallons | \$(500) <u>550</u> ; |
| (5) 200,001 to 840,000 gallons | \$(250) <u>275</u> . |

(e) The following registered sources shall be assessed an annual registration fee of (~~(\$100)~~) \$110, provided that they meet no other criteria listed in Section 5.03(a) of this regulation:

(1) Sources with spray-coating operations subject to Section 9.16 of this regulation that use no more than 4,000 gallons per year of total coatings and solvents;

(2) Gasoline dispensing facilities subject to Section 2.07 of Regulation II with gasoline annual throughput during the previous calendar year (as certified at the time of payment) of no more than 200,000 gallons;

(3) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II; (~~and~~)

(4) Unvented dry cleaners subject to Section 3.03 of Regulation III; and

(5) Batch coffee roasters subject to notification under Section 6.03 (b)(11) of this regulation.

WSR 06-10-053
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed May 1, 2006, 4:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-21-095.

Title of Rule and Other Identifying Information: WAC 388-400-0005 Who is eligible for temporary assistance for needy families?, 388-400-0025 Who is eligible for general assistance unemployable?, 388-400-0040 Am I eligible for benefits through the Washington Basic Food program?, 388-418-0007 When do I have to report changes in my circumstances?, 388-418-0011 What is a six-month report, and do I have to complete one in order to keep getting benefits?, and 388-418-0020 How does the department determine the date a change affects my benefits?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on June 6, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 7, 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., June 6, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by June 2, 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 changes are to clarify department policy regarding eligibility for benefits, update references to other department rules, and streamline the process for individuals and families who receive benefits from more than one program and must complete a six-month report.

Reasons Supporting Proposal: The changes will be to more clearly state department eligibility policy and to reduce the need for households to complete multiple mid-certification reviews when they receive benefits from more than one program. Currently, someone receiving benefits from more than one program could receive multiple six-month reports.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.-050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.12.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 1009 College S.E., Lacey, WA 98504, (360) 725-4116.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

April 26, 2004 [2006]

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-14-100, filed 6/30/05, effective 7/31/05)

WAC 388-400-0005 Who is eligible for temporary assistance for needy families? (1) You can get temporary assistance for needy families (TANF), if you:

- (a) Can be in a TANF/SFA assistance unit as allowed under WAC 388-408-0015 through 388-408-0030;
- (b) Meet the citizenship/alien status requirements of WAC 388-424-0010;
- (c) Live in the state of Washington. A child must live with a caretaker relative, guardian, or custodian who meets the state residency requirements of WAC 388-468-0005;
- (d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;
- (e) Meet TANF/SFA:
 - (i) Income requirements under chapter 388-450 WAC;
 - (ii) Resource requirements under chapter 388-470 WAC; and
 - (iii) Transfer of property requirements under chapter 388-488 WAC.
- (f) Assign your rights to child support as required under WAC 388-422-0005;
- (g) Cooperate with the division of child support (DCS) as required under WAC 388-422-0010 by helping them:
 - (i) Prove who is the father of children applying for or getting TANF or SFA; and
 - (ii) Collect child support.
- (h) Tell us your Social Security number as required under WAC 388-476-0005;
- (i) Cooperate in a review of your eligibility as required under WAC 388-434-0005;
- (j) Cooperate in a quality assurance review as required under WAC 388-464-0001;
- (k) Participate in the WorkFirst program as required under chapter 388-310 WAC;
- (l) Report changes of circumstances as required under WAC 388-418-0005; and

(m) Complete a (~~six-month report~~) mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) If you are an adult, you must have an eligible child living with you or you must be pregnant and meet the requirements of WAC 388-462-0010.

(3) If you are an unmarried pregnant teen or teen parent:

- (a) Your living arrangements must meet the requirements of WAC 388-486-0005; and
- (b) You must attend school as required under WAC 388-486-0010.

(4) In addition to rules listed in subsection (1) of this section, a child must meet the following rules to get TANF:

- (a) Meet the age requirements under WAC 388-404-0005; and
- (b) Live in the home of a relative, court-ordered guardian, court-ordered custodian, or other adult acting *in loco parentis* as required under WAC 388-454-0005; or

(c) If the child lives with a parent or other adult relative that provides care for the child, that adult cannot have used up their sixty-month lifetime limit of TANF or SFA cash benefits as defined in WAC 388-484-0005.

(5) You cannot get TANF if you have been:

- (a) Convicted of certain felonies and other crimes under WAC 388-442-0010; or
- (b) Convicted of unlawful practices to get public assistance under WAC 388-446-0005 or 388-446-0010.

~~((6) If you are a client in a household which is eligible for a tribal TANF program, you cannot receive state and tribal TANF in the same month.))~~ (6) If you are a client in a household which is eligible for a tribal TANF program, you cannot receive state and tribal TANF in the same month.

AMENDATORY SECTION (Amending WSR 04-23-027, filed 11/8/04, effective 12/9/04)

WAC 388-400-0025 Who is eligible for general assistance-unemployable benefits? (1) You can get general assistance-unemployable (GAU) benefits if you:

- (a) Are incapacitated as required under WAC 388-448-0010 through 388-448-0120;
- (b) Are at least eighteen years old or, if under eighteen, a member of a married couple;
- (c) Are in financial need according to GAU income and resource rules in chapters 388-450, 388-470 and 388-488 WAC;
- (d) Meet the general assistance citizenship/alien status requirements under WAC 388-424-0015(2);
- (e) Provide a Social Security number as required under WAC 388-476-0005;
- (f) Reside in the state of Washington as required under WAC 388-468-0005;
- (g) Undergo a treatment and referral assessment as provided under WAC 388-448-0130 through 388-448-0150;
- (h) Assign interim assistance as provided under WAC 388-448-0210;
- (i) Report changes of circumstances as required under WAC 388-418-0005; and

(j) Complete a ~~((six-month-report))~~ mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) You cannot get GAU benefits if:

(a) You are eligible for temporary assistance for needy families (TANF) benefits;

(b) You are eligible for state family assistance (SFA) benefits unless you are not eligible under WAC 388-400-0010;

(c) You have the ability to, but refuse to meet a TANF or SFA eligibility rule;

(d) You are eligible for supplemental security income (SSI) benefits;

(e) You are an ineligible spouse of an SSI recipient; or

(f) ~~((You were denied benefits or your benefits were terminated by the))~~ Social Security Administration (SSA) denied your application for benefits or terminated your benefits for failing to follow a SSI program rule or application requirement.

(3) ~~((The))~~ We determine who is in your assistance unit ~~((will be established))~~ according to WAC 388-408-0010.

(4) ~~((You may be eligible for GAU if you reside in a public institution.))~~ A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it. ~~((Your eligibility will depend upon))~~ If you live in a public institution, you may be eligible for GAU depending on the type of institution you are in.

(a) If you reside in a public institution and are otherwise eligible for GAU, you may be eligible for general assistance if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and are:

(A) Sixty-five years of age or older; or

(B) Twenty years of age or younger.

(b) You are not eligible for GAU when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement:

(i) In a work release program; or

(ii) Outside of the institution including home detention.

AMENDATORY SECTION (Amending WSR 04-21-025, filed 10/13/04, effective 11/13/04)

WAC 388-400-0040 Am I eligible for benefits through the Washington Basic Food program? The Washington Basic Food program (Basic Food) is a nutrition program to help low-income individuals and families buy food. This rule is a summary of the rules for Basic Food.

(1) When you apply for Basic Food, we decide who is in your assistance unit (AU) based on the requirements under WAC 388-408-0034 and 388-408-0035.

(2) To be eligible for Basic Food benefits, your AU must meet the eligibility requirements of the most current version of the Food Stamp Act of 1977.

(3) To be eligible for **federal** Basic Food benefits, each AU member must meet the citizenship or alien status requirements for federal benefits as described under WAC 388-424-0020.

(4) An AU member who is not eligible for federal benefits may be eligible for **state-funded** Basic Food benefits if they meet the requirements described under WAC 388-400-0045.

(5) To be eligible for **federal** or **state** Basic Food benefits, each AU member must:

(a) Be a resident of the state of Washington as required under WAC 388-468-0005;

(b) Meet the citizenship or alien status requirements of either WAC 388-424-0020 or 388-424-0025;

(c) ~~((Provide))~~ Give us their Social Security number as required under WAC 388-476-0005;

(d) ~~((Provide))~~ Give us proof of identity as required under WAC 388-490-0005;

(e) Participate in the food stamp employment and training program (FSE&T) as required under chapter 388-444 WAC; and

(f) Meet the eligibility criteria for strikers as described under WAC 388-480-0001.

(6) To be eligible for Basic Food, your AU must:

(a) Have countable income at or below gross and net income standards as described under WAC 388-478-0060;

(b) Have countable resources at or below your AU's resource limit under WAC 388-470-0005 unless your AU is categorically eligible under WAC 388-414-0001;

(c) Report changes of circumstances as required under WAC 388-418-0005; and

(d) Complete a ~~((six-month-report))~~ mid-certification review and provide proof of any changes if required under WAC 388-418-0011.

(7) If your AU has income under the gross income standard, we deduct certain expenses from your income under WAC ~~((388-450-0200))~~ 388-450-0185 before we calculate your Basic Food benefits.

(8) If an eligible person in your AU is elderly or disabled, some rules may help your AU to be eligible for Basic Food or to ~~((get))~~ receive more Basic Food benefits. These include:

(a) Resources limits and excluding certain resources under chapter 388-470 WAC;

(b) An excess shelter deduction over the limit set for AUs without an elderly or disabled individual under WAC 388-450-0190;

(c) A deduction for out-of-pocket medical expenses for the elderly or disabled individual if they are over thirty-five dollars a month under WAC 388-450-0200; and

(d) Being exempt from the **gross monthly income** standard under WAC 388-478-0060.

(9) For Basic Food, **elderly** means a person who is age sixty or older;

(10) For Basic Food, **disabled** means a person who:

(a) ~~((Gets))~~ Receives SSI;

(b) ~~((Gets))~~ Receives disability payments or blindness payments under Title I, II, XIV, or XVI of the Social Security Act;

(c) ~~((Gets))~~ Receives disability retirement benefits from a state, local or federal government agency because of a disability considered permanent under section 221(i) of the Social Security Act;

(d) ~~((Gets))~~ Receives disability benefits from the Railroad Retirement Act under sections 2 (a)(1)(iv) and (v) and:

- (i) Meets Title XIX disability requirements; or
- (ii) Is eligible for Medicare.

(e) Receives disability-related medical assistance under Title XIX of the Social Security Act;

(f) Is a veteran and receives disability payments based on one hundred percent disability;

(g) Is a spouse of a veteran and:

(i) Either needs an attendant or is permanently housebound; or

(ii) Has a disability under section 221(i) of the Social Security Act and is eligible for death or pension payments under Title 38 of the USC.

(11) If a person in your AU attends an institution of higher education and does not meet the requirements to be an eligible student under WAC 388-482-0005, we do not ~~((consider))~~ count this person as a member of your AU.

(12) If your AU currently receives food benefits under WASHCAP or lives on or near an Indian reservation and ~~((participates in))~~ receives benefits from a tribal food distribution program approved by Food and Nutrition Service (FNS), your AU is not eligible for food assistance benefits through the Washington Basic Food ~~((benefits))~~ Program.

(13) If an AU member is ineligible for any of the following reasons, we count the ineligible person's income as described under WAC 388-450-0140:

(a) Able-bodied adults without dependents who are no longer eligible under WAC 388-444-0030;

(b) Persons fleeing a felony prosecution, conviction, or confinement under WAC 388-442-0010;

(c) Persons who do not attest to citizenship or alien status as defined in WAC 388-424-0001;

(d) Persons who are ineligible aliens under WAC 388-424-0020;

(e) Persons disqualified for an intentional program violation under WAC 388-446-0015;

(f) Persons who do not provide a Social Security number when required under WAC 388-476-0005; or

(g) Persons who failed to meet work requirements under chapter 388-444 WAC.

AMENDATORY SECTION (Amending WSR 05-11-074, filed 5/17/05, effective 7/1/05)

WAC 388-418-0007 When do I have to report changes in my circumstances? (1) If your household has a change of circumstances you are **not required to report** under WAC 388-418-0005, you do not need to contact ~~((the department))~~ us about this change. If you tell us about this change, we take action based on the new information. This includes:

(a) ~~((Requesting additional))~~ Asking for more information we need to determine your eligibility and benefits under WAC 388-490-0005;

(b) Increasing your benefits when we have proof of a change that makes you eligible for more benefits; or

(c) Reducing or ~~((terminating))~~ stopping your benefits based on the change.

(2) If you **are applying for** benefits and have had a change:

(a) After the date you applied but before your interview, you must report the change ~~((at the time of))~~ during your interview; or

(b) After you have been interviewed, you must report changes ~~((required to be reported by someone receiving benefits))~~ that we require someone who receives benefits to report as described under WAC 388-418-0005. You must report this change by the tenth day of the month following the month the change happened.

(3) If you **receive** cash assistance, medical, or Basic Food, you must report changes required under WAC 388-418-0005 by the tenth day of the month following the month the change happened.

(4) For a change in income, the date a change happened is the date you receive income based on this change. For example, the date of your first paycheck for a new job, or the date of a paycheck showing a change in your wage or salary.

(5) If we require you to complete a ~~((six-month report))~~ mid-certification review, you must complete the ~~((report))~~ review to inform us of your circumstances as described under WAC 388-418-0011 in order to keep ~~((getting))~~ receiving benefits.

(6) If you ~~((get))~~ receive TANF/SFA, and you learn that a child in your assistance unit (AU) will be gone from your home longer than ninety days, you must ~~((report this information to us))~~ tell us about this within five calendar days from the date you learn this information.

(a) If you do not report this within five days, the child's caretaker is not eligible for cash benefits for one month ~~((-)); and~~

(b) We continue to budget the ineligible person's countable income as described in WAC 388-450-0162 ~~((while determining))~~ to determine the benefits for the ~~((remaining))~~ people still in the AU.

(7) If you report changes late, you may ~~((get))~~ receive the wrong amount or wrong type of benefits. If you ~~((get))~~ receive more benefits than you are eligible for, you may have to pay them back as described in chapter 388-410 WAC.

AMENDATORY SECTION (Amending WSR 05-09-020, filed 4/12/05, effective 6/1/05)

WAC 388-418-0011 What is a ~~((six-month report))~~ mid-certification review, and do I have to complete one in order to keep ~~((getting))~~ receiving benefits? (1) A ~~((six-month report))~~ mid-certification review (MCR) is a form ~~((the department sends))~~ we send you to ~~((confirm))~~ ask about your current circumstances. We use the ~~((information))~~ answers you ~~((provide))~~ give us ~~((through this report))~~ to ~~((determine))~~ decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive ~~((benefits from any of the following programs, you must complete a six-month report))~~ cash assistance, family-related medical, or Basic Food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) ~~((Cash assistance unless you receive only refugee cash assistance as described under WAC 388-400-0030;))~~

You **do not** have to complete a mid-certification review for cash assistance if you:

(i) Only receive Refugee Cash Assistance as described under WAC 388-400-0030; or

(ii) Have a review period of six months or less.

(b) ~~((Family-related medical; or))~~ You **do not** have to complete a mid-certification review for Basic food if:

(i) Your assistance unit has a certification period of six months or less; or

(ii) All adults in your assistance unit are elderly or disabled and have no earned income.

~~((c) Basic Food unless you meet one of the following conditions:~~

~~(i) Your assistance unit has a certification period of six months or less. If you have a certification period of six months or less, you must complete a recertification under WAC 388-434-0010 in order to keep getting Basic Food benefits; or~~

~~(ii) All adults in your assistance unit are elderly or disabled and have no earned income.))~~

(3) ~~((If you must complete a six-month report, we send you the report with the most current information we have on your case. You can choose to complete the report in one of the following ways:~~

~~(a) Complete and return the form to the department. For us to consider your six-month report complete, you must take all of the steps below:~~

~~(i) Complete the report form, telling us about changes in your circumstances we ask about;~~

~~(ii) Sign and date the report;~~

~~(iii) Provide proof of any changes you report;~~

~~(iv) If you receive family medical benefits, provide proof of your income even if it has not changed; and~~

~~(v) Mail or turn in the completed form and any required proof to us by the due date on the report. This is the tenth day of the sixth month of your review or certification period.~~

~~(b) Complete the six-month report over the phone. For us to consider your six-month report complete, you must take all of the steps below:~~

~~(i) Contact us at the phone number we provide on the report form, telling us about changes in your circumstances we ask about;~~

~~(ii) Provide proof of any changes you report. We may be able to verify some information over the phone;~~

~~(iii) If you receive family medical benefits, provide proof of your income even if it has not changed; and~~

~~(iv) Mail or turn in any required proof to us by the due date on the report. This is the tenth day of the sixth month of your review or certification period.))~~ **When we send the review form:**

<u>If you must complete a MCR...</u>	<u>We send your review form...</u>
<u>(a) For one program such as Basic Food or Family Medical.</u>	<u>In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.</u>

<u>If you must complete a MCR...</u>	<u>We send your review form...</u>
<u>(b) For two or more programs, and all program have a 12-month certification or review period.</u>	<u>In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.</u>
<u>(c) For Basic Food and another program when either program has a certification or review period between six and twelve months.</u>	<u>In the fifth month of your Basic Food certification period when you receive Basic Food and another program. You must complete your review by the 10th day of month six of your Basic Food certification.</u>

(4) ~~If ((your benefits change because of the information in your six-month report, the change takes effect in the seventh month of your certification or review period even if this does not provide you ten days notice before we change your benefits))~~ you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review in one of the following ways:

~~(a) Complete the form and return it to us.~~ For us to count your mid-certification review complete, you must take all of the steps below:

~~(i) Complete the review form, telling us about changes in your circumstances we ask about;~~

~~(ii) Sign and date the form;~~

~~(iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;~~

~~(iv) If you receive family medical benefits, give us proof of your income even if it has not changed; and~~

~~(v) Mail or turn in the completed form and any required proof to us by the due date on the review.~~

~~(b) Complete the mid-certification review over the phone.~~ For us to count your mid-certification review as complete, you must take all of the steps below:

~~(i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;~~

~~(ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;~~

~~(iii) If you receive family medical benefits, give us proof of your income even if it has not changed; and~~

~~(iv) Mail or turn in any required proof to us by the due date on the review.~~

~~(c) Complete the application process for another program.~~ If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) ~~If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you ten days notice before we change your benefits.~~

~~(6)~~ If you do not complete your required ~~((six-month report))~~ mid-certification review, we stop your benefits ~~((end))~~ at the end of the ~~((sixth))~~ month ~~((of your review or certification period))~~ the review was due.

~~((6))~~ **(7) Late ~~((reports))~~ reviews.** If you complete the ~~((report))~~ mid-certification review after the ~~((end of the sixth month of your certification or review period))~~ last day of the month the review was due, we process the ~~((report))~~ review as described below based on when we receive the ~~((report))~~ review:

(a) ~~((Reports completed))~~ **Mid-certification reviews you complete by the last day of the month after the month the ~~((report))~~ review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the ~~((report))~~ review.

(b) ~~((Reports completed after the last day of the month after the month the report))~~ **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this ~~((report))~~ review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

AMENDATORY SECTION (Amending WSR 05-09-020, filed 4/12/05, effective 6/1/05)

WAC 388-418-0020 How does the department determine the date a change affects my benefits? (1) Unless otherwise specified, the rules in this chapter refer to cash, medical assistance, and Basic Food benefits.

(2) If you report a change that happened between the date you applied for benefits and the date we interview you under WAC 388-452-0005, we take this change into consideration when we process your application for benefits.

(3) If we learn about a change in your circumstances from another person, agency, or by matching with any number of systems, we determine the impact this change has on your benefits. We may request additional information under WAC 388-490-0005 or update your benefits based on this information.

(4) For programs other than pregnancy medical and children's medical, if you report a change in your income that we expect to continue at least a month beyond the month when you reported the change, we recalculate the income we estimated under WAC 388-450-0215 based on this change. Changes in income during a certification period do not affect pregnancy medical or children's medical assistance.

(5) When a change causes an increase in benefits, you must provide proof of the change before we adjust your benefits.

(a) If you give us the proof within ten days from the date we requested it, we increase your benefits starting the month after the month you reported the change.

(b) If you give us the proof more than ten days after the date we requested it, we increase your benefits starting the month after the month we got the proof.

(c) If you are eligible for more benefits and we have already sent you benefits for that month, we provide you the additional benefits within ten days of the day we got the proof.

(6) When a change causes a decrease in benefits, we reduce your benefit amount without asking for proof.

(a) If you report a change within the time limits in WAC 388-418-0007, and you are not reporting this as part of a ~~((six-month report))~~ mid-certification review, we decrease your benefits starting the first month following the advance notice period. The advance notice period:

(i) Begins on the day we send you a letter about the change, and

(ii) Is determined according to the rules in WAC 388-458-0025.

(b) If you do not report a change you must tell us about under WAC 388-418-0005, or you report a change later than we require under WAC 388-418-0007, we determine your eligibility as if you had reported this on time. If you received more benefits than you should, we set up an overpayment as described under chapter 388-410 WAC.

(7) If we are not sure how the change will affect your benefits, we send you a letter as described in WAC 388-458-0020 requesting information from you.

(a) We give you ten days to provide the information. If you need more time, you can ask for it.

(b) If you do not give us the information in time, we will stop your benefits after giving you advance notice, if required, as described in WAC 388-458-0030.

(8) Within ten days of the day we learn about a change, we send advance notice according to the rules in chapter 388-458 WAC and take necessary action to provide you the correct benefits. If you request a hearing about a proposed decrease in benefits before the effective date or within the notice period as described in WAC 388-458-0040, we wait to take action on the change.

(9) If you disagree with a decision we made to change your benefits, you may request a fair hearing under chapter 388-02 WAC. The fair hearing rules in chapter 388-02 WAC do not apply for a "mass change." A mass change is when we change the rules that impact all recipients and applicants.

(10) When you request a hearing and ~~((get))~~ receive continued benefits:

(a) We keep giving you the same benefits you got before the advance notice of reduction until the earliest of the following events occur:

(i) For Basic Food only, your certification period expires;

(ii) The end of the month the fair hearing decision is mailed;

(iii) You state in writing that you do not want continued benefits;

(iv) You withdraw your fair hearing request in writing;

or

(v) You abandon your fair hearing request; or

(vi) An administrative law judge issues a written order that ends continued benefits prior to the fair hearing.

(b) We establish an overpayment claim according to the rules in chapter 388-410 WAC when the hearing decision agrees with the action we took.

(11) Some changes have a specific effective date as follows:

(a) When cash assistance benefits increase because a person is added to your assistance unit, we use the effective date rules for applications in WAC 388-406-0055.

(b) When cash assistance benefits increase because you start paying shelter costs, we use the date the change occurred.

(c) When a change in law or regulation changes the benefit amount, we use the date specified by the law or regulation.

(d) When institutional medical assistance participation changes, we calculate the new participation amount beginning with the month your income or allowable expense changes.

WSR 06-10-058

WITHDRAWAL OF PROPOSED RULES

GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed May 2, 2006, 8:26 a.m.]

WAC 230-40-010, proposed by the gambling commission in WSR 05-21-075 appearing in issue 05-21 of the State Register, which was distributed on November 2, 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 06-10-059

WITHDRAWAL OF PROPOSED RULES

GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed May 2, 2006, 8:26 a.m.]

WAC 230-40-610, proposed by the gambling commission in WSR 05-21-076 appearing in issue 05-21 of the State Register, which was distributed on November 2, 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 06-10-060

WITHDRAWAL OF PROPOSED RULES

GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed May 2, 2006, 8:27 a.m.]

WAC 230-40-120, proposed by the gambling commission in WSR 05-21-077 appearing in issue 05-21 of the State Register, which was distributed on November 2, 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 06-10-061

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

(By the Code Reviser's Office)

[Filed May 2, 2006, 8:27 a.m.]

WAC 232-28-334, proposed by the department of fish and wildlife in WSR 05-21-114 appearing in issue 05-21 of the State Register, which was distributed on November 2, 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 06-10-062

WITHDRAWAL OF PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed May 2, 2006, 9:04 a.m.]

Washington State University has decided to withdraw the current proposal to repeal chapter 504-25 WAC, Standards of conduct for students, and to withdraw the current proposal to add new chapter 504-26 WAC, Standards of conduct for students.

The CR-102 for this proposed rule revision was filed on February 6, 2006.

Ralph Jenks, Director
Office of Procedures,
Records, and Forms
University Rules Coordinator

WSR 06-10-072

PROPOSED RULES

SECRETARY OF STATE

(Elections Division)

[Filed May 2, 2006, 3:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-056.

Title of Rule and Other Identifying Information: Implementation of voting equipment/systems rules.

Hearing Location(s): Conference Room, 520 Union Avenue S.E., Olympia, WA 98501, on June 13, 2006, at 1:30 p.m.

Date of Intended Adoption: June 20, 2006.

Submit Written Comments to: Tami Neilson, P.O. Box 40220, Olympia, WA 98504-0220, e-mail tneilson@sec.state.wa.gov, fax (360) 586-5629, by June 13, 2006.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules outline procedures regarding voting equipment, such as removing direct recording electronic (DRE) devices from service, conducting logic and accuracy tests, and voters leaving the polling place without casting their ballots on DRE devices.

Reasons Supporting Proposal: Additional rules are necessary for the purpose of clarification and standardization of procedures among counties.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Agency Personnel Responsible for Drafting: Tami Neilson, Legislative Building, (360) 902-4182; Implementation and Enforcement: Paul Miller, 520 Union Avenue S.E., (360) 725-5783.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes to [do] not appear to have an impact on small business.

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

May 2, 2006

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 05-24-040, filed 11/30/05, effective 12/31/05)

WAC 434-253-080 Voter leaving polling place ~~((without voting))~~ prior to casting ballot. (1) Whenever it is noted by a precinct election officer that a voter has been issued a ballot and leaves a polling place without returning the ballot, a notation shall be made in the poll book or list along with the ballot stub number of the ballot issued.

(2)(a) If a ballot on a direct recording electronic device has not been cast but has been printed by the voter, ~~((the))~~ two precinct election officers ~~((must~~

~~(1) Cancel the ballot to ensure the ballot is not counted;~~

~~(2) Make a mark on the paper record to indicate the ballot has been canceled; and~~

~~(3) Make a notation in the poll book to indicate which direct recording electronic device was used to cancel the ballot~~), preferably representing different political parties, may cast the ballot.

(b) If a ballot on a direct recording electronic device has not been printed nor cast by the voter, a precinct election officer must cancel the ballot and make a corresponding notation in the accountability form.

AMENDATORY SECTION (Amending WSR 05-24-040, filed 11/30/05, effective 12/31/05)

WAC 434-253-110 Examination of voting devices. ~~((At least once every hour))~~ While the poll booths are open, precinct election officers shall examine the voting devices,

poll booths, printed materials within the poll booths, and paper printers or paper canisters attached to direct recording electronic devices to ensure that they have not been tampered with and are in proper working condition. Precinct election officers must also monitor for instances where voters using a direct recording electronic device have left the polling place without casting their ballots. At polling places other than the courthouse, there must be one precinct election officer dedicated to monitoring the voting devices.

(1) If any seal or lock on a direct recording electronic device ~~((or)),~~ including seals for the paper printer or paper canister, has been broken or tampered with, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. The direct recording electronic device and paper printer must be transferred pursuant to WAC 434-253-115 (1)(b). A written report regarding the circumstances of the removal from service must be sent to the county canvassing board.

(2) Precinct election officers must replace any printed materials that were to remain in the poll booth if they have been defaced, removed, or destroyed.

(3) If a paper printer for a direct recording electronic device has malfunctioned or run out of paper, it must be handled pursuant to WAC 434-253-115.

(4) If a voter has voted and left the polling place without casting his or her ballot, it must be handled in accordance with WAC 434-253-080.

NEW SECTION

WAC 434-257-140 Contingency plans for disability access units. For each polling place in which a disability access unit is available for use, county auditors must have a contingency plan to accommodate voters wishing to use the unit should it malfunction or be removed from service in accordance with WAC 434-253-110.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-320 Logic and accuracy test scheduling and preparation—State primary and general election. Prior to each state primary and general election, the office of the secretary of state must prepare a schedule of logic and accuracy tests. The office of the secretary of state must notify each county of the date and time of the test at least thirty days before the primary or election. ~~((The county is responsible for preparing the vote tabulating system and testing it before the actual logic and accuracy test. The vote tabulating system must be fully programmed, cleaned, maintained, tested, and functional before the official logic and accuracy test.))~~ The county must notify the parties, press, public, and candidates of the date and time of the test.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-330 Logic and accuracy test certification—State primary and general election. The county auditor or deputy, the secretary of state representative, and any political party observers must certify that the test was

conducted in accordance with RCW 29A.12.130. This certification must include verification of the version numbers for all software, firmware, and hardware of the voting system used. Copies of this certification must be retained by the secretary of state and the county auditor and may be posted by electronic media. All programming materials, test results, and test ballots must be ~~((securely sealed))~~ kept in secure storage employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.

If, for any reason, any changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-440 Logic and accuracy test deck preparation—State primary and general election—Optical scan systems. ~~((The test deck or decks used for the official logic and accuracy test for optical scan systems may, at the discretion of the secretary of state, be prepared by either the office of the secretary of state, the county, or the county's ballot printer applicant.))~~ The county is responsible for preparing and testing the vote tabulating system prior to the official logic and accuracy test. This pretesting must be completed prior to using the equipment to process ballots. Information describing the candidates, offices, ((ballot formats, ballot positions,)) ballot styles, number of appearances of each office, method used to mark the test deck, a copy of the anticipated results, and all other information required to create the test decks must be ((available)) sent to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county must advise the office of the secretary of state before the 20th day prior to the primary or election.

NEW SECTION

WAC 434-335-445 The preparation of logic and accuracy test decks. Each county shall produce a test deck of ballots to be used in the pretest and the official logic and accuracy test to verify that the vote tabulating system is programmed to correctly count the ballots.

When a race has five or fewer candidates, the pattern to mark the test deck shall begin by giving the first candidate in each race one vote, the second candidate in each race two votes, the third candidate in each race three votes, etc. When a race has more than five candidates the pattern may be repeated. Another pattern may be used which meets the requirements outlined in this section.

The test deck must also test that the vote tabulating system is programmed to accurately count write-in votes, overvotes, undervotes, and blank ballots. In addition, if ballot on demand systems will be used during the election, the test deck must also include a sampling of ballots printed from the ballot on demand system.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-520 Logic and accuracy test plan preparation—State primary and general election—~~((Direct recording electronic systems))~~ Disability access units. The test plan used for the official logic and accuracy test prior to a state primary or election for ~~((a direct recording electronic system may, at the discretion of the secretary of state, be prepared by either the office of the secretary of state or))~~ disability access units must be prepared by the county in the same manner as for optical scan ballots. The official testing must be completed before a direct recording device may be used for casting ballots. Counties must complete the testing to have in-person disability access voting available starting twenty days before the day of a primary or election. Information describing the candidates, offices, ballot formats, ballot styles, number of appearances of each office, and all other information required to create the test plan must be ~~((available))~~ sent to the office of the secretary of state by the 20th day prior to the primary or election. If a county is delayed, the county auditor must advise the office of the secretary of state before the 20th day prior to the primary or election.

WSR 06-10-073

**PROPOSED RULES
SECRETARY OF STATE**

(Elections Division)

[Filed May 2, 2006, 3:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-055.

Title of Rule and Other Identifying Information: Implementation of vote by mail rules.

Hearing Location(s): Conference Room, 520 Union Avenue S.E., Olympia, WA 98501, on June 13, 2006, at 1:30 p.m.

Date of Intended Adoption: June 20, 2006.

Submit Written Comments to: Tami Neilson, P.O. Box 40220, Olympia, WA 98504-0220, e-mail tneilson@sec-state.wa.gov, fax (360) 586-5629, by June 13, 2006.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules outline procedures regarding vote by mail, such as establishing ballot drop site locations and issuing mail ballots.

Reasons Supporting Proposal: Additional rules are necessary for the purpose of clarification and standardization of procedures among counties.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Agency Personnel Responsible for Drafting: Tami Neilson, Legislative Building, (360) 902-4182; Implementation and Enforcement: Sheryl Moss, 520 Union Avenue S.E., (360) 902-4146.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes to [do] not appear to have an impact on small business.

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

May 2, 2006

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-030 Applications. (1) As authorized by RCW 29A.40.040, requests for status as an ongoing absentee voter must be made in writing. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

(a) A space for the voter to print his or her name and the address at which he or she is registered to vote;

(b) The address to which the ballot is to be mailed; and

(c) A space for the voter to sign and date the application.

A voter may request status as an ongoing absentee voter by indicating such on a standard voter registration form.

(2) As authorized by RCW 29A.40.020 and 29A.40.030, requests for a single absentee ballot may be made in person, by telephone, electronically, or in writing, and may be made by a family member. Each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

(a) A space for the voter to print his or her name and the address at which he or she is registered to vote;

(b) The address to which the ballot is to be mailed;

(c) A space for the voter to indicate for which election or elections the application is made; and

(d) A space for the voter to sign and date the application.

(3) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. In addition to the requirements for a single absentee ballot, as provided in subsection (2) of this section, the form must include:

(a) A space for an out-of-state, overseas, or service voter not registered to vote in Washington to indicate his or her last residential address in Washington;

(b) A checkbox requesting that a single absentee ballot be forwarded as soon as possible; and

(c) The declaration required in WAC 434-250-050.

The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor until the appropriate time and then processed.

(4) As authorized by RCW 29A.40.080, requests for an absentee ballot may be made by a resident of a health care facility, as defined by RCW 70.37.020(3). Each county shall provide an application form for such a registered voter to apply for a single absentee ballot by messenger on election

day. The messenger may pick up the voter's absentee ballot and deliver it to the voter and return it to the county auditor's office.

(5) If an application for an absentee ballot does not contain sufficient information to enable the auditor to issue the correct absentee ballot, the auditor shall notify the person and explain why the application is not accepted. If, in the judgment of the county auditor, enough time exists to correct the application, the county auditor must request the proper information from the voter in order to facilitate the application. If, in the judgment of the county auditor, insufficient time exists to correct the application, the auditor must issue the absentee ballot as if the voter had listed the county auditor's office as his or her residence. Upon its return, the ballot must be referred to the county canvassing board, and the only offices or issues that may be tabulated are those common to the entire county and those for which it can be conclusively determined the voter is qualified to vote.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

WAC 434-250-100 Depositing of ballots. Ballots may be deposited in the auditor's office during normal business hours prior to the day of the election, and from 7:00 a.m. to 8:00 p.m. on the day of the election. (~~Other~~) Places of deposit may be staffed or unstaffed.

(1)(a) Staffed sites must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If two or more deposit site staff are persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of the duties.

(b) Staffed deposit sites must be open from 7:00 a.m. until 8:00 p.m. on the day of the election and may be open prior to the election on dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board for consideration of whether special circumstances warrant consideration, as documented by the deposit site staff.

(c) A staffed deposit site that only receives ballots is not considered a polling place. A staffed deposit site that both receives and issues ballots is considered a polling place.

(2) Unstaffed sites may be used if the ballot drop box is either:

(a) Constructed and secured according to the same requirements as United States Postal Service postal drop boxes; or

(b) Secured and located indoors.

(3) Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened, by whom, and the number of ballots removed. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the

county auditor must empty each ballot drop box with sufficient frequency to prevent damage or unauthorized access to the ballots. Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. On election day, ballot drop boxes must be emptied at exactly 8:00 p.m. to ensure that all ballots meet the 8:00 p.m. delivery deadline.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-320 Deposit sites. A county auditor conducting a county-wide election entirely by mail must provide at least ~~((one))~~ two sites for the deposit of ballots ~~((in addition to the county auditor's office))~~. One of the deposit sites may be at the county auditor's office. All other deposit sites must be at geographical locations that are different from the county auditor's office. All deposit sites must meet the requirements of WAC 434-250-100.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-261-075 Manual inspection of ballot—Acceptability of marks ~~((or punches))~~. (1) If the voter returns voting responses by mail on any form other than the ballot sent, the votes thereon shall be acceptable and tallied provided that:

- (a) Only votes for offices or measures for which the voter is eligible are counted.
- (b) The candidate or measure response position for which the voter is voting can be clearly identified.
- (c) The ballot issued is not returned, or if returned, contains no marks ~~((or punches))~~ indicating an attempt to vote it.
- (d) A valid signature on an absentee oath is on file with the county auditor.

The votes accepted must then be duplicated to a ballot that can be read by the electronic voting equipment.

(2) Corrected absentee ballots shall be counted in the following manner:

- (a) If a voter follows the instructions for correcting a vote, either the written instructions or other instructions given to the voter by the county auditor, the correction shall be made by duplicating the ballot and then tabulating the duplicated ballot.
- (b) If a voter appears to have corrected the ballot in a manner other than as instructed, the vote for that candidate or issue shall not be tabulated unless the voter provides written instructions directing how the vote should be counted or has clearly attempted to erase a mark.

(3) If a voter has indicated a write-in vote on the ballot which duplicates the name of a candidate who already appears on the ballot for the same office, the ballot shall be duplicated to count one vote for the candidate indicated. Such a vote shall be counted pursuant to RCW 29A.60.021.

(4) ~~((If a voter signs the oath with a mark and does not have two witnesses attest to the signature, the envelope must be treated as if it were unsigned.~~

~~((5)))~~ If a ballot contains marks ~~((or punches))~~ that differ from those specified in the voting instructions, those marks ~~((or punches))~~ shall not be counted as valid votes unless there

is a discernable and consistent pattern, to the extent that the voter's intent can clearly be determined. If there is such a pattern, the ballot shall be duplicated to reflect the voter's intent.

WSR 06-10-074

PROPOSED RULES

SECRETARY OF STATE

(Elections Division)

[Filed May 2, 2006, 3:07 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Implementation of rules regarding the counting of ballots.

Hearing Location(s): Conference Room, 520 Union Avenue S.E., Olympia, WA 98501, on June 13, 2006, at 1:30 p.m.

Date of Intended Adoption: June 20, 2006.

Submit Written Comments to: Tami Neilson, P.O. Box 40220, Olympia, WA 98504-0220, e-mail tneilson@sec-state.wa.gov, fax (360) 586-5629, by June 13, 2006.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules address issues such as issuing provisional ballots before election day, physically counting ballots when poll site ballot counters are used, comparing ballot counts at the poll site and the counting center, maintaining the secrecy of ballots, aggregating precinct results, providing examples of reconciliation reports and oaths, and calculating levy validation figures and results.

Reasons Supporting Proposal: Additional rules are necessary for the purpose of clarification and standardization of procedures among counties.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Agency Personnel Responsible for Drafting: Tami Neilson, Legislative Building, (360) 902-4182; Implementation and Enforcement: Sheryl Moss, 520 Union Avenue S.E., (360) 902-4146.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes to [do] not appear to have an impact on small business.

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

May 2, 2006

Steve Excell

Assistant Secretary of State

NEW SECTION

WAC 434-250-085 Provisional ballots issued before election day. A provisional ballot issued before election day, in accordance with RCW 29A.40.070 and 29A.48.010, is valid if issued to an ongoing absentee voter or issued in a county conducting the election entirely by mail.

AMENDATORY SECTION (Amending WSR 05-06-035 and 05-08-065, filed 2/25/05, effective 3/28/05)

WAC 434-253-203 Precinct count optical scan and direct recording devices—Poll-site reconciliation. (1) Each precinct or poll-site ballot counter shall print out results immediately following the closing of the polls. A copy of the results will be posted at the poll-site or otherwise made available for public inspection.

(2) The total of votes cast from each counter shall be reconciled with the number of signatures in the poll book(s) and a manual count of the number of optical scan ballots from each machine prior to transporting to the counting center. The total number of ballots reported on the results printout should equal the number of signatures in the poll book(s). Discrepancies shall be reported and explained by the inspector.

(3) In a sealed container, the data pack/chip of each ballot counter shall be transported to the counting center with each results printout.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-262-010 Definitions. As used in these regulations:

(1) "Canvassing" is that process of examining in detail a ballot, groups of ballots, election subtotals, or grand totals, in order to determine the final official returns of a primary, special, or general election, and to safeguard the integrity of the election process.

(2) "County canvassing board" is that body charged by law with the duty of canvassing ballots, of ruling on the validity of questioned or challenged ballots, of the verifying all unofficial returns as listed in the auditor's abstract of votes, and the producing of the official county canvass report; it shall be composed of the county auditor, prosecuting attorney, and chairman of the board of the county legislative authority, or their designated representatives.

(3) "Auditor's abstract of votes" is that report prepared by the county auditor which lists the number of registered voters, votes cast, all of the vote totals by precinct, or by combination of precincts if applicable, absentee ballot totals, legislative and congressional district subtotals, if any, and county-wide totals. The auditor's abstract of votes must also include the reconciliation report required by RCW 29A.60.235(1). Vote totals in the auditor's abstract of votes shall be unofficial until verified and certified by the county canvassing board.

(4) "County canvass report" is the auditor's abstract of votes after verification by the county canvassing board and shall contain a certificate which shall include the oath as specified in RCW 29A.60.200, the original signatures of each member of the county canvassing board, the county seal, and all other material pertinent to the election.

(5) "Certified copy of the county canvass report" is that report transmitted by the county auditor to the secretary of state which contains registered voters and votes cast by precinct, or combination of precincts if applicable, votes cast for and against state measures, and votes cast for candidates for federal and statewide offices and for any office whose jurisdiction encompasses more than one county, absentee ballot

totals for those measures and candidates, subtotals if applicable, and county-wide totals. It shall also include a certificate, bearing original signatures and an original county seal, identical to that included in the official county canvass report, and any other material which may be pertinent to the canvass of the election.

NEW SECTION

WAC 434-262-017 Calculating validation figures and results for bonds and levies. (1) Before determining a jurisdiction's validation figures, the number of votes cast in the jurisdiction in the last general election must be determined. For levies, the state Constitution states, "...the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty per centum of the total votes cast in such taxing district at the last preceding general election..." For example:

10,000 votes cast in the jurisdiction in the last general election x 40% = 4,000 votes

These numbers should be calculated based on the number of voters credited for voting in each jurisdiction, before adding, deleting, or transferring voters following the general election.

(2) When determining the results of a specific bond or levy, county auditors must not include overvotes or undervotes in the calculation. Rounding must not be used to reach sixty percent "yes" votes for a bond or levy. For example:

2,980 "yes" votes ÷ 5,000 total votes cast = 59.6%, so the levy would not pass.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-262-020 Preliminary abstract of votes. Following the election and prior to the official canvass, the county auditor shall prepare a preliminary abstract of votes, listing the number of registered voters and votes cast. Provisional ballot results must be combined with precinct results. The preliminary abstract of votes must list separately for each precinct:

(1) Votes cast by absentee or mail ballot and votes cast at the polls(=);

(2) Votes cast for and against measures(=);

(3) Votes cast for candidates(=); and

(4) Overvotes and undervotes(=, by precinct or groups of precincts in the event that precincts have been combined in accordance with RCW 29A.16.060, for canvassing purposes). Pursuant to RCW 29A.60.230, the county auditor may aggregate results if the secrecy of a person's ballot may be jeopardized. The county auditor shall inspect the preliminary abstract of votes for errors or anomalies that may affect the results of the election. Correction of any errors or anomalies discovered must be made prior to the official canvass.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-262-030 Auditor's abstract of votes. No later than the tenth day following any primary or special election and the twenty-first day following any general election the county canvassing board shall meet and canvass all ballots. Upon completion of this canvass, the board shall direct the county auditor to ~~((include all ballot totals, or legislative or congressional district subtotals if applicable, and the re-~~

~~conciliation report in the preliminary abstract of votes prepared pursuant to WAC 434-262-020. The ensuing report, containing a count of all ballots cast in the election, subtotal reports by legislative district, and county-wide totals shall constitute the auditor's abstract of votes))~~ prepare the auditor's abstract of votes as defined by WAC 434-262-010. The oaths and the reconciliation report must be substantially similar to the following:

Oath of County Auditor or Supervisor of Elections

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I solemnly swear that the returns of the (insert election) held on (insert date), in _____ County, State of Washington, have been in no way altered and that they are the same as when they were deposited in my office.

County Auditor or Supervisor of Elections

Subscribed and sworn to me this ___ day of (insert month, year).

Chairman, County Legislative Authority

Certification Reconciliation Report
_____ Election
(insert date)

County _____
Date of Completion _____

NOTE: Address confidentiality program participants must be included with service voters.

Registration

Total number of active registered voters in all precincts _____

Total number of inactive registered voters in all precincts _____

Total registered voters in all precincts _____

Total absentee ballots counted (includes absentee, VBM, federal write-in, overseas, out of state, and service ballots) _____

Total poll site ballots counted (includes poll site and provisional ballots) _____

Total Ballots counted _____

Absentee and VBM Ballots

The total number of absentee/VBM ballots originally issued _____

The total number of absentee/VBM ballots received _____

The total number of absentee/VBM ballots rejected _____

The total number of absentee/VBM ballots counted _____

Federal Write-In Ballots

The total number of federal write-in ballots counted _____

Out-of-State, Overseas, and Service Voters

The total number of out-of-state, overseas, and service voters' ballots issued _____

The total number of out-of-state, overseas, and service voters' ballots received _____

The total number of out-of-state, overseas, and service voters' ballots rejected _____

The total number of out-of-state, overseas, and service voters' ballots counted _____

Provisional Ballots

The total number of provisional ballots issued (by this county) _____

The total number of provisional ballots rejected (includes sending to other counties) _____

The total number of provisional ballots received from other counties _____

The total number of provisional ballots counted _____

Certification of the Canvassing Board

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

The undersigned officers designated by law as constituting the Canvassing Board for the County of _____, State of Washington, hereby certify that this is a full, true and correct copy of the Abstract of Votes including the cumulative results, precinct results, and a reconciliation report of votes cast at the (insert election) held on (insert date), in _____ County, State of Washington, and that the following are the true and reconciled numbers of voters and votes counted.

Witness our hands and official seal this _____ day of (insert month, year).

County Auditor or Supervisor of Elections

Chairman, County Legislative Authority

County Prosecuting Attorney

NEW SECTION

WAC 434-262-135 Thirty day reconciliation report. Within thirty days of certification, the county auditor must prepare and make publicly available at the auditor's office or on the auditor's web site a final election reconciliation report that is substantially similar to the following:

30 DAY RECONCILIATION REPORT
_____ ELECTION
(insert date)

Total number of registered voters in all precincts	
Total number of absentee voters credited	
Total number of poll voters credited	
Total number of provisional voters credited	
Total number of federal write-in voters credited	
Total number of UOCAVA voters credited	
Total number of voters credited even though the ballot was late and not counted	0
Total number of voters credited	0

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

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-262-203 Poll-site ballot reconciliation—Central count optical scan (~~and punchcard~~). Using the poll-site ballot accountability forms, the poll books, and election night precinct results, poll-site ballots shall be reconciled in the following manner:

- (1) Reconciliation must begin as soon as practical after the election.
- (2) Each precinct's or poll-site's results shall be reconciled with the precinct's ballot accountability form. The number of ballots issued should equal the number of ballots counted plus any ballots not counted. Ballots not counted may include, but not be limited to: Provisional ballots, ballots referred to the canvassing board, ballots to be duplicated, ballots with write-in votes, spoiled ballots.

(3) Any discrepancies in precinct or poll-site results compared with the ballot accountability form must be investigated. At a minimum, the following areas must be checked (~~until~~) in an attempt to resolve the discrepancy (~~is resolved~~):

- (a) Check the accuracy of the ballot accountability form.
- (b) Recount the signatures in the poll book.

- (c) Check the spoiled ballots.
- (d) Check the provisional ballots.
- (e) Count the ballot stubs.
- (f) Check the poll-site supplies for ballots.
- (g) Manually count the number of ballots.
- (h) Call the poll workers.
- (4) The ballot count included in the ballot accountability form must be compared to the number of ballots counted at the counting center:

(5) All steps to reconcile each precinct and the ballot accountability count with the number of ballots reported shall be documented, including any discrepancies that cannot be resolved. Reconciliation of all precincts shall be completed and presented to the county canvassing board before the election can be certified.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-262-204 Poll-site ballot reconciliation—Precinct count optical scan and direct recording devices. Poll-site ballots shall be reconciled in the following manner:

- (1) Compare the total number of votes cast from each counter at the poll-site and the number of signatures in the poll book(s).
- (2) The number of ballots issued should equal the number of ballots counted plus any ballots not counted. Ballots

not counted may include, but not be limited to: Provisional ballots, ballots referred to the canvassing board, ballots to be duplicated, ballots with write-in votes, any out-sorted ballots, spoiled ballots, and ballots canceled in accordance with WAC 434-253-080.

(3) Any discrepancies in precinct or poll-site results compared with the ballot accountability form must be investigated. At a minimum, the following areas must be checked (~~(and)~~) in an attempt to resolve the discrepancy (~~(is resolved)~~):

- (a) Check the accuracy of the ballot accountability form.
- (b) Recount the signatures in the poll book.
- (c) Ballot counter/direct recording device results.
- (d) Check the bins in the ballot counter(s).
- (e) Check the spoiled ballots.
- (f) Check the provisional ballots.
- (g) Count the ballot stubs.
- (h) Check the poll-site supplies for ballots.
- (i) Manually count the number of ballots.
- (j) Call the poll workers.

(4) The ballot count included in the ballot accountability form must be compared to the number of ballots counted at the counting center:

(5) All steps to reconcile each precinct and the ballot accountability count with the number of ballots reported shall be documented, including any discrepancies that cannot be resolved. Reconciliation of all precincts shall be completed and presented to the county canvassing board before the election may be certified.

WSR 06-10-075

PROPOSED RULES

SECRETARY OF STATE

(Elections Division)

[Filed May 2, 2006, 3:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-053.

Title of Rule and Other Identifying Information: Implementation of 2006 elections legislation and miscellaneous procedures.

Hearing Location(s): Conference Room, 520 Union Avenue S.E., Olympia, WA 98501, on June 13, 2006, at 1:30 p.m.

Date of Intended Adoption: June 20, 2006.

Submit Written Comments to: Tami Neilson, P.O. Box 40220, Olympia, WA 98504-0220, e-mail tneilson@sec-state.wa.gov, fax (360) 586-5629, by June 13, 2006.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules address issues such as documenting situations where a seal is missing or broken, verifying a voter registration applicant's identity, mailing ballot materials to out-of-state voters, notifying voters of unsigned ballot envelopes, late transfer registrations,

filing voter registration challenges, and certifying voting equipment.

Reasons Supporting Proposal: Additional rules are necessary for the purpose of clarification and standardization of procedures among counties.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: Chapters 344, 206, 208, 97, 320, 207, Laws of 2006.

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

Name of Agency Personnel Responsible for Drafting: Tami Neilson, Legislative Building, (360) 902-4182; Implementation and Enforcement: Sheryl Moss, 520 Union Avenue S.E., (360) 902-4146.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes to [do] not appear to have an impact on small business.

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

May 2, 2006

Steve Excell

Assistant Secretary of State

NEW SECTION

WAC 434-250-025 Broken or missing seals. If a seal is missing or broken without authority, all subsequent steps taken must be documented and included in a report to the canvassing board.

NEW SECTION

WAC 434-253-005 Broken or missing seals. If a seal is missing or broken without authority, all subsequent steps taken must be documented and included in a report to the canvassing board.

AMENDATORY SECTION (Amending WSR 98-03-033, filed 1/13/98, effective 2/13/98)

WAC 434-253-050 Voter unable to sign name— Authority to vote. Whenever a registered voter's name appears in the poll book or precinct list but the voter is unable to sign his/her name, the precinct election officer shall require the person offering to vote to be identified by another registered voter and issued a ballot. The ballot shall be processed in the same manner as other regularly voted ballots. In the event that the person offering to vote cannot be identified by another registered voter, the precinct election officer shall issue the person a (~~(special)~~) provisional ballot. Such (~~(special)~~) provisional ballots shall be referred to the county canvassing board. The precinct election officer shall note on the poll book that the voter could not sign their name. The county auditor shall verify after election day that the voter's registration reflects the voter's inability to sign. The county auditor shall request an updated signature for those voters without current signatures on file.

AMENDATORY SECTION (Amending WSR 99-12-004, filed 5/19/99, effective 6/19/99)

WAC 434-260-170 Distribution of special review recommendations and response. The county auditor and the county canvassing board may respond in writing to any recommendations made by the review staff. Such response shall not be made later than ~~((fifteen))~~ ten working days after the completion of the mandatory recount. The review staff shall, after the county auditor and county canvassing board have had an opportunity to respond, provide a copy of its recommendations and any response to any person requesting them at actual reproduction costs. Nothing in this section shall prevent the review staff from modifying or amending its recommendations, based on the response received from the county auditor or county canvassing board. In the event the special review recommendations are modified or amended, only the final recommendations and any response by the county shall be made available for inspection and copying. In the event that the review staff does not modify or amend the draft recommendations within sixteen working days from the completion of the mandatory recount, the draft recommendations shall be considered to be final recommendations and shall be made available for inspection and copying. A copy of the special review recommendations and any response shall be provided to the chairperson of the election administration and certification board and a copy shall also be kept on file by the secretary of state.

NEW SECTION

WAC 434-261-007 Broken or missing seals. If a seal is missing or broken without authority, all subsequent steps taken must be documented and included in a report to the canvassing board.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-040 Data transfer to secretary and registration status. (1) Following entry into the county election management system, all information in the application for voter registration must be transferred electronically to the secretary for identity verification, outlined in RCW 29A.08.107. The application for voter registration must remain in the county election management system in pending status until the applicant's identity has been verified.

(2) If the applicant provided a Washington driver license number or state identification card number, the applicant's identity is verified with the department of licensing. If the applicant provided the last four digits of his or her Social Security number, the applicant's identity is verified with the Social Security Administration through the department of licensing.

(3) If the applicant's identity is not verified automatically, the secretary must notify the county election management system accordingly. The auditor must first confirm the accuracy of the information entered in the county election management system from the voter registration application. The auditor must correct any errors and again attempt to verify the applicant's identity automatically.

(4) If the applicant provided a Washington driver license number or state identification number and the identity is not verified automatically, the information on the application may be considered a "match" for purposes of RCW 29A.08.107 if the number on the application exactly matches a number issued by the department of licensing, and it is clear that the information on the application describes the person on the department of licensing record. The county may conclude that the information on the application matches the department of licensing record if:

(a) The first or middle name on the application is a variation of the first or middle name in the department of licensing record;

(b) The first, middle, or last name has transposed letters or another typographical error on the application or in the department of licensing record;

(c) The first or middle name is abbreviated with initials on the application or in the department of licensing record; or

(d) The month and day of the applicant's date of birth are transposed on the application or in the department of licensing record.

If the information on the application matches the information maintained by the department of licensing, the auditor may override the automated failure to verify and must note the reason it is considered a match.

(5) If the applicant's information cannot be considered a match, the county must attempt to contact the voter to resolve the discrepancy, as required by RCW 29A.08.107, or seek an alternative form of identification, as allowed by RCW 29A.08.113.

(6) If the applicant provided the last four digits of his or her Social Security number and the identity is not verified automatically, the county must contact the voter to resolve the discrepancy, as required by RCW 29A.08.107, or seek an alternative form of identification, as allowed by RCW 29A.08.113.

(7) Once the ~~((secretary has verified the applicant's identity pursuant to RCW 29A.08.107))~~ applicant's identity has been verified, the secretary must assign a state identification number, and the auditor must change the voter's registration code in the county election management system from pending status to active. ~~((If the applicant's identity has not been verified, the secretary must notify the auditor accordingly.))~~ Consistent with RCW 29A.08.110, the applicant is considered registered as of the original date of mailing or date of delivery, whichever is applicable.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-150 Retaining voter registration records. The secretary and each county must retain the voter registration records according to a retention schedule approved by the state or local records committee and promulgated by the archives division of the secretary's office. On an annual basis, the secretary must copy all voter registration records from the statewide voter registration data base after ~~((the))~~ each general election. By December 31st of each year, the secretary must transfer the copy to the state archives division for permanent retention. This copy will contain all voter

registration records in the statewide voter registration data base, including active, inactive, and canceled records.

NEW SECTION

WAC 434-335-005 Broken or missing seals. If a seal is missing or broken without authority, all subsequent steps taken must be documented and included in a report to the canvassing board.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-060 Service and overseas voters—Material and postage. Pursuant to RCW 29A.40.150, the secretary of state must furnish envelopes and instructions for ~~((out of state,))~~ overseas ~~((;))~~ and service voters. For purposes of RCW 29A.40.150, ~~((out of state voters are limited to voters who are spouses or dependents of service voters, and))~~ service voters do not include participants of the address confidentiality program established in chapter 40.24 RCW. All absentee ballots to voters in these categories will be sent postage-free, pursuant to the provisions of federal law, and the return envelopes must be marked as to indicate that they may be returned free of postage.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-261-050 Unsigned oath or mismatched signatures. If a voter neglects to sign the oath on an absentee or provisional ballot envelope, signs the oath with a mark and fails to have two witnesses attest to the signature, or signs the ballot envelope but the signature on the envelope does not match the signature on the voter registration file, the auditor shall notify the voter ~~((by phone, as required by))~~ pursuant to RCW 29A.60.165 ~~((, if the voter has provided the auditor with a phone number. Leaving a message for the voter is not sufficient. If, at least one week prior to the certification of the election, the county auditor still has not been able to contact the voter by phone, the county auditor shall send a first class letter to the voter. If the ballot is received within one week of certification, the county auditor shall both send a letter and telephone the voter. The voter must sign the oath that appeared on the envelope)).~~

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-075 ~~((Transfer of voter registration record between counties.))~~ **Timelines for new and transfer registrations.** (1) ~~((Up until))~~ In order to be in effect for an upcoming primary, special, or general election, a registered voter must transfer his or her registration record by mail or in person no later than thirty days prior to ~~((a))~~ the primary, special ~~((election)),~~ or general election ~~((;)).~~ A registered voter may transfer his or her registration record by completing and submitting a new application for voter registration ~~((pursuant to RCW 29A.08.140)).~~ Upon receipt, the auditor must process the application for voter registration in the same

manner as all other applications for voter registration pursuant to WAC 434-324-010.

(2) ~~((a))~~ If a registered voter transfers his or her registration late, as outlined in RCW 29A.08.145 between counties, the new auditor must issue the voter a late registration absentee ballot and envelope for the next primary, special election, or general election. The late registration absentee ballot must not be counted until it is confirmed that it is a valid ballot.

(b) A late registration absentee ballot must be issued in a specially marked envelope along with an instructional notice. The notice must explain why a late registration absentee ballot is being issued, that the enclosed ballot is the correct ballot for the voter to cast, and that no other ballot submitted by the voter for that same primary, special election, or general election will be counted. The auditor's contact information must be included, and it must be stated that the voter may call the auditor regarding questions. The voter's registration status in the previous county must promptly be flagged so any returned ballots will not be counted.

(c) ~~((i))~~ If the new county receives a late registration absentee ballot, it must confirm that the previous county did not receive a ballot from the same voter.

~~((ii))~~ If the previous county does not receive a ballot from the voter, the late registration absentee ballot received by the new county must be counted. Any subsequent ballot returned to the previous county must not be counted.

~~((iii))~~ If the previous county receives a ballot from the voter, it must contact the new county. If the late registration absentee ballot was not returned to the new county, the previous county must send the absentee ballot to the new county, and the new county must count only races applicable to that county. In order to vote in an upcoming primary, special, or general election, a person who is not registered to vote in Washington must register:

(a) By mail no later than thirty days prior to the primary, special, or general election; or

(b) In person at the county auditor's office no later than fifteen days before the primary, special, or general election. A person who registers under this subsection will be issued an absentee ballot for the upcoming primary, special, or general election.

AMENDATORY SECTION (Amending WSR 05-17-094, filed 8/15/05, effective 9/15/05)

WAC 434-324-115 Challenge of voter's registration. All county auditors ~~and the secretary of state shall~~ ~~((maintain a supply of, and))~~ furnish to the public on request ~~((;))~~ forms substantially similar to the sample included below for the purpose of allowing a registered voter to challenge the registration of another voter pursuant to RCW ~~((29A.08.830))~~ 29A.08.810 through 29A.08.850. ~~((A copy of the form shall be sent to the voter, whose voter registration has been challenged and to the challenger pursuant to RCW 29A.08.840. The form shall be substantially similar to the following:~~

VOTER REGISTRATION CHALLENGE FORM REASON FOR CHALLENGE

Check the appropriate box below.

The individual challenged is not a U.S. Citizen.

- The individual challenged is not at least eighteen years old.
- The individual challenged is currently being denied his or her civil rights by reason of a felony conviction.
- The individual challenged has been judicially declared mentally incompetent.
- The individual challenged does not reside at the address at which he or she is registered to vote. Under Article VI, section 4, of the Washington State Constitution, a voting residence is not lost if the person is absent due to state or federal employment, military service, school attendance, confinement in prison, or engaged in navigation at sea. State law requires the person filing the challenge to provide the address at which the challenged voter actually resides:

Voter Registration Address	Actual Address
----------------------------	----------------

Please describe the factual basis for the voter registration challenge:

AFFIDAVIT OF CHALLENGER

I, _____ declare under penalty of perjury under the laws of the State of Washington that I am a registered voter in the State of Washington and that I hereby challenge the voter registration of _____. I have personal knowledge and belief that this person is not qualified to vote, or does not reside at the address given on his or her voter registration record and is also not protected by the provisions of Article VI, section 4, of the Washington State Constitution.

Signature of Challenger _____ Date and Place Signed _____

Address _____

City, State, Zip _____

**PROCEDURES FOR FILING A
VOTER REGISTRATION CHALLENGE
FORM**

By statute, any registered voter may challenge the right to vote of any other registered voter, up until the day before an election, by filing the attached affidavit subject to the penalties of perjury. The challenger must declare that, to his or her personal knowledge and belief, the challenged voter is not qualified to vote or does not actually reside at the address given on his or her voter registration record.

If the challenge is based on residence, RCW 29A.08.830 requires the challenger to provide the address at which the challenged voter actually resides. The challenger must also declare that, to his or her personal knowledge and belief, the challenged voter is not protected by the provisions of Article VI, section 4, of the Washington State Constitution. This provision of the Washington State Constitution protects a voter from losing his or her voting residence if the absence is due to state or federal employment, military service, school attendance, confinement in prison, or engaged in navigation at sea.

Challenges may not be based on unsupported allegations or allegations by anonymous third parties.

HEARING

The County Auditor shall notify the challenged voter, by certified mail, that his or her voter registration has been challenged. The notice shall request that the challenged voter appear at a hearing to be held within 10 days, and shall state the date, time, and location of the hearing. The challenger shall be provided a copy of the notice.

If either the challenger or the challenged voter is unable to appear at the hearing, he or she may submit a reply by affidavit stating, under oath, the reasons he or she believes that the voter registration is valid or invalid.

The identity of the challenger, and any third person involved in the challenge, is public record and shall be announced at the time the challenge is made.

A challenged voter may properly transfer or reregister until three days before the election by applying personally to the County Auditor.

If a challenge is filed more than 30 days before an election, the County Auditor presides over the hearing and issues a decision. If the challenge is filed less than 30 days before an election, the County Canvassing Board presides over the hearing and issues a decision.

For more information, please contact your County Auditor.))

VOTER REGISTRATION CHALLENGE

AFFIDAVIT

I, _____ declare under penalty of perjury under the laws of the State of Washington that I am a registered voter in the State of Washington and that I hereby challenge the voter registration of: _____

Name _____ Registered Address _____

I have personal knowledge and belief that this person is not qualified to vote or does not reside at the address given on his or her voter registration record, as evidenced below. I have exercised due diligence to personally verify the evidence presented.

REASON FOR CHALLENGE

Check the appropriate box below. The voter:

- Is not a U.S. Citizen.
- Will not be at least eighteen years old by the next election.
- Has been convicted of a felony and his or her right to vote has not been restored.
- Has been judicially declared ineligible to vote due to mental incompetency.
- Does not reside at the address at which he or she is registered to vote, in which case I am submitting either:
 - 1) The address at which the challenged voter actually resides: _____

- or
- 2) Evidence that I exercised due diligence to verify that the voter does not reside at the address provided and to attempt to contact the voter to learn the voter's actual residence. I personally:
- Sent a letter with return service requested to all known addresses for the voter;
 - Visited the voter's residential address to contact persons at the address to determine if the voter actually resides there. If I was able to contact anyone who owns, manages, resides, or is employed at the address, I am submitting a signed affidavit from that person stating that, to his or her personal knowledge, the voter does not reside at the address;
 - Searched local telephone directories to determine whether the voter maintains a telephone listing at an address within the county;
 - Searched county auditor property records to determine whether the voter owns any property in the county; and
 - Searched the statewide voter registration data base to determine if the voter is registered at any other address in the state.

List the evidence for the challenge:

Signature of Challenger	Date and Place Signed
-------------------------	-----------------------

Address	City, State, Zip
---------	------------------

Attach all necessary documentation.

FILING A VOTER REGISTRATION CHALLENGE

General Information

The registration of a person as a voter is presumptive evidence of that person's right to vote. A voter registration challenge cannot be based on unsupported allegations or allegations by anonymous third parties. All documents pertaining to a challenge are public records. A challenge may be dismissed if it is not in proper form or if the reason is not grounds for a challenge. The challenge process is established in RCW 29A.08.810 through 29A.08.850. Residency requirements are established in Article VI, section 4 of the Washington state Constitution, RCW 29A.04.151 and 29A.08.112.

Who May File a Challenge and When

A registered voter or the prosecuting attorney may file a challenge. To affect an upcoming election, the challenge must be filed at least forty-five days before the election. However, if the challenged voter registered less than sixty days before the election or moved less than sixty days before the election without transferring the registration, the challenge must be filed at least ten days before the election or ten days after the

voter registered, whichever is later. Additionally, a poll site judge or inspector may challenge a voter's right to vote on election day at the poll site.

Exceptions to the Residency Requirements

A voter does not lose his or her voting residency if absent due to state or federal employment, military service, school attendance, confinement in a public prison, out-of-state business, or navigation at sea. A voter who lacks a traditional residential address, such as a person who resides in a shelter, park, motor home or marina, is assigned a precinct based on the voter's physical location.

The Hearing

The county auditor notifies the voter and challenger of the hearing date and time. The voter and challenger may either appear in person or submit testimony by affidavit. The county auditor presides over the hearing, unless the challenge was filed during the forty-five days before an election, in which case the county canvassing board presides over the hearing. The challenger has the burden to prove by clear and convincing evidence that the voter's registration is improper. The voter has an opportunity to respond. The final decision may only be appealed in superior court.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-010 Certification of voting equipment. All voting systems, voting devices, and vote tallying systems must be certified and approved by the secretary of state before they can be used in Washington state. ~~(In order for a voting system to be certified in Washington state, it must)~~ pursuant to RCW 29A.12.080 and meet the applicable federal standards ~~(, comply with Washington state law, and, except for functions or capabilities unique to Washington state, be certified and used in at least one other state)).~~

WSR 06-10-076
PROPOSED RULES
SECRETARY OF STATE
 (Elections Division)
 [Filed May 2, 2006, 3:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-052.

Title of Rule and Other Identifying Information: Implementation of pick-a-party primary rules.

Hearing Location(s): Conference Room, 520 Union Avenue S.E., Olympia, WA 98501, on June 13, 2006, at 1:30 p.m.

Date of Intended Adoption: June 20, 2006.

Submit Written Comments to: Tami Neilson, P.O. Box 40220, Olympia, WA 98504-0220, e-mail tneilson@sec-state.wa.gov, fax (360) 586-5629, by June 13, 2006.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

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

ing the pick-a-party primary system are proposed. The pick-a-party primary system will be used for the 2006 primary unless *Washington State Republican Party v. Logan*, 377 F. Supp. 2d 907 (W.D. Wash 2005) is overturned.

Reasons Supporting Proposal: Permanent rules are necessary to implement the pick-a-party primary.

Statutory Authority for Adoption: RCW 29A.04.611.

Rule is necessary because of federal court decision, *Washington State Republican Party v. Logan*, 377 F. Supp. 2d 907 (W.D. Wash 2005).

Name of Agency Personnel Responsible for Drafting: Tami Neilson, Legislative Building, (360) 902-4182; Implementation and Enforcement: Sheryl Moss, 520 Union Avenue S.E., (360) 902-4146.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes to [do] not appear to have an impact on small business.

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

May 2, 2006

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-215-005 Filing information—Questionnaire—Compiling and dissemination. Prior to ((~~May~~)) April 1 of each year, the county auditor shall send a questionnaire to the administrative authority of each local jurisdiction for which the auditor is the candidate filing officer subject to the provisions of RCW 29A.04.320 and 29A.04.330. The purpose of the questionnaire shall be to confirm information which the auditor may disseminate to the public regarding the filing for elective offices. The questionnaire should request, as a minimum, confirmation of offices to be filled at the general election that year, the name of the incumbent, and the annual salary for the position at the time of the filing period(~~(; and the statutory reference for candidate eligibility)~~). Responses should be received prior to ((~~June~~)) May 1 of that year so that the filing information can be compiled and disseminated to the public at least two weeks prior to the candidate filing period.

AMENDATORY SECTION (Amending WSR 02-15-156, filed 7/23/02, effective 8/23/02)

WAC 434-215-012 Declaration of candidacy—Offices subject to a primary. Declarations of candidacy for all partisan and nonpartisan offices filed either in person or by mail shall be in substantially the following form:

((STRICKEN GRAPHIC))

FILING DATA . . . FOR OFFICE USE ONLY

Date _____ Fee Paid \$ _____ File No. _____
 Paid By (Check one)
 AM Check Other
 PM Cash Nom. Petition
 Clerk/Cashier Initials _____

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at:

2. _____
(STREET ADDRESS OR RURAL ROUTE) (TELEPHONE NUMBER)

(MAILING ADDRESS--IF DIFFERENT)
 _____, Washington _____
(CITY) (COUNTY) (ZIP CODE)

and at the time of filing this declaration I am legally qualified to assume office if elected.

3. I declare myself as a candidate for nomination to the office of:

(NAME OF OFFICE)

(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)

(POSITION NUMBER IF APPLICABLE) (DIRECTOR OR COMMISSIONER DISTRICT, IF ANY)

4. For the following term of office:

- a full term or a full term and a short term, or
- an unexpired term

5. This office is:

- Nonpartisan, or
- Partisan, and I am: a candidate of the _____ party, or
 an independent candidate nominated pursuant to chapter 29.24 RCW

6. Filing Fee: (Check one):

- There is no filing fee because the office has no fixed annual salary, or
- I am submitting a filing fee of \$10 because the fixed annual salary of the office being sought is \$1,000 or less, or
- I am submitting a filing fee of \$ _____, an amount equal to 1% of the annual salary, or
- I am without sufficient assets or income to pay the filing fee required by law and I have attached a nominating petition in lieu of this fee, pursuant to RCW 29.18.050.

7. Please print my name on the ballot exactly as follows: _____
(PLEASE PRINT)

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

Note: Your signature must be personally attested to by either a notary public or by the officer with whom the declaration is filed.

8. Sign Here **X** _____
(SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)

(SIGNATURE OF ACKNOWLEDGING OFFICIAL)

(TITLE OF ACKNOWLEDGING OFFICIAL)

Candidate: Return all copies of this declaration to your Elections Dept.
Distribution by Elections Dept: White--County; Yellow--POC; Pink--Candidate

) _____
 (STRICKEN GRAPHIC))

~~((STRICKEN GRAPHIC))~~

[

FILING DATA . . . FOR OFFICE USE ONLY

Date/Time _____	Fee Paid \$ _____	File No. _____
Paid By (Check one)		
<input type="checkbox"/> Check	<input type="checkbox"/> Other	Office _____
<input type="checkbox"/> Cash	<input type="checkbox"/> Nom. Petition	Code: _____
Clerk/Cashier initials _____		

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

2. _____
 (STREET ADDRESS OR RURAL ROUTE WHERE REGISTERED TO VOTE) (CITY) (COUNTY) (ZIP CODE)

_____ (MAILING ADDRESS) (CITY) (COUNTY) (ZIP CODE)

_____ (TELEPHONE NO.) (EMAIL ADDRESS)

and at the time of filing this declaration I am legally qualified to assume office if elected.

3. I declare myself as a candidate for nomination to the office of:
 _____ (NAME OF OFFICE)

_____ (CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)

_____ (POSITION NUMBER IF APPLICABLE) (DIRECTOR OR COMMISSIONER DISTRICT, IF ANY)

4. For the following term of office:
 A full term or a full term and a short term, or
 An unexpired term

5. This office is:
 Nonpartisan, or
 Partisan, and I am: a candidate of the _____ party, or
 an independent candidate nominated pursuant to chapter 29.24 RCW.

6. Filing Fee (Check one):
 There is no filing fee because the office has no fixed annual salary, or
 I am submitting a filing fee of \$10 because the fixed annual salary of the office being sought is \$1,000 or less, or
 I am submitting a filing fee of \$ _____, an amount equal to 1% of the annual salary, or
 I am without sufficient assets or income to pay the filing fee required by law and I have attached a nominating petition in lieu of this fee, pursuant to RCW 29.15.050.

7. Please print my name on the ballot exactly as follows: _____ (PLEASE PRINT)

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

Note: Your signature must be personally attested to either by a notary public or by the officer with whom the declaration is filed.

8. Sign Here X _____
 (SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)

STATE OF WASHINGTON, COUNTY OF _____

SIGNED OR ATTESTED BEFORE ME ON _____ (DATE)

by _____ (CANDIDATE)

_____ (SIGNATURE OF NOTARY)

_____ (TITLE)

My APPOINTMENT EXPIRES _____

(SEAL OR STAMP)

SSE 84-1 (2002)

Candidate: Return all copies of this declaration to your Elections Dept. Distribution by Elections Dept: White—County; Yellow—PDC; Pink—Candidate

]

~~((STRICKEN GRAPHIC))~~

~~((Candidate: Return all copies of this declaration to the filing officer. Distribution by the filing officer: White—County; Yellow—PDC; Pink—Candidate))~~

FILING DATA . . . FOR OFFICE USE ONLY

Date _____ Fee Paid \$ _____ File No. _____ Office Code _____
[] Check [] Debit/Credit
[] Cash [] Filing Fee Petition Voter Registration # _____ Clerk Initials _____

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at:

(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

2. _____ (STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) (ZIP CODE)

_____ (MAILING ADDRESS) (CITY) (COUNTY) (ZIP CODE)

_____ (TELEPHONE NUMBER) _____ (EMAIL ADDRESS)

and at the time of filing this declaration I am legally qualified to assume office if elected.

3. I declare myself as a candidate for the office of:

(NAME OF OFFICE)

(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)

(POSITION NUMBER IF APPLICABLE)

(DIRECTOR OR COMMISSIONER DISTRICT, IF ANY)

4. For the following term of office:
[] A full term or a full term and a short term, or
[] An unexpired term

5. This office is:
[] Nonpartisan, or
[] Partisan, and I am (check one): [] a candidate of the _____ party, or
[] an independent candidate.

6. Filing Fee (check one):
[] There is no filing fee because the office has no fixed annual salary, or
[] I am submitting a filing fee of \$10 because the fixed annual salary of the office is \$1,000 or less, or
[] I am submitting a filing fee of \$_____, an amount equal to 1% of the annual salary, or
[] I am without sufficient assets or income to pay the filing fee required by law and I have attached a filing fee petition in lieu of this fee, pursuant to RCW 29A.24.091.

7. Please print my name on the ballot exactly as follows: _____ (PLEASE PRINT)

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.
Note: Your signature must be personally attested to either by a notary public or by the officer with whom the declaration is filed.
8. Sign Here X _____ (SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)
STATE OF WASHINGTON, COUNTY OF _____
(SIGNED OR ATTESTED BEFORE ME ON _____ (DATE)
by _____ (CANDIDATE)
(SIGNATURE OF NOTARY)
(TITLE)
MY APPOINTMENT EXPIRES _____
(SEAL OR STAMP)

SSE 84-1 (2006)

Candidate: Return all copies of this declaration to your Elections Dept.
Distribution by Elections Dept: White—County; Yellow—PDC; Pink—Candidate

The form shall measure eight and one-half inches by eleven inches and be printed on paper stock of good quality. The form shall also contain space for recording the date and time of filing and a sequential filing and receipt number. One copy of the form or an electronic file, in a format approved by the

secretary of state and acceptable to the public disclosure commission, containing the information on the form of each properly executed and filed declaration and affidavit of candidacy shall be forwarded to the public disclosure commission as required by RCW ((29.15.030)) 29A.24.070, and one copy of

the form or an electronic file containing the information on the form of each properly executed and filed declaration and affidavit of candidacy shall be returned to the candidate.

AMENDATORY SECTION (Amending WSR 02-09-007, filed 4/4/02, effective 4/4/02)

WAC 434-215-020 Declaration of candidacy—Precinct committee officer. Declarations of candidacy for the office of precinct committee officer, shall be filed in substantially the following form:

((DECLARATION OF CANDIDACY

State of Washington }
County of } ss.

~~I, (Name as it will appear on ballot), declare that I am a registered voter residing at (Street and Number or Rural Route), (City or Town), County of, state of Washington; that, at the time of filing this declaration, I am a registered voter in precinct and that I am legally qualified to assume office if elected; that I hereby declare myself a candidate for the office of precinct committee officer to be elected at the general election to be held on the day of November, 19..., and hereby request that my name be printed upon the official general election ballots as a candidate of the party, and:~~

~~I accompany herewith the sum of dollars, the fee required by law of me for becoming a candidate~~

AFFIDAVIT

~~further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.~~

.....
(Signature of candidate))

Filing Data For Office Use Only

Date _____	Fee Paid \$ _____	Filing No. _____	Precinct # _____
Paid By (check one)			
<input type="checkbox"/> Check	<input type="checkbox"/> Cash	<input type="checkbox"/> Other	Clerk/Cashier Initials _____ Voter Registration # _____

DECLARATION OF CANDIDACY
PRECINCT COMMITTEE OFFICER

I, _____, declare that I am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

(STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) WA (ZIP CODE)

(MAILING ADDRESS) (CITY) (COUNTY) WA (ZIP CODE)

(TELEPHONE NUMBER) (EMAIL ADDRESS)

that, at the time of filing this declaration, I am a registered voter in _____ precinct and that I am legally qualified to assume office if elected; that I hereby declare myself a candidate for the office of Precinct Committee Officer to be elected at the Primary Election to be held on the _____ day of September, 2006, and hereby request that my name be printed upon the official Primary Election ballot as a candidate of the _____ party, and:

I am submitting the sum of one dollar, the fee required by RCW 29A.24.091.

Please print my name on the ballot exactly as follows: _____

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

X _____
(SIGNATURE OF CANDIDATE) (DATE)

The forms shall measure eight and one-half inches by eleven inches and be printed on paper stock of good quality. The form may also contain space for recording the date and time of filing, a receipt number, if applicable, and a sequential filing number. County auditors may design and use a declaration of candidacy different in form and style from that specified by this rule as long as it contains all of the information required by this rule.

Chapter 434-220 WAC

PARTISAN PRIMARIES

NEW SECTION

WAC 434-220-010 Partisan primaries. This chapter is limited in application to the conduct of partisan primaries and nonpartisan primaries held in conjunction with partisan primaries. If a county holds only a nonpartisan primary, it is exempt from this chapter.

NEW SECTION

WAC 434-220-020 Definitions. As used in this chapter:

(1) "Checkbox" means a voter response position on a consolidated ballot that allows a voter who desires to vote in a partisan primary to affiliate with a major political party.

(2) "Consolidated ballot" is a single ballot that lists the candidates for partisan office of all major political parties, the candidates for nonpartisan office, and the ballot measures. The candidates for partisan office are listed by party, and each party is separated from the other parties. The candidates for nonpartisan office and the ballot measures are listed at the end of the ballot, after the partisan offices. In the case of a direct recording electronic device, a consolidated ballot must have a beginning screen which contains a checkbox for the major political parties. After the voter has affiliated with a major party by marking a checkbox, only the party ballot checked by the voter and the nonpartisan ballot shall appear to the voter.

(3) "Nonpartisan ballot" means a ballot that includes nonpartisan offices listed in RCW 29A.52.231, and ballot measures.

(4) "Party affiliation" means:

(a) For a voter:

(i) On a consolidated ballot, a voter's selection of a major political party in a manner consistent with the type of voting system used;

(ii) On physically separate ballots, voting a major political party's ballot;

(b) For a write-in candidate, filing as a write-in candidate as a member of a major political party.

(5) "Physically separate ballots" include party ballots for each major political party, and a nonpartisan ballot. Each party ballot lists the candidates for partisan office that have listed that party on the declaration of candidacy.

(6) "Spot color" means coloring a portion of the ballot.

(7) "Void," when applied to unvoted ballots, means keeping the unvoted ballots in the sealed container in which they were deposited on election day.

NEW SECTION

WAC 434-220-030 Ballot layout and color—Consolidated ballots. A county may choose to use a combination of both consolidated and physically separate ballots for poll-site, absentee, and vote by mail ballots. County auditors may use spot coloring, shading, or colored printing to assist the voter in distinguishing between party sections. If color is used, blue must be used for the democratic party ballot, and

red must be used for the republican party ballot. In addition to other requirements listed in state law and administrative rule, the following provisions apply to the layout of consolidated ballots:

(1) The party checkboxes must be listed before all offices and ballot measures, pursuant to RCW 29A.36.106. The checkboxes must be labeled "democratic party" and "republican party."

(2) Ballots must list partisan office candidates in columns or sections labeled "democratic party" and "republican party." If a party section spans multiple columns, the next party section must either:

(a) Begin where the last party section ended, and there must be a well-defined division between the party sections; or

(b) Candidates shall be listed in columns or sections, by major political party. It is permissible for party sections to span multiple columns to facilitate ballot arrangement. The next major party section must begin where the last major party section ends with a well-defined division between party sections. If all parties cannot be listed on the same side of the ballot, there must be a conspicuous explanation that additional parties are listed on the other side of the ballot.

(3) Ballots must list the nonpartisan offices and ballot measures separately in a column or section labeled "nonpartisan offices and measures."

(4) Ballot instructions must be printed on the ballot and include:

(a) Instructions on how to mark the ballot, including write-in votes; and

(b) Instructions, as required by RCW 29A.36.106 and 29A.36.161, printed in substantially the following form:

"This ballot contains major political party candidates for the partisan offices, candidates for the nonpartisan offices, and ballot measures. For the partisan offices, you may vote for candidates of only one political party. Regardless of whether you vote for partisan offices, you may vote for the nonpartisan offices and the ballot measures.

1. Select one political party. If you do not select a party or if you select more than one party, your votes for partisan offices will **not** be counted. No record will be made of the party you select.

2. Vote only for candidates of that party. Votes for another party's candidates will **not** be counted.

3. Vote for nonpartisan offices and ballot measures. These votes **will** be counted, even if you do not select a political party."

(5) Ballot instructions may be printed on the ballot itself or on the ballot stub. An instruction page may be considered a separate page of the ballot in which case page one of the ballot must be the instruction page and the candidates and ballot measures must begin on page two.

NEW SECTION

WAC 434-220-040 Ballot layout and color—Physically separate ballots. A county may choose to use a combination of both consolidated and physically separate ballots for poll-site, absentee, and vote by mail ballots. County auditors may use colored ballot stock, spot coloring, shading, or

colored printing to assist the voter in distinguishing between the ballots. If colored ballot stock is used, blue must be used for the democratic party ballot, and red must be used for the republican party ballot. In addition to other requirements listed in state law and administrative rule, the following provisions apply to the layout of physically separate ballots:

(1) A separate ballot must be produced for each major political party and for all nonpartisan races. The political party abbreviation after each candidate's name may be eliminated if the ballot layout clearly identifies the candidate's political party.

(2) Each physically separate ballot must have "democratic party," "republican party," or "nonpartisan offices and measures" printed on the ballot. In addition to the requirements of RCW 29A.36.121, each party ballot must list partisan offices first, then all nonpartisan offices and ballot measures. All ballots must be issued to each voter, both at the poll-site and to voters voting by mail or absentee. Voters must be instructed to vote and return only one ballot.

(3) Ballot instructions must be printed on the ballot and must include:

(a) Instructions on how to mark the ballot, including write-in votes; and

(b) Instructions, as required by RCW 29A.36.106 and 29A.36.161, printed in substantially the following form:

"Separate ballots for each political party have been provided, in addition to a third ballot for nonpartisan offices and ballot measures. Each party ballot lists the candidates of that political party running for partisan office, as well as the candidates running for nonpartisan office and the ballot measures. The ballot labeled "nonpartisan offices and measures" lists the candidates running for nonpartisan office and the ballot measures, but does **not** list any partisan offices.

You may only vote one ballot. Your affiliation with a political party is inferred by choosing that party's ballot, but no record will be made of your choice. If you cast more than one party ballot, none of your votes for partisan office will count. If you vote for the nonpartisan offices and ballot measures on a party ballot, return the party ballot only and **not** the separate nonpartisan ballot. Votes for the nonpartisan offices and ballot measures will not be affected by your choice of party ballot."

(4) Ballot instructions may be printed on the ballot itself or on the ballot stub. An instruction page may be considered a separate page of the ballot in which case page one of the ballot must be the instruction page and the candidates and ballot measures must begin on page two.

NEW SECTION

WAC 434-220-050 Order of political parties. The order of political parties for consolidated ballots and ballot guides, sample ballots, and notices of election must be in the same order as candidates on the general election ballot as determined by RCW 29A.36.161.

NEW SECTION

WAC 434-220-060 Ballot programming—Consolidated ballots. (1) Before a county may use a consolidated

ballot format, the ballot counting program must achieve the following:

(a) If a voter marks a checkbox for a major political party, only votes for candidates of that party may be counted; and

(b) If a voter does not mark a checkbox for a major political party, no votes for a partisan office may be counted; and

(c) If a voter marks two or more checkboxes, no votes for a partisan office may be counted; and

(d) In the case of direct recording devices, the voter must be allowed to select one ballot on the first screen, and have only the ballot selected appear to the voter.

(2) If an optical scan ballot counting program cannot use the checkbox to eliminate invalid votes for each of the situations listed in this section, all ballots must be inspected for those marks that cannot be read correctly. Improperly marked ballots must be duplicated to ensure invalid votes are not counted. In the case of precinct ballot counters, ballots must be inspected after they have been returned from the polls. As part of the canvassing process, the county auditor must take appropriate steps to amend the unofficial precinct count totals to reflect the correct count.

NEW SECTION

WAC 434-220-070 Polling place procedures—Physically separate ballots. (1) In the case of optical scan ballots, poll workers must give each voter a party ballot for each major political party and a nonpartisan ballot. The county auditor must number the ballot stubs in a manner so that it cannot be determined which ballot was cast by the voter. The poll workers must instruct the voter to choose one ballot to vote. The remaining two ballots must be deposited into an "unvoted ballots" container secured with a numbered seal. The voter may select a single ballot and deposit the other ballots in the "unvoted ballots" container prior to entering the voting booth, or may deposit the unvoted ballots after leaving the voting booth. Regardless of when the ballot selection is made, the poll workers must ensure that only one ballot is deposited in the ballot box and the remaining ballots are deposited into the "unvoted ballots" container. The privacy of the ballot selection by the voter must be maintained. The ballot stub must be removed and placed into the ballot stub envelope before the voted ballot is deposited into the ballot box.

(2) The "unvoted ballots" container must remain sealed and be returned to the county auditor with the supplies and voting materials.

(3) If a voter spoils a ballot and wishes to correct the error, the ballot must be returned to the poll worker and placed into the spoiled ballot envelope. The poll worker must issue a new set of ballots, consisting of each major political party's ballot and the nonpartisan ballot. The ballot stub number must be recorded in the poll book.

NEW SECTION

WAC 434-220-080 No records made at poll-sites. Pursuant to RCW 29A.44.231, no record of the political party ballot selected by the voter may be made. This prohibition includes poll workers, political observers and any other per-

son who may be present while voting or ballot processing is taking place. The use of devices such as telephones, cameras, or recording devices to report, track, or monitor the ballot selection by voters is prohibited.

NEW SECTION

WAC 434-220-090 Partisan primary recounts. When a recount in a partisan primary is either requested or mandatory under chapter 29A.64 RCW, the recount only applies to the candidates of the affected political party. Votes for candidates for the same office but of a different political party may not be recounted.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-230-010 Sample ballots. Sample paper ballots shall be printed in substantially the same form as official ballots, but shall be a different color than the official ballot. Sample ballots for counties using electronic or mechanical voting systems shall be printed in a manner that makes them easily distinguishable from the official ballot. Sample ballots shall be available starting fifteen days prior to an election. Such sample ballots shall be made available through the office of the county auditor and at least one shall be available at all polling places on election day.

Names of the candidates in each office to appear on the primary ballot shall be arranged on the sample ballot in the order provided by RCW ((29A.36.120)) 29A.36.121. The names of the candidates in each office to appear on the general election ballot shall be listed on the sample ballot in the order in which their names appear on the official ballot. State measures and local measures shall be in the same order as they appear on the official ballot.

At any primary or election when a local voters' pamphlet is published which contains a full sample ballot, a separate sample ballot need not be printed.

Counties with populations of over five hundred thousand may produce more than one sample ballot for a primary or election, each of which lists a portion of the offices and issues to be voted on at that election. Sample ballots may be printed by region or area (e.g., legislative district, municipal, or other district boundary) of the county, provided that all offices and issues to be voted upon at the election appears on at least one of the various sample ballots printed for such county. Each regional sample ballot shall contain all offices and issues to be voted upon within that region. A given office or issue may appear on more than one sample ballot, provided it is to be voted upon within that region. Sample ballots shall be made available and distributed to each polling place and to other locations within the appropriate region or area.

AMENDATORY SECTION (Amending WSR 98-03-033, filed 1/13/98, effective 2/13/98)

WAC 434-230-030 Placement of ballot measures for local units of government. All county-wide ballot measures shall be listed immediately following state ballot measures ((~~or issues~~)). In the absence of state ballot measures ((~~or issues~~)), county-wide ballot measures shall appear first ((~~and~~

~~all sample ballots and on all ballots~~)) where state ballot measures would appear. For other local ballot measures and offices, each county shall establish written procedures to determine the order in which local units of government are to be listed on the ballot. Such order of local governmental units shall be consistent on official, absentee, and sample ballots. The order may be determined by, but is not limited to the following: Size of jurisdictional area, alphabetical order by jurisdictional area, or such order as to provide for efficient use of ballot spacing and voting positions. Such procedures are to provide consistency from election to election within a county.

Except for county-wide ballot measures, local ballot measures and offices, if any, may be positioned in the area dedicated for that jurisdiction; or, local ballot measures may be grouped in a separate area dedicated to special measures only. This may be an area on the ballot separate from the candidates of such local government unit.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-230-060 Primary votes required for appearance on general election ballot. Following any non-partisan primary, no candidate's name shall be entitled to appear on the general election ballot unless he or she receives the greatest or the next greatest number of votes for the office and additionally receives at least one percent of the total votes cast for the office.

Following any partisan primary, no major political party candidate's name shall be entitled to appear on the general election ballot unless he or she receives a plurality of votes cast for the candidates of his or her party for that office ((~~and additionally at least one percent of the total votes cast for the office. An independent candidate must receive one percent of the total votes cast for the office in the primary in order for his or her name to appear on the general election ballot. The filing officer shall notify, in writing, all candidates who satisfy other requirements but who fail to meet the one percent requirement of the fact that their name will not appear on the general election ballot~~)). The requirement in RCW 29A.36.191 that a candidate for partisan office receive at least one percent of the votes cast for that office in order to appear on the general election ballot is unenforceable based on *Libertarian Party v. Sam Reed*, Thurston County Superior Court No. 04-2-01974-2 (2004).

In those charter counties where provision is made in the county charter for the qualification of minor party and independent candidates, the charter provisions shall apply if the candidates has chosen that method for ballot qualification.

AMENDATORY SECTION (Amending WSR 98-03-033, filed 1/13/98, effective 2/13/98)

WAC 434-230-150 ((~~Electronic voting device~~)) Ballot uniformity. Counties may use varying sizes and colors of ballot cards if such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate absentee ballots, ((~~official~~)) poll ballots ((~~or~~)), vote by mail ballots, ((~~and in~~

the case of a presidential preference primary,) or political party ballots.

AMENDATORY SECTION (Amending WSR 98-03-033, filed 1/13/98, effective 2/13/98)

WAC 434-230-160 (~~(Electronic voting device)~~) Poll-site voting instructions. The ballot shall identify the type of primary or election, the county, and the date of the primary or election. Prominently displayed in the voting booth or on the ballot shall appear instructions directing the voter how to (~~operate the voting device and~~) correctly cast votes on issues and candidates, including write-in votes. The instructions shall read substantially as follows: To vote for a candidate or for or against a ballot measure, (~~punch or~~) mark the voting position to the right of the candidate or ballot measure (~~or of the name of the person~~) for whom you desire to vote. To vote for a person not on the ballot, write the title of the office, (~~if applicable~~), the name of the candidate, and party affiliation if for a partisan office, in the space provided on the ballot (~~card or ballot envelope~~) and (~~punch or~~) mark (~~such~~) the write-in position (~~if applicable~~).

(~~Absentee ballots shall be designated in such a manner as to clearly distinguish them from polling place ballots.~~)

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

WAC 434-230-170 (~~(Electronic voting devices)~~) Ballot form. Each office on the ballot shall be identified, along with a statement designating how many candidates are to be voted on for such office (e.g., vote for , with the words, "one," "two," or a spelled number). The office term shall be included on the ballot if such term is other than a full term (e.g., short/full term, two-year unexpired term, etc.). Each office shall be listed on the ballot in the manner prescribed by law or administrative rule. Following the office designation the names of all candidates for that position shall be listed together with political party designation certified by the secretary of state as provided in RCW (~~29A.36.010~~) 29A.36.011 or the word "nonpartisan," or "NP" as applicable. Each office listed on the ballot shall be separated by a bold line. In a year in which a President of the United States is to be elected, the names of all candidates for President and Vice-President for each party shall be grouped together (~~Each group shall be enclosed in brackets~~) with one vote response position for each party, where the voter may indicate (~~their~~) his or her choice.

Candidate names shall be printed in a type style and point size which is easily read. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include using a smaller point size, a different type style, or setting the name in upper/lower case letters, rather than upper case, if appropriate.

Each position, with the candidates running for that office, shall be clearly delineated from the following one by a bold line. Following each listing of candidates shall be a blank space for writing in the name of any candidate (~~if~~

desired, on the ballot card, or a write-in space provided on the ballot envelope)).

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

WAC 434-253-020 Polling place—Election supplies. Polling places shall be provided, at a minimum, with the following supplies at every election:

- (1) Precinct list of registered voters or a poll book, which shall include suitable means to record the signature and address of the voter;
- (2) Inspector's poll book;
- (3) Required oaths/certificates for inspectors and judges;
- (4) Sufficient number of ballots as determined by election officer;
- (5) Ballot containers;
- (6) United States flag;
- (7) Voting instruction signs;
- (8) Challenge and provisional ballots and envelopes;
- (9) Cancellation cards due to death;
- (10) Voting equipment instructions;
- (11) Procedure guidelines for inspectors and judges and/or precinct election officer guidebooks;
- (12) Keys and/or extra seals;
- (13) Pay voucher;
- (14) Ballots stub envelope;
- (15) Emergency plan of action;
- (16) Either sample ballots or voters' pamphlets;
- (17) HAVA voter information poster; (~~and~~)
- (18) Voter registration forms; and
- (19) For partisan primaries in counties using physically separate ballots, and "unvoted ballots" container with a numbered seal.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-262-031 Rejection of ballots or parts of ballots. Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

- (1) Where two ballots are found folded together, or where a voter has voted more than one ballot;
- (2) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;
- (3) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent;
- (4) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;
- (5) Where the voter has voted for more candidates for an office than are permissible;
- (6) Where the voter has incorrectly attempted to correct a vote on the ballot contrary to the instructions provided pursuant to WAC 434-250-040 unless the voter provides written instructions directing how the vote should be counted;
- (7) In the case of a partisan primary:
 - (a) For physically separate ballots:

(i) A log must be kept of all voted ballots rejected and included as part of the county canvassing board minutes.

(ii) When a voted nonpartisan ballot and a voted party ballot are both returned, and the nonpartisan section of the party ballot was not voted, the votes from both ballots must be duplicated onto a blank ballot of the same party the voter originally voted for.

(iii) When a party ballot and nonpartisan ballot both have been returned with the nonpartisan offices and ballot measures voted on both ballots, only the party ballot, including the votes cast for nonpartisan candidates and ballot measures, must be counted and the nonpartisan ballot is rejected.

(iv) Write-in votes for a partisan candidate on a nonpartisan ballot must not be counted in the final write-in tally.

(v) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy, thereby affiliating with a major party, must not be counted in the final write-in tally.

(vi) If physically separate ballots are used and a voter returns more than one voted partisan ballot, no votes cast for candidates for partisan office shall be counted. If votes are cast for nonpartisan offices and/or ballot measures on only one of the partisan ballots, those votes must be counted. If votes are cast for nonpartisan offices and/or ballot measures on more than one party ballot, only those votes which are the same on each ballot shall be duplicated onto a nonpartisan ballot and counted.

(vii) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.

(b) For consolidated ballots:

(i) When voting a consolidated ballot, if the voter does not mark the party checkbox, votes cast for candidates for partisan office must not be counted but votes cast on the nonpartisan portion of the ballot shall be counted.

(ii) Write-in votes for a partisan candidate in a partisan office on the nonpartisan section of the ballot must not be counted in the final write-in tally.

(iii) Write-in votes for a partisan candidate who has not filed a write-in declaration of candidacy shall not be counted in the final write-in tally.

(iv) If the voter marks one party checkbox, only those votes for candidates of that party shall count. Votes cast for candidates of other political parties must not be counted and do not cause over-votes.

Additionally, the canvassing board shall reject any ballot cast by a voter not qualified to vote, and shall reject absentee ballots where such rejection is required by law or administrative rule.

atories and WAC 246-101-520 and 246-101-635 Special conditions—AIDS and HIV, names retention of asymptomatic HIV case reports and expanded HIV laboratory test reporting.

Hearing Location(s): Red Lion Hotel Seattle Airport, 18220 International Boulevard, Seattle, WA 98188, on June 14, 2006, at 1:30 p.m.

Date of Intended Adoption: June 14, 2006.

Submit Written Comments to: Maria Courogen, Department of Health, Office of Infectious Disease and Reproductive Health, P.O. Box 47844, Olympia, WA 98504-7844, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 586-5440, by June 5, 2006.

Assistance for Persons with Disabilities: Contact Harla Eichenberger by June 1, 2006, TTY 711 or TDD (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule revision is to: (1) Retain HIV case reports by name through a confidential name-based reporting system; and (2) expand HIV laboratory reporting to include all HIV-related laboratory test results. The effect of this proposed rule revision will be to: (1) Enhance HIV reporting accuracy to determine service delivery needs; (2) maintain eligibility for Ryan White CARE Act (RWCA) funding through state-level names retention; and (3) provide streamlined control of HIV by local-level names retention. Changes to existing rules include: (a) Requiring that laboratories report all HIV-related laboratory values to the department of health; (b) requiring the department to retain asymptomatic HIV case reports by name; (c) permitting local health jurisdictions (LHJs) to retain asymptomatic HIV case reports by name; (d) establishing minimum security and confidentiality standards for retaining asymptomatic case reports by name; (e) requiring biennial review of LHJ security measures by the department; and (f) requiring a report to the board of health by December 2007 on the impact of the name reporting system.

Reasons Supporting Proposal: The Center for Disease Control (CDC) has clearly communicated that only HIV case data reported through a name-based system will be accepted. Washington currently uses a name-to-code system and HIV case reports are not included in the national database. In fiscal year 2007, RWCA funding will be calculated on the proportion of states' HIV cases (not just AIDS). The CDC and Council of State and Territorial Epidemiologists recommend expanded lab reporting to enhance HIV reporting accuracy and to determine service delivery needs. This revision will also decrease the burden of labs to sort tests based on certain values.

Statutory Authority for Adoption: RCW 70.24.125.

Statute Being Implemented: RCW 70.24.125.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Maria Courogen, DOH/IDRH, 111 Israel Road, Tumwater, WA, (360) 236-3458.

WSR 06-10-081
PROPOSED RULES
STATE BOARD OF HEALTH

[Filed May 3, 2006, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-151.

Title of Rule and Other Identifying Information: Amending WAC 246-101-201 Notifiable conditions and lab-

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required under RCW 19.85.030, the rule does not impose more than minor costs on businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Harla Eichenberger, DOH, Office of Infectious Disease and Reproductive Health, P.O. Box 47840, Olympia, WA 98504-7840, phone (360) 236-3424, fax (360) 236-3400, e-mail Harla.Eichenberger@doh.wa.gov.

May 1, 2006
 Craig McLaughlin
 Executive Director

AMENDATORY SECTION (Amending WSR 05-03-055, filed 1/11/05, effective 2/11/05)

WAC 246-101-201 Notifiable conditions and laboratories. This section describes the conditions about which

Washington's laboratories must notify public health authorities of on a statewide basis. The board finds that the conditions in the table below (Table Lab-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington. The board also finds that submission of specimens for many of these conditions will further prevent the spread of disease. Laboratory directors (~~shall~~) **must** notify public health authorities of positive cultures and preliminary test results as individual case reports and provide specimen submissions using procedures described throughout this chapter. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC 246-101-205, 246-101-210, 246-101-215, 246-101-220, 246-101-225, and 246-101-230 also include requirements for how notifications and specimen submissions are made, when they are made, the content of these notifications and specimen submissions, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table Lab-1 (Conditions Notifiable by Laboratory Directors)

Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
Arboviral Disease (Isolation; Detection of Viral Nucleic Acid or Antibody)	2 days	√		
Blood Lead Level	Elevated Levels – 2 Days Nonelevated Levels – Monthly		√	
Botulism (Foodborne)	Immediately	√		Serum and Stool - If available, submit suspect foods (2 days)
Botulism (Infant)	Immediately	√		Stool (2 days)
Botulism (Wound)	Immediately	√		Culture, Serum, Debrided tissue, or Swab sample (2 days)
Brucellosis (<i>Brucella</i> species)	2 days	√		Subcultures (2 days)
CD4+ (T4) lymphocyte counts (less than 200) and/or CD4+ (T4) (percent less than fourteen percent of total lymphocytes) (patients aged thirteen or older)	Monthly	Only when the local health department is designated by the Department of Health	√ (<u>Except King County</u>)	
<i>Chlamydia trachomatis</i> infection	2 days	√		
Cholera	Immediately	√		Culture (2 days)
Cryptosporidiosis	2 days	√		
Cyclosporiasis	2 days	√		Specimen (2 days)
Diphtheria	2 days	√		Culture (2 days)

Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
Disease of Suspected Bioterrorism Origin (examples): • Anthrax • Smallpox	Immediately	√		Culture (2 days)
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i> O157:H7 Infection	2 days	√		Culture (2 days)
Gonorrhea	2 days	√		
Hepatitis A (IgM positive)	2 days	√		
Hepatitis B	Monthly	√		
Hepatitis C	Monthly	√		
Human immunodeficiency virus (HIV) infection ((including)) <u>for example, positive Western Blot assays, P24 antigen or viral culture tests</u>	2 days	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Human immunodeficiency virus (HIV) infection ((positive results on HIV nucleic acid tests (RNA or DNA))) <u>all viral load detection test results - detectable and undetectable</u>	Monthly	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Listeriosis	2 days	√		
Measles (rubeola)	Immediately	√		Serum (2 days)
Meningococcal disease	2 days	√		Culture (Blood/CSF or other sterile sites) (2 days)
Pertussis	2 days	√		
Plague	Immediately	√		Culture or other appropriate clinical material (2 days)
Rabies (human or animal)	Immediately	√ (Pathology Report Only)		Tissue or other appropriate clinical material (Upon request only)
Salmonellosis	2 days	√		Culture (2 days)
Shigellosis	2 days	√		Culture (2 days)
Syphilis				Serum (2 days)
Tuberculosis	2 days		√	Culture (2 days)
Tuberculosis (Antibiotic sensitivity for first isolates)	2 days		√	
Tularemia				Culture or other appropriate clinical material (2 days)
Other rare diseases of public health significance	Immediately	√		

Additional notifications that are requested but not mandatory include:

(1) Laboratory directors may notify either local health departments or the department or both of other laboratory results through cooperative agreement.

(2) Laboratory directors may submit malaria cultures to the state public health laboratories.

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-101-520 Special conditions—AIDS and HIV. (1) The local health officer and local health department personnel shall maintain individual case reports for AIDS and HIV as confidential records consistent with the requirements of this section. The local health officer and local health department personnel ~~((shall))~~ must:

(a) Use identifying information on HIV-infected individuals only:

(i) For purposes of contacting the HIV-positive individual to provide test results and post-test counseling; or

(ii) To contact persons who have experienced substantial exposure, including sex and injection equipment-sharing partners, and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed care services and counseling and disease prevention; or

(iv) As specified in WAC 246-100-072; or

(v) To provide case reports to the state health department.

~~(b) ((Destroy case report identifying information on asymptomatic HIV infected individuals received as a result of this chapter within three months of receiving a complete case report.~~

~~(e))~~ Maintain HIV case reports in secure systems that meet the following standards and are consistent with the 2006 *Security and Confidentiality Guidelines* developed by the Centers for Disease Control and Prevention:

(i) Secure systems must be described in written policies that are reviewed annually by the local health officer;

(ii) Access to case report information must be limited to health department staff who need it to perform their job duties and a current list of these staff must be maintained by the local health officer;

(iii) All physical locations containing electronic or paper copies of surveillance data must be enclosed in a locked, secured area with limited access and not accessible by window;

(iv) Paper copies or electronic media containing surveillance information must be housed inside locked file cabinets that are in the locked, secured area;

(v) A crosscut shredder must be available for destroying information and electronic media must be appropriately sanitized prior to disposal;

(vi) Files or data bases containing confidential information must reside on either stand-alone computers with restricted access or on networked drives with proper access controls, encryption software and firewall protection;

(vii) Electronic communication of confidential information must be protected by encryption standards that are reviewed annually by the local health officer;

(viii) Locking briefcases must be available for transporting confidential information;

(c) Cooperate with the department of health in biennial review of system security measures described in (b) of this subsection.

~~(d)~~ Destroy documentation of referral information established in WAC 246-100-072 ~~((and this subsection))~~ containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first unless such documentation is being used in an investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024.

~~((e))~~ (e) Not disclose identifying information received as a result of this chapter unless:

(i) Explicitly and specifically required to do so by state or federal law; or

(ii) Authorized by written patient consent.

(2) Local health department personnel are authorized to use HIV identifying information obtained as a result of this chapter only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services;

(c) Linkage to other public health data bases, provided that the identity or identifying information on the HIV-infected person is not disclosed outside of the health department; and

(d) Investigations pursuant to RCW 70.24.022 or 70.24.024.

(3) Public health data bases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or data bases maintained by law enforcement officials.

(4) Local health officials will report ~~((asymptomatic))~~ HIV infection cases to the state health department ~~((according to a standard code developed by the state health department)).~~

(5) Local health officers ~~((shall))~~ must require and maintain signed confidentiality agreements with all health department employees with access to HIV identifying information. These agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter 70.24 RCW and other administrative actions that may be taken by the department.

(6) Local health officers ~~((shall))~~ must investigate potential breaches of the confidentiality of HIV identifying information by health department employees. All breaches of confidentiality ~~((shall))~~ must be reported to the state health officer or their designee for review and appropriate action.

(7) Local health officers and local health department personnel must assist the state health department to reascertain the identities of previously reported cases of HIV infection.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-635 Special conditions—AIDS and HIV. The following provisions apply for the use of AIDS and HIV notifiable conditions case reports and data:

(1) Department personnel (~~(shall)~~) must not disclose identifying information received as a result of receiving information regarding a notifiable conditions report of a case of AIDS or HIV unless:

(a) Explicitly and specifically required to do so by state or federal law; or

(b) Authorized by written patient consent.

(2) Department personnel are authorized to use HIV identifying information received as a result of receiving information regarding a notifiable conditions report of a case of AIDS or HIV only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services; and

(c) Linkage to other public health data bases, provided that the identity or identifying information on the HIV-infected person is not disclosed outside of the health department.

(3) For the purposes of this chapter, public health data bases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or data bases maintained by law enforcement officials.

(4) The state health officer (~~(shall)~~) must require and maintain signed confidentiality agreements with all department employees with access to HIV identifying information. These agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter 70.24 RCW and other administrative actions that may be taken by the department.

(5) The state health officer (~~(shall)~~) must investigate potential breaches of the confidentiality of HIV identifying information by department employees. All breaches of confidentiality shall be reported to the state health officer or their authorized representative for review and appropriate action.

(6) The department must maintain all HIV case reports in a name-based surveillance system solely for the purpose of complying with HIV reporting guidelines from the federal Centers for Disease Control and Prevention, and must not disclose or otherwise use any information contained in that system for any other purpose, except as expressly permitted by this section.

(7) Authorized representatives of the department must review available records to reascertain the identities of previously reported cases of asymptomatic HIV infection and retain those cases in a confidential name-based system.

(8) The department must maintain HIV case reports in secure systems that meet the following standards and are consistent with the 2006 Security and Confidentiality Guidelines developed by the Centers for Disease Control and Prevention:

(a) Secure systems must be described in written policies that are reviewed annually by the overall responsible party;

(b) Access to case report information must be limited to health department staff who need it to perform their job duties and a current list of these staff must be maintained by the overall responsible party;

(c) All physical locations containing electronic or paper copies of surveillance data must be enclosed in a locked,

secured area with limited access and not accessible by window;

(d) Paper copies or electronic media containing surveillance information must be housed inside locked file cabinets that are in the locked, secured area;

(e) A crosscut shredder must be available for destroying information and electronic media must be appropriately sanitized prior to disposal;

(f) Files or data bases containing confidential information must reside on either stand-alone computers with restricted access or on networked drives with proper access controls, encryption software and firewall protection;

(g) Electronic communication of confidential information must be protected by encryption standards that are reviewed annually by the overall responsible party;

(h) Locking briefcases must be available for transporting confidential information.

(9) The state health officer or designee must conduct a biennial review of system security measures described in WAC 246-101-520 (1)(b) at local health jurisdictions that are maintaining records by name.

(10) When providing technical assistance to a local health department, authorized representatives of the department may temporarily and subject to the time limitations in WAC (~~(246-101-525(2))~~) 246-101-520 receive the names of reportable cases of (~~(asymptomatic)~~) HIV infection for the purpose of (~~(HIV surveillance)~~) partner notification, or special studies. Upon completion of the activities by representatives of the state health department, named information will be(=

(a)) provided to the local health department subject to the provisions of WAC (~~(246-101-525(2); and~~

(b) Converted to code and maintained as code only until the person is diagnosed with AIDS)) 246-101-520.

(~~(7) Within twelve months of the effective date of the HIV infection notification system (by September 1, 2000), established in this chapter,~~) (11) By December 2007, the state health officer, in cooperation with local health officers, will report to the board on:

(a) The ability of the HIV reporting system to meet surveillance performance standards established by the federal Centers for Disease Control and Prevention;

(b) The cost of the reporting system for state and local health departments;

(c) The reporting system's effect on disease control activities; (~~and~~)

(d) The impact of HIV reporting on HIV testing among persons at increased risk of HIV infection; and

(e) The availability of anonymous HIV testing in the state.

WSR 06-10-082

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed May 3, 2006, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-18-117.

Title of Rule and Other Identifying Information: Chapter 246-872 WAC, Automated drug distribution devices, the proposed rule will create a new chapter in Title 246 WAC and will adopt uniform standards for the use of automated drug distribution devices for those facilities that choose to use them. In addition, the proposed rules will include current board of pharmacy requirements for drug storage, security, and accountability in WAC 246-873-070 and 246-873-080. It will recognize the automated drug distribution device as an appropriate storage site for controlled substances.

Hearing Location(s): Department of Health, 310 Israel Road, Room 152-153 PPE, Tumwater, WA 98501, on July 20, 2006, at 10:00 a.m.

Date of Intended Adoption: July 20, 2006.

Submit Written Comments to: Tim Fuller, P.O. Box 47863, Olympia, WA 98502-7863, www.doh.wa.gov/policyreview/, fax (360) 586-4359, by July 19, 2006.

Assistance for Persons with Disabilities: Contact Doreen Beebe by July 5, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will create new chapter 246-872 WAC, regarding automated drug distribution devices. It will set standards for the use of these devices for hospitals and healthcare facilities, which the current rules do not. In addition, they will provide standards that will improve medication safety, appropriate access to medications, and accountability, particularly for controlled substances. The current rule WAC 246-869-120 Mechanical devices in hospitals, applies to devices that are not available. For the few devices in use, the mechanical device rule will remain in place.

Reasons Supporting Proposal: Hospitals and other healthcare facilities have purchased automated drug distribution devices to store and distribute medications. For public health and safety, the board of pharmacy establishes the minimum standards automated devices meet the standards for drug storage, security, distribution, and accountability.

Statutory Authority for Adoption: RCW 18.64.005.

Statute Being Implemented: RCW 18.64.005.

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

Name of Proponent: Department of health, board of pharmacy, governmental.

Name of Agency Personnel Responsible for Drafting: Tim S. Fuller, P.O. Box 47863, (360) 236-4825; Implementation and Enforcement: Steven M. Saxe, P.O. Box 47863, (360) 236-4825.

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

Small Business Economic Impact Statement

1. Briefly describe the proposed rule: Hospitals and other healthcare facilities have purchased automated drug distribution devices to store and distribute medications in a secure manner outside a pharmacy and to improve access to medications for administration to a patient. The devices also ensure that each patient is charge[d] appropriately and provides accountability for each unit of medication.

The proposed rule will create a new chapter in Title 246 WAC and will adopt uniform standards for the use of automated drug distribution devices for those facilities that choose to use them. In addition, the proposed rules will include current board of pharmacy requirements for drug storage, security, and accountability. It will recognize the automated drug distribution as an appropriate storage site for controlled substances.

The current rule applies to mechanical devices that are no longer available. For the few devices in use, the mechanical device rule will remain in place.

2. Is a small business economic impact statement (SBEIS) required for this rule? Yes, the costs of compliance by hospitals and other health care facilities exceed minor costs on small businesses. The automated devices are purchased voluntarily by hospitals and other healthcare facilities. However, the proposed rule ensures that the board of pharmacy requirements for drug storage are met by generating reports that the pharmacist must review. The cost of generating the required reports is an additional cost, if a provider decides to purchase automated drug distribution devices. The additional cost exceeds minor costs.

The costs to comply with the mechanical devices are greater than for automated drug distribution devices, since they no longer record medications removed and require a separate paper record system to meet board of pharmacy requirements.

3. Which industries are affected by this rule?

II. What industries are affected?				
8051 Skilled Nursing Care				
8062 General Medical & Surgical Hospital				
			Average Employment	
	Number of Firms	Total Employment	Small Business	Large Business
8051 Skilled nursing care facilities	281	26,407	14.7	144.2
8062 General medical & surgical hospital	146	78,593	11.1	2027.7

4. What are the costs of complying with this rule for small businesses (those with fifty or fewer employees) and for the largest 10% of businesses affected? It was estimated that costs of generating reports for small facilities would be \$600.00 per year. The estimated cost for large facilities is \$9,600.00 per year. The higher cost for large facilities is due to the difference in the number of automated devices used by small and large businesses.

5. Does the rule impose a disproportionate impact on small businesses? Yes, when the costs for small and large facilities are averaged, there is a disproportionate impact on small businesses.

	Average Employment	Average Employment	Compliance Costs	Compliance Costs	Average Costs	Average Costs
	Small Business	Large Business	Small Business	Large Business	Small Business	Large Business
8051 Skilled nursing care facilities	14.7	144.2	\$600	\$9,600	\$40.82	\$66.57
8062 General medical and surgical hospital	11.1	2027.7	\$600	\$9,600	\$54.05	\$4.73

As the table indicates, only SIC 8062 employers would be disproportionately affected by the costs of the proposed rule. Average per employee costs for small businesses in this industry \$54.04 is much higher than \$4.73 which is the average per employee costs of compliance for large businesses.

6. If the rule imposes a disproportionate impact on small businesses, what efforts were taken to reduce that impact (or why is it not "legal and feasible" to do so) by:

a) Reducing, modifying, or eliminating substantive regulatory requirements? The board of pharmacy standards for drug storage apply to all facilities and incorporate several Federal standards. No exemptions are allowed.

b) Simplifying, reducing, or eliminating record-keeping and reporting requirements? The proposed rule language allows the facility flexibility in how they comply with drug storage standards.

c) Reducing the frequency of inspections? [Answer here.]

d) Delaying compliance timetables? [Answer here.]

e) Reducing or modifying fine schedules for noncompliance? Fines are not levied against firms for noncompliance of standards for drug storage.

f) Any other mitigation techniques? Pharmacist investigator would provide technical assistance to the facility to simplify record-keeping and reporting requirements.

7. How are small businesses involved in the development of this rule? Stakeholders included employees from small as well as large healthcare facilities. Representatives from small facilities attended the stakeholders meeting, reviewed and commented on the proposed rule, sent e-mails, and made phone calls to express concerns. A listserv notice was used to confirm the proposed rule language.

A copy of the statement may be obtained by contacting Tim Fuller, P.O. Box 27863, Olympia, WA 98502-7863, phone (360) 236-4827, fax (360) 586-4359, e-mail timothy.fuller@doh.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. Tim Fuller, P.O. Box 27863, Olympia, WA 98502-7863, phone (360) 236-4827, fax (360) 586-4359, e-mail timothy.fuller@doh.wa.gov.

May 2, 2006
 Steven M. Saxe
 Executive Director

Chapter 246-872 WAC

AUTOMATED DRUG DISTRIBUTION DEVICES

NEW SECTION

WAC 246-872-010 Purpose. The purpose of this chapter is to better ensure that licensed pharmacies and health care facilities that choose to use automated drug distribution devices to distribute medications both in a secure manner to protect public health and safety and in a manner that provides access to medications for quality care. The chapter defines appropriate medication security, accountability, and device performance as well as patient confidentiality. It specifies standards of care and provides guidance on how to meet those standards and required approval by the board of pharmacy.

NEW SECTION

WAC 246-872-020 What definitions do I need to know to understand these rules? (1) "Automated drug distribution devices" means automated equipment used for remote storage and distribution of medication for use in patient care. The system is supported by an electronic data base.

(2) "Information access" means entry into a recordkeeping component of the automated drug distribution device, by electronic or other means, to add, update, or retrieve any patient record, medication record, or other data.

(3) "Medication access" means the physical entry into any component of the automated drug distribution devices to stock, inventory, remove medications, or repair the device.

NEW SECTION

WAC 246-872-030 What are the pharmacy's responsibilities? Each facility using drug distribution devices must designate a registered pharmacist responsible for the oversight of the use of these devices. The responsibilities of this pharmacist are to ensure:

(1) Policies and procedures are in place for the safe use of patient medications that are removed from the devices, including those removed prior to pharmacist review of the prescriber's order.

(2) Conduct of quarterly audits of compliance with policies and procedures.

(3) Approval of the medication inventory to be stocked in the automated drug distribution devices.

(4) Supervision of medication preparation and distribution of medications used in automated drug distribution devices.

(5) That the stocking and checking of medications in the automated drug distribution devices is reserved to a pharmacist, pharmacy intern, or a pharmacy technician.

(a) Pharmacy technicians checking automated drug distribution devices must have completed competency-based training and have documentation of the training on file in the pharmacy.

(b) The board may approve electronic bar code checking, or other approved technology, in place of manual double-checking of the medications stocked in the automated drug distribution devices.

(6) Ensure the security of medications in automated drug distribution devices by:

(a) Limiting access to licensed health personnel consistent with the patient care services identified within their scope of practice;

(b) Controlling user access to prevent unauthorized access to the devices;

(c) Monitoring controlled substance usage and taking appropriate action as warranted; and

(d) Working in cooperation with nursing administration to maintain an ongoing discrepancy resolution and monitoring process.

(7) A process is in place for all staff using the automated drug distribution devices to receive adequate training.

(8) Pharmacist participation in the facility automated drug distribution devices system quality assurance and performance improvement program.

NEW SECTION

WAC 246-872-040 What are the responsibilities of the facility in the use of automated drug distribution devices? The licensed health care facility must maintain readily available policies and procedures for the use of automated drug distribution devices that address:

(1) Type of equipment, components, and locations.

(2) Medication and information access.

(a) The automated drug distribution devices must have a system in place to record all medication removal or return including date and time, identity of user, patient name, complete description of medication, quantity, and cosignatures, if required;

(b) The record of medications filled, inventoried, or stocked including identification of the person accessing the automated drug distribution devices shall be readily retrievable and maintained by authorized personnel; and

(c) The records for patients discharged from the facility must be removed from the automated drug distribution devices data base within twelve hours.

(3) Medication refilling and removal.

(a) All medications in the automated drug distribution devices must be packaged and labeled in compliance with state and federal laws;

(b) All controlled substances activities must comply with requirements of state and federal laws;

(c) The process for securing and accounting for returned or wasted medication is defined; and

(d) Verification that a patient's information in automated drug distribution devices match facility records.

NEW SECTION

WAC 246-872-050 What are quality assurance and performance improvement requirements for the use of automated drug distribution devices? Each facility shall establish and maintain a quality assurance and performance program that includes but is not limited to:

(1) Accuracy of medication filling and removal;

(2) Regular review of controlled substances discrepancies;

(3) Use of the data collected to take action to insure quality of care and make improvements to the automated drug distribution device system;

(4) Documentation of the outcomes of the quality assurance activities.

WSR 06-10-083

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 3, 2006, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 01-22-068 and 06-07-192.

Title of Rule and Other Identifying Information: WAC 246-809-110 Definitions, 246-809-130 Supervised postgraduate experience, 246-809-134 Approved supervisor, 246-809-210 Definitions, 246-809-230 Supervised postgraduate experience, 246-809-234 Approved supervisor, 246-809-310 Definitions, 246-809-320 Education requirements and supervised postgraduate experience, and 246-809-334 Approved supervisor standards and responsibilities for licensed marriage and family therapists, licensed mental health counselors, and licensed social workers.

Hearing Location(s): Department of Health, Point Plaza East, Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on June 8, 2006, at 10:00 a.m.

Date of Intended Adoption: June 8, 2006.

Submit Written Comments to: Holly Rawnsley, P.O. Box 47869, Olympia, WA 98504-7869, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4909, by June 22, 2006.

Assistance for Persons with Disabilities: Contact Holly Rawnsley by June 1, 2006, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends WAC 246-809-130, 246-809-230, and 246-809-320 and creates new sections WAC 246-809-110, 246-809-134, 246-809-210, 246-809-234, 246-809-310, and 246-809-334.

The purpose of this proposal is to clearly define the terms that apply to licensure for marriage and family therapists, mental health counselors, and social workers. The proposal also identifies the requirements for postgraduate experience and the requirements necessary to become an approved supervisor.

Reasons Supporting Proposal: The proposal updates the rules to reflect changes to the licensed counselor laws. The proposal provides additional clarification regarding postgrad-

uate education requirements and the approved supervisor requirements.

Statutory Authority for Adoption: RCW 18.225.040 and [18.225.]090.

Statute Being Implemented: Chapter 18.225 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly Rawnsley, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, (360) 236-4912.

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

Small Business Economic Impact Statement

1. Briefly describe the proposed rule: Chapter 18.19 RCW was amended to eliminate certification of marriage and family therapists (MFTs), mental health counselors (MHCs) and social workers (SWs). New chapter 18.225 RCW was created for licensing of those counselors. The statute mandates that licensed counselors have a number of supervised

3. Which industries are affected by this rule?

SIC Industry Code and Title	# of Businesses	# of Employees	Average # of Employees for Smallest Businesses	Average # of Employees for 10% of Largest Businesses
8051 Skilled nursing facilities	281	26,407	15	144
8063 Psychiatric hospitals	6	3,177	0	147
8221 Colleges and universities	124	43,952	31	3,454
8322 Individual and family services	1,261	29,061	31	181
8399 Social services, not elsewhere classified	372	3,400	4	36

4. What are the costs of complying with this rule for small businesses (those with fifty or fewer employees) and for the largest 10% of businesses affected? The rules require approved supervisors to complete a minimum of fifteen clock hours of training in clinical supervision prior to beginning to supervise prospective licensees. The elements of the fifteen hour training course include ethical, legal and philosophical issues relating to supervision. The cost of obtaining individual supervision by an applicant from an approved supervisor ranges from \$65 to \$125 an hour. An applicant may also choose to obtain group supervision which may range from \$100 to \$150 an hour, split among the group of supervisees. The cost to supervisees would be approximately the same as it was under the old certification rules.

Requiring fifteen hours of training in supervision is a new cost that was not previously required for approved supervisors for certification. This change will increase the cost to be an approved supervisor for licensure applicants. However, the fees that supervisors charge prospective applicants for supervision would more than offset the cost of the training for approved supervisors.

The cost of a two day training course in supervision ranges from \$200 to \$250. The cost of a two day continuing education (CE) course on supervision would be the same,

postgraduate hours prior to being issued a license. However, the statute does not define who will provide the supervision or the requirements to be an approved supervisor.

The proposed rules do the following:

1. They clearly define terms that apply to licensure of MFTs, MHCs and SWs;
2. They identify the requirements for postgraduate experience;
3. They identify the requirements necessary to become an approved supervisor.

2. Is a small business economic impact statement (SBEIS) required for this rule? Yes, portions of this rule require an SBEIS. However, department of health (department) has reviewed this proposal and has determined that no SBEIS is required for the following portions of the rule.

- The proposed rules will allow an equally qualified licensed mental health practitioner to supervise mental health applicants.

An SBEIS is not required because the rule does not impose more than minor costs on affected businesses. Instead, this portion of the rule provides additional resources for applicants.

approximately \$200 to \$250 or, if the employer pays through an agency grant, the CE course would be no cost to the supervisor. The cost of fifteen hours of supervision would depend on who provides this service, a licensed counselor or licensed psychiatrist. The range for a licensed counselor supervisor is \$125 to \$150 an hour. The range for a licensed psychiatrist may reach \$175 an hour. Group supervision costs range from \$200 to \$250 an hour, split among the group.

The Washington state mental health counselors, marriage and family therapists, and social workers advisory committee was created by the legislature to provide the department of health with expertise and assisted in the accurate assessment of the costs of the proposed rules.

5. Does the rule impose a disproportionate impact on small businesses? If individual supervisors pay for the costs of their individual supervision training, then small businesses would not be disproportionately affected. However, if we assume that employers pay for the costs of supervision, the supervisor training requirement cost is disproportionate to small businesses as the following table shows. This analysis was based on the assumption that small businesses employ one supervisor and large businesses employ two supervisors to supervise prospective applicants for licensure who are employed by the business.

SIC Industry Code and Title	Average # of Employees for Smallest Businesses	Average # of Employees for 10% of Largest Businesses	Costs of Rule Change Small Businesses	Costs of Rule Change Large Businesses	Average Cost Per Employees Small Businesses	Average Cost Per Employees Large Businesses
8051 Skilled nursing facilities	15	144	\$250	\$500	16.67	3.47
8063 Psychiatric hospitals	0	147	\$250	\$500		3.40
8221 Colleges and universities	31	3,454	\$250	\$500	8.06	0.14
8322 Individual and family services	31	181	\$250	\$500	8.06	2.76
8399 Social services, not elsewhere classified	4	36	\$250	\$500	62.50	13.89

6. If the rule imposes a disproportionate impact on small businesses, what efforts were taken to reduce that impact (or why is it not "legal and feasible" to do so) by: Parts of the proposed rule impose a disproportionate impact to small businesses. In order to mitigate the impact of these costs, the department focused on reducing costs associated with the following parts of the rule.

The proposed rules allow a person to be an approved supervisor if they have not been the licensure candidate's therapist for the past two years. The rules on certification did not specify a length of time and limited the pool of potential approved supervisors to only those who had never been the licensure candidate's therapist. By specifying a length of time, which is less than the original certification rule, this may increase the pool of potential supervisors.

The SW proposed rules do not include a limit on the number of supervisees an approved supervisor may meet with at one time. The MHC and MFT rules include a limit of two supervisees to one supervisor for "individual or one-on-one" supervision. The MFT rules also include a limit of six supervisees to one supervisor for "group" supervision. The previous general certification definition rules included a limit of two supervisees to one supervisor for all categories of approved supervisors.

The proposed rules require that the supervisor must hold a license without restrictions that has been in good standing for at least two years in all categories. The previous certification rules required three years of employment as a licensed counselor for all categories.

The proposed rules require twenty-five hours of supervision experience rather than one year of supervision experience required by the certification rules for all categories of licensed counselors.

The advisory committee considered including language making the approved supervisors legally responsible (liable) for the actions of supervisees but decided to exclude that provision in these rules.

Although the rule causes a disproportionate impact to small businesses, the benefit to the public outweighs the cost.

7. How are small businesses involved in the development of this rule? Many social service agencies are small businesses. They have been regularly informed of the rule development and invited to participate in the rule-making process through the distribution of advisory committee meeting agendas and minutes.

A copy of the statement may be obtained by contacting Holly Rawnsley, P.O. Box 47869, Olympia, WA 98504-

7869, phone (360) 236-4912, fax (360) 236-4909, e-mail Holly.Rawnsley@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Holly Rawnsley, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4912, fax (360) 236-4909, e-mail Holly.Rawnsley@doh.wa.gov.

May 2, 2006

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-809-110 Definitions. The following terms apply to the licensure of marriage and family therapists.

(1) "Approved educational program" means:

(a) Any college or university accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or its successor; or

(b) A program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAM-FTE), at the time the applicant completed the required education.

(2) "Approved supervisor" means a licensed marriage and family therapist, or an equally qualified licensed mental health practitioner.

(3) "Equally qualified licensed mental health practitioner" means a licensed mental health counselor, licensed clinical social worker, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner, who has completed:

(a) Three hundred clock hours in graduate or postgraduate marriage and family education, or continuing education in marriage and family therapy or supervision by an approved marriage and family therapist supervisor in marriage and family therapy or any combination of these; and

(b) Five years of clinical practice that includes the equivalent of one year of clinical practice working with couples and families.

(4) "Group supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(5) "Licensure candidate" means an individual that is accruing supervised clinical experience required for licensure.

(6) "One-on-one supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than two licensure candidates.

(7) "Supervised experience requirement" means experience that is obtained under an approved supervisor who meets the requirements described in WAC 246-809-134.

(8) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a license holder to act as an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-134.

AMENDATORY SECTION (Amending WSR 01-17-113, filed 8/22/01, effective 9/22/01)

WAC 246-809-130 Supervised postgraduate experience. The ~~((following are))~~ experience requirements for the marriage and family therapist applicant's practice area ~~((=~~

~~((+)))~~ include successful completion of a supervised experience requirement. The experience requirement consists of a minimum of two calendar years of full-time marriage and family therapy. Of the total supervision, one hundred hours must be with a licensed marriage and family therapist with at least five years' clinical experience; the other one hundred hours may be with an equally qualified licensed mental health practitioner. Total experience requirements include:

~~((a)))~~ (1) A minimum of three thousand hours of experience, one thousand hours of which must be direct client contact; at least five hundred hours must be gained in diagnosing and treating couples and families; plus

~~((b)))~~ (2) At least two hundred hours of qualified supervision with ~~((a))~~ an approved supervisor. At least one hundred of the two hundred hours must be one-on-one supervision, and the remaining hours may be in one-on-one or group supervision.

~~((c)))~~ (3) Applicants who have completed a master's program accredited by the Commission on Accreditation for Marriage and Family Therapy education of the American Association for Marriage and Family Therapy may be credited with five hundred hours of direct client contact and one hundred hours of formal meetings with an approved supervisor.

NEW SECTION

WAC 246-809-134 Approved supervisor. (1) The approved supervisor shall hold a license without restrictions that has been in good standing for at least two years.

(2) The approved supervisor shall not be a blood or legal relative or cohabitant of the licensure candidate, licensure candidate's peer, or someone who has acted as the licensure candidate's therapist within the past two years.

(3) The approved supervisor, prior to the commencement of any supervision, shall provide the licensure candidate a declaration, on a form provided by the department, that the supervisor has met the requirements of WAC 246-809-134 and qualifies as an approved supervisor.

(4) The approved supervisor shall have completed the following:

(a) A minimum of fifteen clock hours of training in clinical supervision obtained through:

(i) A supervision course; or

(ii) Continuing education credits on supervision; or

(iii) Supervision of supervision; or

(iv) Any combination of these; and

(b) Twenty-five hours of experience in supervision of clinical practice; or

(c) An American Association of Marriage and Family Therapy (AAMFT) approved supervisor is considered to have met the qualifications above.

(5) The approved supervisor shall attest to having thorough knowledge of the supervisee's practice activities including:

(a) Practice setting;

(b) Recordkeeping;

(c) Financial management;

(d) Ethics of clinical practice; and

(e) A backup plan for coverage.

(6) Applicants whose supervised postgraduate experience began prior to the effective date of these rules are exempt from the requirements of subsection (4) of this section.

NEW SECTION

WAC 246-809-210 Definitions. The following definitions apply to the licensure of mental health counselors.

(1) "Approved educational program" means any college or university accredited by an accreditation body recognized by the Council for Higher Education Accreditation (CHEA) or its successor, at the time the applicant completed the required education.

(2) "Approved setting" includes facilities, agencies or private practice where an applicant works with individuals, families, couples or groups under the supervision of an approved supervisor.

(3) "Approved supervisor" means a qualified licensed mental health counselor or equally qualified licensed mental health practitioner who has been licensed without restrictions for at least two years.

(4) "Equally qualified licensed mental health practitioner" means a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner.

(5) "Group supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(6) "Immediate supervision" means a meeting with an approved supervisor, involving one supervisor and no more than two licensure candidates.

(7) "Licensure candidate" means an individual that is accruing supervised clinical experience required for licensure.

(8) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a licensee to act as an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-234.

AMENDATORY SECTION (Amending WSR 01-17-113, filed 8/22/01, effective 9/22/01)

WAC 246-809-230 Supervised postgraduate experience. The ~~((following are))~~ experience requirements for the mental health applicant's practice area~~((s))~~ include successful completion of a supervised experience requirement. The experience requirement consists of a minimum of thirty-six months full-time counseling or three thousand hours of post-graduate mental health counseling under the supervision of a qualified licensed mental health counselor or equally qualified licensed mental health practitioner in an approved setting. The three thousand hours of required experience includes a minimum of one hundred hours spent in immediate supervision with the qualified licensed mental health counselor or equally qualified licensed mental health practitioner, and includes a minimum of one thousand two hundred hours of direct counseling with individuals, couples, families, or groups.

NEW SECTION

WAC 246-809-234 Approved supervisor. (1) The approved supervisor shall hold a license without restrictions that has been in good standing for at least two years.

(2) The approved supervisor shall not be a blood or legal relative or cohabitant of the licensure candidate, licensure candidate's peer, or someone who has acted as the licensure candidate's therapist within the past two years.

(3) The approved supervisor, prior to the commencement of any supervision, shall provide the licensure candidate a declaration, on a form provided by the department, that the supervisor has met the requirements of WAC 246-809-234 and qualifies as an approved supervisor.

(4) The approved supervisor shall have completed the following:

(a) A minimum of fifteen clock hours of training in clinical supervision obtained through:

- (i) A supervision course; or
- (ii) Continuing education credits on supervision; or
- (iii) Supervision of supervision; and

(b) Twenty-five hours of experience in supervision of clinical practice.

(5) The approved supervisor shall have full knowledge of the licensure candidate's practice activities including:

- (a) Recordkeeping;
- (b) Financial management;
- (c) Ethics of clinical practice; and

(d) The licensure candidate's backup plan for coverage in times when the licensure candidate is not available to their clients.

(6) Applicants whose supervised postgraduate experience began prior to the effective date of these rules are exempt from the requirements of subsection (4) of this section.

NEW SECTION

WAC 246-809-310 Definitions. The following definitions apply to the licensure of independent clinical and advanced social workers.

(1) "Approved educational program" means a master's or doctoral educational program in social work accredited by the Council on Social Work Education.

(2) "Approved supervisor" means a licensed independent clinical social worker (LICSW), licensed advanced social worker (LASW)(for LASWs only), or an equally qualified licensed mental health practitioner.

(3) "Equally qualified licensed mental health practitioner" means a licensed mental health counselor, licensed marriage and family therapist, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner.

(4) "Group supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(5) "Licensure candidate" means an individual that is accruing supervised clinical experience required for licensure.

(6) "Nationally recognized standards" means the *Educational Policy and Accreditation Standards*, revised October 2004 published by the Council on Social Work Education revised October 2004 or any future revisions.

(7) "One-on-one supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than two licensure candidates.

(8) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a licensee to become an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-334.

AMENDATORY SECTION (Amending WSR 01-17-113, filed 8/22/01, effective 9/22/01)

WAC 246-809-320 Education requirements and supervised postgraduate experience. ~~((The following are education and experience requirements for the applicant's practice area:~~

~~(1) Licensed advanced social worker.~~

~~(a) Graduation from a master's or doctoral social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards; and~~

~~(b) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of three thousand two hundred hours with ninety hours of supervision by a licensed independent clinical social worker or a licensed advanced social worker who has been licensed or certified for at least two years. Of those hours, fifty hours must include direct supervision by a licensed advanced social worker or licensed independent clinical social worker; the other forty hours may be with an equally qualified licensed mental health practitioner. Forty hours must be in one to one supervision and fifty hours may be in one to one supervision or group supervision. Distance supervision is limited to forty supervision hours. Eight hundred hours must be in direct client contact.~~

~~(2) Licensed independent clinical social worker.~~

~~(a) Graduation from a master's or doctorate level social work educational program accredited by the council on social~~

~~work education and approved by the secretary based upon nationally recognized standards; and~~

~~(b) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of four thousand hours of experience, of which one thousand hours must be direct client contact, over a three-year period supervised by a licensed independent clinical social worker, with supervision of at least one hundred thirty hours by a licensed mental health practitioner. Of the total supervision, seventy hours must be with an independent clinical social worker; the other sixty hours may be with an equally qualified licensed mental health practitioner. Sixty hours must be in one-to-one supervision and seventy hours may be in one-to-one supervision or group supervision. Distance supervision is limited to sixty supervision hours.) (1) The following are the education requirements for the social worker applicant's practice area:~~

~~(a) Licensed advanced social worker. Graduation from a master's or doctoral social work educational program accredited by the Council on Social Work Education and approved by the secretary based upon nationally recognized standards.~~

~~(b) Licensed independent clinical social worker. Graduation from a master's or doctorate level social work educational program accredited by the Council on Social Work Education and approved by the secretary based upon nationally recognized standards.~~

~~(2) The following are the supervised postgraduate experience requirements for the social worker applicant's practice area:~~

~~(a) Licensed advanced social worker. Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of three thousand two hundred hours with ninety hours of supervision by a licensed independent clinical social worker or a licensed advanced social worker who has been licensed or certified for at least two years. Of those hours, fifty hours must include direct supervision by a licensed advanced social worker or licensed independent clinical social worker; the other forty hours may be with an equally qualified licensed mental health practitioner. Forty hours must be in one-to-one supervision and fifty hours may be in one-to-one supervision or group supervision. Distance supervision is limited to forty supervision hours. Eight hundred hours must be in direct client contact.~~

~~(b) Licensed independent clinical social worker. Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of four thousand hours of experience, of which one thousand hours must be direct client contact, over a three-year period supervised by a licensed independent clinical social worker, with supervision of at least one hundred thirty hours by a licensed mental health practitioner. Of the total supervision, seventy hours must be with an independent clinical social worker; the other sixty hours may be with an equally qualified licensed mental health practitioner. Sixty hours must be in one-to-one supervision and seventy hours may be in one-to-one supervision or group supervision. Distance supervision is limited to sixty supervision hours.~~

NEW SECTION

WAC 246-809-334 Approved supervisor standards and responsibilities. (1) The approved supervisor must hold a license without restrictions that has been in good standing for at least two years.

(2) The approved supervisor shall not be a blood or legal relative or cohabitant of the licensure candidate, licensure candidate's peer, or someone who has acted as the licensure candidate's therapist within the past two years.

(3) The approved supervisor, prior to the commencement of any supervision, shall provide the licensure candidate a declaration, on a form provided by the department, that the supervisor has met the requirements of WAC 246-809-334 and qualifies as an approved supervisor.

(4) The approved supervisor shall have completed the following:

(a) A minimum of fifteen clock hours of training in clinical supervision obtained through:

- (i) A supervision course; or
- (ii) Continuing education credits on supervision; or
- (iii) Supervision of supervision; and

(b) Twenty-five hours of experience in supervision of clinical practice; or

(c) Has had two years of clinical experience postlicensure (LASWs only) or five years of clinical experience post-certification or licensure (for LICSWs only).

(5) The approved supervisor shall attest to having thorough knowledge of the licensure candidate's practice activities including:

- (a) Specific practice setting;
- (b) Recordkeeping;
- (c) Financial management;
- (d) Ethics of clinical practice; and
- (e) The licensure candidate's backup plan for coverage in times when he/she is not available to their clients.

(6) Licensure candidates whose supervised postgraduate experience began prior to the effective date of these rules are exempt from the requirements of subsection (4) of this section.

**WSR 06-10-086
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed May 3, 2006, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-04-002.

Title of Rule and Other Identifying Information: Sturgeon size limits.

Hearing Location(s): Red Lion Hotel Wenatchee, 1225 North Wenatchee Avenue, Wenatchee, on June 9-10, 2006, starts at 9:00 a.m. on June 9, 2006.

Date of Intended Adoption: June 9, 2006.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by June 2, 2006.

Assistance for Persons with Disabilities: Contact Nancy Burkhart by May 26, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Standardize green sturgeon upper size limits.

Reasons Supporting Proposal: Protect broodstock sturgeon.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

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

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: None.

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

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? Commercial sturgeon fishers will be required to release green sturgeon over sixty inches in length. The primary fishery for these sturgeon is the Columbia River estuary, where release is already required under the Columbia River sturgeon management agreement. It is anticipated that the number of green sturgeon required to be released from the commercial fisheries in Willapa Bay and Grays Harbor will be a maximum of one hundred fish. Green sturgeon in this size range are about thirty-pound fish, which sell for \$1.50 per pound. Thus the entire loss for the commercial fishery will not exceed \$4,500.

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

- a. Cost per employee;
 - b. Cost per hour of labor; or
 - c. Cost per one hundred dollars of sales.
- There are no costs of compliance.

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

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: This rule has been implemented in the Columbia River through the Columbia River sturgeon management agreement between Washington and Oregon, which has had industry participation at all

stages. The by-catch in Willapa Bay and Grays Harbor is so insignificant that it will have virtually no effect on those fisheries, which catch white sturgeon as a by-catch to the salmon gillnet fishery, and green sturgeon as a subset of that by-catch. Green sturgeon are routinely discarded to allow retention of additional white sturgeon.

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

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

May 3, 2006

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 06-39, filed 3/9/06, effective 4/9/06)

WAC 220-20-020 General provisions—Lawful and unlawful acts—Food fish other than salmon. (1) It is unlawful to fish for or possess for commercial purposes any round, undressed (~~white~~) sturgeon less than 48 inches or greater than 60 inches in length (~~or any round, undressed green sturgeon less than 48 inches or greater than 66 inches in length~~).

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

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

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

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

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

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

(8) It is unlawful to fin sharks in Washington state waters, and it is unlawful to possess shark fins in the field unless the carcass of the shark is retained, except that once a commercially taken shark carcass has been delivered to a licensed wholesale dealer or a person acting in that capacity, and the sale of the shark has been recorded on a fish receiving

ticket, the shark fins need not be retained with the shark carcass.

WSR 06-10-087
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed May 3, 2006, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-04-003.

Title of Rule and Other Identifying Information: Sale of wildlife parts.

Hearing Location(s): Red Lion Hotel Wenatchee, 1225 North Wenatchee Avenue, Wenatchee, on June 9-10, 2006, starts at 9:00 a.m. on June 9, 2006.

Date of Intended Adoption: June 9, 2006.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by June 2, 2006.

Assistance for Persons with Disabilities: Contact Nancy Burkhart by May 26, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will allow sale of cougar hides without a special permit, and will allow persons and businesses to import game farm-raised deer and elk meat.

Reasons Supporting Proposal: Reduce regulatory burden on cougar hide sales and provide for lawful importation and sale of game farmed meat.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

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

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Dave Britnell, 1111 Washington Street, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: Businesses importing game farmed deer and elk will be required to retain the sales invoice with the product until it is exported or consumed.

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

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: Minimal. Businesses routinely retain invoices.

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

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

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

There are no costs of compliance.

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

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department will contact the Washington Restaurant Association.

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

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

May 3, 2006

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 01-69, filed 4/26/01, effective 5/27/01)

WAC 232-12-071 Buying or selling game unlawful—Game-farmed meat exception. (1) Unless prohibited by federal regulations, nonedible parts of wild animals, game birds or game fish lawfully taken may be offered for sale, sold, purchased or traded, ~~except((,+))~~ it is unlawful to offer for sale, sell, purchase or trade the following unless authorized by a written permit issued by the director:

(a) Nonedible parts of ~~((cougar,))~~ bighorn sheep((:)) or mountain goat.

(b) Velvet antlers of deer or elk.

(c) Gall bladder, claws, or teeth of bear, **except** those claws or teeth permanently attached to a full bear skin or mounted bear.

(2) It is unlawful to knowingly buy, sell, or otherwise exchange, or offer to buy, sell, or otherwise exchange the raw fur or carcass of a wild animal trapped in Washington with a body-gripping trap, whether or not pursuant to permit.

(3) It is lawful to purchase and sell the meat of game-farm raised deer and elk, provided the meat is imported from a licensed game farm in another state, the meat is boned and only meat is imported for sale, and the meat is packaged for retail sale prior to import into this state. It is unlawful to fail to maintain proof of the source of the game-farmed meat together with the meat until the meat is consumed or exported.

WSR 06-10-090
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed May 3, 2006, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-06-049.

Title of Rule and Other Identifying Information: Sport fishing rules.

Hearing Location(s): Red Lion Hotel Wenatchee, 1225 North Wenatchee Avenue, Wenatchee, on June 9-10, 2006, starts at 9:00 a.m. on June 9, 2006.

Date of Intended Adoption: June 9, 2006.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by June 2, 2006.

Assistance for Persons with Disabilities: Contact Nancy Burkhardt by May 26, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Consolidation of sport fishing rules. Sport fishing rules are currently in both Titles 232 and 220 WAC. Although many of the rules have been moved into chapter 220-56 WAC, definitions are found in two places, some sport rules are redundant, and having to look in two titles to find the rules makes it difficult. This proposal consolidates the rules, except for fishing contests, which remain in Title 232 WAC.

Reasons Supporting Proposal: Ease of locating rules.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

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

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Dave Brittell, 1111 Washington Street, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules affect recreational fishers, not small businesses.

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

May 3, 2006

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 05-53, filed 3/30/05, effective 4/30/05)

WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other ((food)) fish and shellfish.

(1) It shall be unlawful to take, fish for, possess or transport for any purpose ((food)) fish, shellfish or parts thereof, in or from any of the waters or land over which the state of Washington has jurisdiction, or from the waters of the Pacific Ocean, except at the times, places and in the manners and for

the species, quantities, sizes or sexes provided for in the regulations of the department.

(2) It shall be unlawful for any person to have in possession or under control or custody any food fish or shellfish within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the rules and regulations of the commission or director, unless otherwise provided.

(3) It shall be lawful to fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided; that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

Pacific halibut	<i>(Hippoglossus stenolepis)</i>
Pacific herring (except as prescribed in WAC 220-49-020)	<i>(Clupea harengus pallasii)</i>
Salmon	
Chinook	<i>(Oncorhynchus tshawytscha)</i>
Coho	<i>(Oncorhynchus kisutch)</i>
Chum	<i>(Oncorhynchus keta)</i>
Pink	<i>(Oncorhynchus gorbuscha)</i>
Sockeye	<i>(Oncorhynchus nerka)</i>
Masu	<i>(Oncorhynchus masu)</i>
Pilchard	<i>(Sardinops sagax)</i>
Except as provided for in WAC 220-88C-040	

(4) It shall be unlawful for any person to fish for ((food)) fish or shellfish while in possession in the field of ((food)) fish or shellfish that are in violation of the harvest regulations for the area being fished. This regulation does not apply to vessels in transit.

(5) It shall be unlawful for the owner or operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or offshore waters unless said gear is marked.

(a) Shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy to which shall be affixed in a visible and legible manner the department approved and registered buoy brand issued to the license, provided that:

(i) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(ii) When two or more shellfish pots are attached to a common ground line the number of pots so attached must be clearly labeled on the required buoy.

(b) It is unlawful to operate any gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, a buoy, float, or some other form of marker, visible on the corkline of the net, on which shall be marked in a visible, legible and permanent manner the name and gill net license number of the fisher.

(c) It shall be unlawful at any time to leave a gill net unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided; that this provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department, provided further that it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47°20' from August 15 through November 30 except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any manner specified by authorized representatives of the department.

(8) It shall be unlawful for any person taking or possessing (~~food~~) fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington or the Pacific Ocean for any purpose to fail to submit such (~~food~~) fish or shellfish for inspection by authorized representatives of the department.

(9) It shall be unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing and storing of (~~food~~) fish or shellfish whether taken within the jurisdiction of the state of Washington or beyond or on Indian reservations or usual and accustomed Indian fishing grounds.

(10) It shall be unlawful to take, fish for or possess or to injure, kill or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere in any manner with the proper operation of such fish protective devices.

(11) It shall be unlawful to club, gaff, shoot with firearm, crossbow, bow and arrow or compressed air gun, snag, snare, dip net, harass, spear, stone or otherwise molest, injure, kill or destroy any (~~food~~) fish or shellfish or parts thereof, or for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, except as provided for in this subsection:

(a) It shall be lawful to use a dip net or club in the landing of (~~food~~) fish taken by personal-use angling unless otherwise provided and it shall be lawful to use a gaff in the landing of tuna, halibut and dogfish in all catch record card areas.

(b) It shall be lawful to use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the food fish or shellfish while sorting commercial catches during the act of discarding those fish that are not going to be retained.

(c) It shall be lawful to use a spear in underwater spear fishing as provided for in WAC 220-56-160.

(d) It shall be lawful to use a bow and arrow or spear to take carp as provided for in WAC 220-56-280.

(e) It shall be lawful to snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs.

(f) It shall be lawful to shoot halibut when landing them with a dip net or gaff.

(12) It shall be unlawful to take or possess for any purpose any (~~food~~) fish or shellfish smaller than the lawful

minimum size limits. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish and it shall be unlawful to allow undersized salmon entangled in commercial nets to pass through a power block or onto a power reel or drum.

(13) It shall be unlawful to possess aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, length, weight, or sex limit is prescribed for said species and it is unlawful to possess food fish or shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species.

(14) It shall be unlawful in any area to use, operate or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department.

(15) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director, or to perform any act not specifically authorized in said document or in the regulations of the commission or director.

(16) It shall be unlawful to use, place or cause to be placed in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting (~~food~~) fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director.

(17) It shall be unlawful to test commercial fishing gear except as follows:

(a) Bellingham Bay - inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances in waters 10 fathoms and deeper.

(b) Boundary Bay - north of a line from Birch Point to Point Roberts and south of the international boundary in waters 10 fathoms and deeper during times not under IPSFC control.

(c) San Juan Channel - within a 1 mile radius of Point Caution during times not under IPSFC control.

(d) Port Angeles - inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner - within a 2 mile radius of the entrance to Everett breakwater in waters 10 fathoms and deeper.

(f) Central Puget Sound - between lines from Meadow Point to Point Monroe and Skiff Point to West Point in waters 50 fathoms and deeper.

(g) East Pass - between lines from Point Robinson true east to the mainland and from Dash Point to Point Piner in waters 50 fathoms and deeper.

(h) Port Townsend - westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes exclusive of setting and retrieving time.

(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.

(k) Codends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.

(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or shellfish are to be retained aboard the vessel at any time during a gear test operation.

(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fish and wildlife enforcement office in Olympia prior to testing.

(18) It is unlawful for any person or corporation either licensed by the department or bringing ~~((food))~~ fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from ~~((food))~~ fish or shellfish. It is also unlawful for any such person or corporation to fail to relinquish to the department, upon request, any part of a salmon or other ~~((food))~~ fish containing coded-wire tags, including but not limited to, the snouts of those salmon that are marked by having clipped adipose fins.

(19) It is unlawful for any person to possess live bottom fish taken under a commercial fishery license.

(20) It is unlawful for any person to use chemical irritants to harvest fish, shellfish or unclassified marine invertebrates except as authorized by permit issued by the department.

AMENDATORY SECTION (Amending Order 06-23, filed 2/14/06, effective 5/1/06)

WAC 220-56-100 Definitions—Personal-use fishing.

The following definitions apply to personal use fishing in Titles 220 and 232 WAC:

(1) "Anadromous game fish" means steelhead, searun cutthroat trout, and searun Dolly Varden/bull trout.

(2) "Bait" means any substance which attracts fish by scent or flavors. Bait includes any lure which uses scent or flavoring to attract fish.

~~((2))~~ (3) "Barbless hook" means a hook on which all barbs have been deleted when manufactured or filed off or pinched down.

~~((3))~~ (4) "Bow and arrow fishing" means any method of taking, or attempting to take, fish by the use of an arrow equipped with a barbed head and a line attached, and propelled by a bow, as in the sport of archery, while the fisher is above the surface of the water.

~~((4))~~ (5) "Buoy 10 line" means a true north-south line projected through Buoy 10 at the mouth of the Columbia River. "Buoy 10 fishery" means a fishery between a line in the Columbia River from Tongue Point in Oregon to Rocky Point in Washington and the Buoy 10 line.

~~((5))~~ (6) "Channel Marker 13 line" means a true north-south line through Grays Harbor Channel Marker 13.

~~((6))~~ (7) "Daily limit" means the maximum number or pounds of fish, shellfish, or seaweed of the required size of a given species or aggregate of species which a person may retain in a single day.

~~((7))~~ (8) "Fresh" means fish or shellfish that are refrigerated, iced, salted, or surface glazed.

~~((8))~~ (9) "Freshwater area" means:

(a) Within any freshwater river, lake, stream or pond.

(b) On the bank or within 10 yards of any freshwater river, lake, stream or pond.

(c) On or within any boat launch, ramp, or parking facility associated with any freshwater river, lake, stream or pond.

~~((9))~~ (10) "Frozen" means fish or shellfish that are hard frozen throughout.

~~((10))~~ (11) "Gaffing" means an effort to take fish by impaling the fish with a hook attached directly to a pole or other device.

~~((11))~~ (12) "Hatchery" when used to describe the difference between a hatchery fish and a nonhatchery fish, except salmon, means a fish having a clipped adipose fin or a clipped ventral fin with a healed scar at the location of the clipped fin. A hatchery salmon is a salmon having a clipped adipose fin and a healed scar at the location of the clipped fin, regardless of whether the fish is missing a ventral fin.

~~((12))~~ (13) "Hook" means one single point, double or treble hook. A "single point hook" means a hook having only one point. A "double hook" means a hook having two points on a common shank. A "treble hook" means a hook having three points on a common shank.

~~((13))~~ (14) "Hook and line" or "angling" shall be identical in meaning and, except as provided in WAC 220-56-115, shall be defined as the use of not more than one line with three hooks attached to a pole held in hand while landing fish, or the use of a hand operated line without rod or reel, to which may be attached not more than three hooks. When fishing for bottom fish, "angling" and "jigging" shall be identical in meaning.

~~((14))~~ (15) "In the field or in transit" means at any place other than at the ordinary residence of the harvester. An ordinary residence is a residential dwelling where a person normally lives, with associated features such as address, telephone number, utility account, etc. A motor home or camper parked at a campsite or a vessel are not considered to be an ordinary residence.

~~((15))~~ (16) "Juvenile" means a person under fifteen year of age.

~~((16))~~ (17) "Lure" means a manufactured article constructed of feathers, hair, fiber, wood, metal, glass, cork, leather, rubber or plastic which does not use scent or flavoring to attract fish. "Nonbuoyant lure" means a lure complete with hooks, swivels or other attachments, which does not float in freshwater.

~~((17))~~ (18) "Night closure" means closed to fishing from one hour after official sunset to one hour before official sunrise.

~~((18))~~ (19) "Nonbuoyant lure restriction" means nonbuoyant lures, defined as lures with hooks and attachments (eyes, swivels, etc.), that do not have enough buoyancy to float in freshwater, may have only one single hook measuring not more than 3/4 inch point to shank. No weights may be attached below or less than twelve inches above a buoyant lure defined as a lure with hooks and attachments that has enough buoyancy to float in freshwater, and all hooks must be attached to or no more than three inches below a buoyant

lure or within three inches of bait or a nonbuoyant lure. No hook may be attached to the line above a buoyant lure.

~~((19))~~ (20) "Possession limit" means the number of daily limits allowed to be retained in the field or in transit.

~~((20))~~ (21) "Processed" means fish or shellfish which have been processed by heat for human consumption as kippered, smoked, boiled, or canned.

~~((21))~~ (22) "~~(Seasonal wild)~~ Steelhead license year limit" means the maximum number of ~~(wild)~~ steelhead trout any one angler may retain from April 1st through the following March 31st.

~~((22))~~ (23) "Selective gear rules" means terminal fishing gear is limited to artificial flies with barbless single hooks or lures with barbless single hooks, bait is prohibited, and fishing from a floating device equipped with an internal combustion motor is prohibited unless otherwise provided. Up to three hooks may be used. Only knotless nets may be used to land fish. In waters under selective gear rules, fish may be released until the daily limit is retained.

~~((23))~~ (24) "Slough" means any swamp, marsh, bog, pond, side-channel, or backwater connected to a river by water. Waters called sloughs that are not connected to a river are considered lakes.

~~((24))~~ (25) "Snagging" means an effort to take fish with a hook and line in a manner that the fish does not take the hook or hooks voluntarily in its mouth.

~~((25))~~ (26) "Spearing" or "spear fishing" means an effort to take fish or shellfish by impaling the fish or shellfish on a shaft, arrow or other device.

~~((26))~~ (27) "Stationary gear restriction" means the line and weight and lure or bait must be moving while in the water. The line and weight and lure or bait may not be stationary.

~~((27))~~ (28) "Steelhead" means searun rainbow trout over twenty inches in length.

(29) "Unmarked salmon" means a salmon with intact adipose and ventral fins.

~~((28))~~ (30) "Trout" means brown trout, bull trout, cutthroat trout, Dolly Varden, Eastern brook trout, golden trout, grayling, Kokanee (silver trout), lake trout, rainbow trout, tiger trout, and, in WAC 232-28-619, salmon from waters designated as "landlocked salmon rules apply."

(31) "Whitefish gear rules" means terminal fishing gear is restricted to one single hook, maximum hook size three-sixteenths inch point to shank (hook size 14), and bait is allowed. All species: Release all fish except whitefish.

~~((29))~~ (32) "Wild" when used to describe the difference between a hatchery fish and a nonhatchery fish, except salmon, means a fish with all fins intact.

~~((30))~~ (33) "Wild" when used to describe a salmon (chinook, coho, chum, pink or sockeye), means a salmon with an unclipped adipose fin, regardless of whether the fish is ventral fin-clipped. A salmon with a clipped adipose fin and a healed scar at the site of the clipped fin is not a wild salmon.

(34) "Wild cutthroat release" means it is unlawful to retain any cutthroat trout that does not have a clipped adipose fin and a healed scar at the location of the clipped fin.

(35) "Wild steelhead release" means it is unlawful to retain any steelhead that does not have a clipped adipose or ventral fin and a healed scar at the location of the clipped fin.

NEW SECTION

WAC 220-56-107 Fishing hours. (1) It is lawful to fish for food fish, game fish, and unclassified fish twenty-four hours per day during any open period for the species, except as otherwise provided. Unless otherwise provided, fishing seasons open at 12:01 a.m. on the first day and end at 11:59 p.m. on the last day of any season.

(2) It is unlawful to fish for the following species during the time periods indicated:

(a) It is unlawful to fish for salmon at night in the Hood-sport Hatchery zone as provided for in WAC 220-56-124.

(b) It is unlawful to fish for any species during night closures provided for in WAC 220-56-126 and 232-28-619.

(c) It is unlawful to fish for sturgeon in freshwater, except the Chehalis River, during the night closure provided for in WAC 220-56-282.

AMENDATORY SECTION (Amending Order 06-23, filed 2/14/06, effective 5/1/06)

WAC 220-56-175 Catch record cards. It is unlawful for any person to fail to comply with the catch record requirements as provided for in this section:

(1) In order to fish for or possess for personal use any crab, anadromous salmon, sturgeon, halibut, or steelhead, an angler must obtain and have in personal possession a valid appropriate catch record card as described in WAC 220-69-236 except for commercially caught salmon retained for personal use as provided for in WAC 220-20-016 and commercially caught sturgeon retained for personal use as provided for in WAC 220-20-021. Notwithstanding the provisions of this subsection, a catch record card is not required for landlocked steelhead or for salmon in waters designated as "landlocked salmon rules apply" in WAC 232-28-619.

(2) Any angler, after obtaining a catch record card shall validate the catch record card by completely, accurately, and legibly completing all personal identification information in ink on the catch record card prior to detaching the catch record card from the underlying copy of the catch record card or, for automated licenses, affixing the appropriate validation sticker to the catch record card. A catch record card remains valid so long as there are one or more unfilled spaces available for the species being fished for, except:

(a) In the mainstem Columbia River downstream from where the river forms the common boundary between Oregon and Washington for sturgeon a catch record card remains valid when the sturgeon portion of the catch record card is filled. A person may not retain sturgeon after the sturgeon portion of the catch record card is filled.

(b) A second or subsequent catch record card is invalid for retention of sturgeon.

(3) Immediately upon catching and possessing a salmon, steelhead, sturgeon or halibut, the angler shall enter in ink in the appropriate space the place, date of catch, species (catch type), for sturgeon, length, for halibut, vessel type and for salmon, whether or not the fish was marked.

(4) Immediately upon retaining a Dungeness crab aboard a vessel or on the shore, the fisher must enter in ink in the appropriate space the place and date of catch, fishery type and enter a tally mark for each Dungeness crab retained from each catch record card area fished. At the end of the fishing day, the fisher shall enter the total number of crab tally marks for each fishery type.

(5) Every person possessing a catch record card shall by April 30 of the year following the year printed on the card return such card to the department of fish and wildlife.

(6) Any person possessing a catch record card shall, upon demand of any law enforcement officer or authorized department employee, exhibit said card to such officer or employee for inspection.

(7) A catch record card shall not be transferred, borrowed, altered, or loaned to another person.

NEW SECTION

WAC 220-56-500 Game fish seasons. It is unlawful to fish for game fish except during open seasons or open time periods.

(1) Freshwater lakes, ponds and reservoirs: Open year round except as provided for in WAC 232-28-619.

(2) Freshwater rivers, streams and beaver ponds: Open June 1 through October 31 except as provided for in WAC 232-28-619.

(3) Saltwater (all waters downstream and seaward of the mouths of rivers and streams generally defined in WAC 220-16-245 and specifically defined in WAC 220-56-105): Open year round, except:

(a) Lake Washington Ship Canal - Those waters of Area 10 west of the Lake Washington Ship Canal to a north-south line 175 feet west of the Burlington-Northern Railroad Bridge are closed waters.

(b) Toliva Shoal - Waters within 500 yards of the Toliva Shoal buoy are closed waters from June 16 through April 30.

(c) Freshwater Bay - Waters south of a line from Angeles Point westerly to Observatory Point are closed July 1 through August 31.

(d) Tulalip Bay - Waters of Tulalip Bay east of a line from Hermosa Point to Mission Point are closed waters.

NEW SECTION

WAC 220-56-510 Game fish possession limits and size limits. It is unlawful to retain or possess game fish taken in excess of the daily, possession, or license year possession limits, or game fish that do not conform to the size limits provided for in this section, unless otherwise provided for in WAC 232-28-619.

(1) Daily game fish possession and size limits:

Species	Daily limit	Size limits
Bass	5	Release bass 12 to 17 inches in length. Not more than 1 bass 17 inches in length or greater may be retained.

Species	Daily limit	Size limits
Burbot	5	No size restriction.
Channel catfish	5	No size restriction.
Eastern brook trout	Count as part of the 5 trout daily limit in lakes, ponds and reservoirs. Bonus limit in rivers, streams and beaver ponds. Up to 5 trout including Eastern brook trout may be retained, but not more than 2 of which may be trout other than Eastern brook trout.	No size restriction.
Grass carp	Unlawful to retain.	Not applicable.
Trout (except Eastern brook trout)	5 from lakes, ponds and reservoirs. 2 from rivers, streams, and beaver ponds. The daily trout limit is 5 trout, regardless of origin, of which not more than 2 may be steelhead.	No size restriction. 8-inch minimum size.
Walleye	5	16-inch minimum size. Not more than 1 walleye greater than 22 inches in length may be retained.
Whitefish	15	No size restriction.
All other game fish	No limit.	No size restriction.

(2) Possession limit: The game fish possession limit in the field is two daily limits in fresh, frozen or processed form.

(3) Wild steelhead and Dolly Varden/bull trout: Except as provided for in this section and WAC 232-28-619, it is unlawful to retain wild steelhead or Dolly Varden.

(4) Wild steelhead license year limit: From waters in which wild steelhead may be taken as provided for in WAC 232-28-619, the license year limit is one wild steelhead.

(5) Total steelhead license year limit: The license year limit is thirty steelhead in total.

(6) Saltwater game fish retention: Game fish taken in saltwater may not be retained, except that up to two hatchery steelhead per day may be retained.

AMENDATORY SECTION (Amending Order 99-13, filed 3/30/99, effective 5/1/99)

WAC 220-55-160 Free fishing weekend. The Saturday and Sunday following the first Monday in June is declared to be free fishing weekend in Washington. On this weekend a fishing license is not required for any person, regardless of age or residency, to fish for or possess fish and shellfish and a fish and wildlife lands vehicle use permit is not required to utilize department parking facilities except that it is unlawful to fish for or possess any species for which a catch record is required without a valid catch record card in possession. During free fishing weekend only the license and permit provided for in this section are affected, and all other rules including the catch record card requirement remain in effect.

AMENDATORY SECTION (Amending Order 06-67, filed 4/11/06, effective 5/12/06)

WAC 220-56-122 Statewide bait rules. (1) It is unlawful to fish for sturgeon except with bait.

(2) It is unlawful to use lamprey as fishing bait, regardless of the source or species of lamprey.

(3) It is lawful to use bait in saltwater, and it is unlawful to use terminal gear other than bait suspended above the bottom by a float in the East Duwamish waterway between a line projected east along the path of southwest Hanford Street and a line projected east from the south tip of Harbor Island.

(4) It is unlawful to chum, broadcast, feed, or distribute into freshwater any bait or other substance capable of attracting fish unless specifically authorized in exceptions to statewide rules.

(5) When fishing for trout with bait, all trout that are lawful to possess and are equal to or greater than the minimum size are counted as part of the daily limit, whether kept or released, and it is unlawful to continue to fish once the daily limit has been achieved, except that steelhead trout may be caught and released until the daily limit is taken.

(6) It is unlawful to use live fish as bait to fish for game fish.

(7) Use of bait in violation of this section is an infraction, punishable under RCW 77.15.160.

((7)) (8) It is unlawful to possess fish taken with bait in violation of the provisions of this section. Possession of fish while using bait in violation of the provisions of this section is a rebuttable presumption that the fish were taken with such bait. Violation of this subsection is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the fish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.

AMENDATORY SECTION (Amending Order 01-69, filed 4/26/01, effective 5/27/01)

WAC 232-12-001 Definition of terms. Definitions used in rules of the commission are defined in RCW 77.08.010. In addition, unless otherwise provided:

(1) A "valid" license, permit, tag, stamp or catch record card means a license, permit, tag, stamp, or catch record card that was issued to the bearer for the current season and is required to hunt, fish or possess wildlife and has not been altered except as provided by rule of the commission.

(2) "Falconry" means possession, control, or use of a raptor for the purpose of hunting and free flight training.

(3) (~~"Anadromous game fish" means:~~
(a) ~~Steelhead trout, *Oncorhynchus mykiss*, defined as any searun rainbow trout over twenty inches in length~~

(b) ~~Searun cutthroat, *Oncorhynchus clarkii*~~

(c) ~~Searun Dolly Varden, *Salvelinus malma*~~

(4)) "Handgun" means any pistol, revolver or short firearm with a barrel length of less than sixteen inches and does not have a shoulder stock.

((5)) (4) "Body-gripping trap" means a trap that grips an animal's body or body part. Body-gripping trap includes, but is not limited to, steel-jawed leghold traps, padded-jaw leghold traps, Conibear-type traps, neck snares, and non-strangling foot snares. Cage and box traps, suitcase-type live beaver traps, and common rat and mouse traps are not considered body-gripping traps.

((6)) (5) "Raw fur" means a pelt that has not been processed for purposes of retail sale.

((7)) (6) "Padded foot-hold trap" means a trap designed and set to grip the foot of a wild animal, both jaws of which are covered with rubber pads having a minimum thickness of one-eighth inch.

AMENDATORY SECTION (Amending Order 06-23, filed 2/14/06, effective 5/1/06)

WAC 232-12-619 (~~Permanent Washington statewide game fish rules.~~) Bullfrogs. ((The following statewide rules apply to all waters unless modified under regional regulation exceptions:

(1) ~~Fishing seasons open at 12:01 a.m. on the first day and close at 11:59 p.m. on the last day and fishing is allowed 24 hours per day.~~

(2)) It is unlawful to((:

(a) ~~Use a gaff hook to land game fish.~~

(b)) ~~take bullfrogs except by angling, hand dip netting, spearing (gigging) or with bow and arrow. There is no daily limit on the number of bullfrogs that may be taken, no possession limit, and no size restrictions.~~

((c) ~~Feed or use any substance to attract game fish unless specifically authorized by special regulations.~~

(d) ~~Fish for game fish with a bow and arrow or spear.~~

(e) ~~Possess fish which are under the minimum size or over the maximum size as shown in general or exceptions to state-wide rules.~~

(3) ~~Seasonal steelhead limit: Each angler who possesses a valid steelhead catch record card may not retain more than thirty steelhead April 1st through the following March 31st of~~

which no more than one may be a wild steelhead from waters in which wild steelhead retention is allowed.

(4) Military personnel, regardless of the length of time in the state of Washington, who are permanently stationed at a military installation within the state, are entitled to purchase a resident license. Military personnel must have a license to fish for game fish anywhere in the state. Dependents must establish a ninety-day residency.

(5) Wild cutthroat release: In waters requiring a wild cutthroat release, it is unlawful to possess any cutthroat that does not have a clipped adipose fin and a healed scar in the location of the clipped fin.

(6) Wild steelhead release: In waters requiring wild steelhead release, it is unlawful to possess any steelhead trout that does not have a clipped adipose or ventral fin and a healed scar at the location of the clipped fin.

(7) Free fishing weekend: The Saturday and Sunday following the first Monday in June is declared as free fishing weekend in Washington. On this weekend a fishing license is not required for any person, regardless of residency or age, to fish for or possess game fish and a fish and wildlife lands vehicle use permit is not required to utilize department parking facilities, except that it is unlawful to fish for or possess steelhead trout without the required catch record card. During free fishing weekend only the licensing requirement is affected, and all other rules remain in effect.

(8) Fish taken with artificial flies and lures: Where use of bait is prohibited, or where artificial flies or lures are used voluntarily, fish may be released until the daily limit is retained. If any fish has swallowed the hook or is hooked in the gill, eye or tongue, it should be kept if legal to do so.

(9) Rainbow trout taken from landlocked lakes: Rainbow trout taken from landlocked lakes shall not be considered steelhead and no catch record card is required.

(10) OPEN SEASONS:

LAKES, PONDS, AND RESERVOIRS: YEAR AROUND, unless specified otherwise under exceptions to state-wide rules.

RIVERS, STREAMS AND BEAVER PONDS: JUNE 1 THROUGH OCTOBER 31, unless specified otherwise under exceptions to state-wide rules.

Note: The date set for "traditional" April openers for Lakes, Ponds, and Reservoirs for this year and future years is the last Saturday in April.

(11) Daily limits and minimum sizes:

GAME FISH SPECIES	DAILY LIMIT	MINIMUM SIZE LIMIT
BASS	Five release bass greater than twelve but less than seventeen inches in length, only one over seventeen inches may be retained	None

GAME FISH SPECIES	DAILY LIMIT	MINIMUM SIZE LIMIT
	Bass may be caught, retained, and released alive from a livewell until a daily limit is in possession.	
GRASS CARP... TROUT (except Eastern Brook trout)	It is unlawful to fish for or retain grass carp. A total of five trout, of which no more than two may be from Rivers, Streams, and Beaver Ponds.	None in Lakes, Ponds, and Reservoirs.
EASTERN BROOK TROUT (Salvelinus fontinalis)	Five to be considered part of the trout daily catch limit. Counts as a bonus limit in rivers, streams and beaver ponds. Total of five fish, including brook trout, in these waters.	Eight inches in Rivers, Streams, and Beaver Ponds. None
BURBOT	Five	None
CHANNEL CATFISH	Five.	None.

(a) The following game fish species are managed as trout:

- Eastern brook trout
- Brown trout
- Cutthroat trout
- Dolly Varden/Bull trout
- Golden trout
- Grayling
- Kokanee/Silver trout
- Lake trout
- Landlocked Atlantic salmon
- Rainbow trout/Steelhead
- Landlocked chinook and coho
- Tiger trout

(b) Wild steelhead release is required year-round, except as provided in exceptions to statewide rules.

(c) All waters, statewide, are closed year around to fishing for or retaining Dolly Varden/Bull Trout.

Where exceptions to the above closure for Dolly Varden/Bull Trout occur under individual listings in the exceptions to statewide rules, Dolly Varden/Bull Trout count as part of the combined trout daily limit of five.

GAME FISH SPECIES	DAILY LIMIT	MINIMUM SIZE LIMIT
WALLEYE	Five, not more than one over twenty-two inches Walleye may be caught, retained, and released alive from a livewell until a daily limit is in possession.	Sixteen inches
WHITEFISH	Fifteen	None
ALL OTHER GAME FISH	No Limit	None
BULLFROGS	No Limit	None

(12) Daily wild steelhead limit: It is unlawful for any person to retain more than one wild steelhead per day from those waters in which wild steelhead retention is allowed.

(13) Possession limit. Except as otherwise provided, the possession limit is two daily limits in fresh, frozen or processed form.

(14) Marine waters rules: These rules apply to all marine waters contained within the boundaries of Washington state, within Puget Sound, Hood Canal, the Strait of Juan de Fuca, the San Juan Islands, the Strait of Georgia, and the Pacific Ocean, including estuaries (river mouths) from salt water upstream to a line between the outermost headlands measured at the highest high tide (usually the debris line furthest inshore on surrounding beaches), unless otherwise described under area regulations (see individual areas, below):

(a) Fishing hours: Twenty-four hours per day year around except:

(i) Lake Washington Ship Canal—Those waters of Area 10 west of the Lake Washington Ship Canal to a north-south line 175 feet west of the Burlington Northern Railroad Bridge are closed waters.

(ii) Toliva Shoal—Waters within 500 yards of the Toliva Shoal buoy are closed waters from June 16 through April 30.

(iii) Freshwater Bay—Waters south of a line from Angeles Point westerly to Observatory Point are closed July 1 through August 31.

(iv) Tulalip Bay—Waters of Tulalip Bay east of a line from Hermosa Point to Mission Point are closed waters.

(b) License requirements: A valid current Washington state department of fish and wildlife saltwater license, and, if appropriate, a sport catch record card, is required to fish for game fish including steelhead in marine waters. All steelhead taken from marine areas shall be entered on the catch record card using the words Marine Area and followed by the appropriate marine area code number.

(e) Gear restrictions: Angling gear only. In all areas, underwater spearfishing, spearing, gaffing, clubbing, netting, or trapping game fish is unlawful.

(d) All species: Release all fish except up to two hatchery steelhead may be retained per day.)

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-12-144 Possession of live fish for bait while fishing.

**WSR 06-10-093
PROPOSED RULES
DEPARTMENT OF REVENUE**

[Filed May 3, 2006, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-22-116.

Title of Rule and Other Identifying Information: WAC 458-20-267 Annual reports for certain tax adjustments.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on June 6, 2006, at 9:30 a.m.

Date of Intended Adoption: June 13, 2006.

Submit Written Comments to: Allan C. Lau, P.O. Box 47453, Olympia, WA 98504-7453, e-mail AllanL@dor.wa.gov, fax (360) 586-5543, by June 6, 2006.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7499.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file an annual report with the department of revenue (the "department") detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. This rule explains the reporting requirements for tax adjustments provided to the aerospace manufacturing, aluminum manufacturing, electrolytic processing, and solar electric manufacturing industries. This rule explains who is required to file annual reports, how to file reports, and what information must be included in the reports.

The proposed rule incorporates provisions of chapter 1, Laws of 2003 2nd sp.s.; chapter 24, Laws of 2004; chapter 240, Laws of 2004; and chapter 301, Laws of 2005. These provisions impose the annual reporting requirement for taking the tax adjustments provided to the aerospace manufacturing, aluminum manufacturing, electrolytic processing, and solar electric manufacturing industries.

Reasons Supporting Proposal: To clarify the annual report requirements.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.32.545, 82.32.-570, 82.32.560, and 82.32.620.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Allan C. Lau, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6134; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

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

May 3, 2006
Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-267 Annual reports for certain tax adjustments. (1) **Introduction.** In order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file an annual report with the department of revenue (the "department") detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. This section explains the reporting requirements for tax adjustments provided to the aerospace manufacturing, aluminum manufacturing, electrolytic processing, and solar electric manufacturing industries. This section explains who is required to file annual reports, how to file reports, and what information must be included in the reports.

This section contains a number of examples. These examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Who is required to file the report?** A recipient of the benefit of the following tax adjustments must complete and file an annual report with the department:

(a) **Tax adjustments for the aerospace manufacturing industry:**

(i) The B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts;

(ii) The B&O tax credit provided by RCW 82.04.4461 for qualified preproduction development expenditures for manufacturers and processors for hire of commercial airplanes and component parts;

(iii) The retail sales and use tax exemption provided by RCW 82.08.980 and 82.12.980 for constructing new buildings used for manufacturing superefficient airplanes;

(iv) The leasehold excise tax exemption provided by RCW 82.29A.137 for facilities used for manufacturing super-efficient airplanes;

(v) The property tax exemption provided by RCW 84.36.655 for property used for manufacturing superefficient airplanes; and

(vi) The B&O tax credit for property taxes and leasehold excise taxes provided by RCW 82.04.4463 for manufacturers and processors for hire of commercial airplanes and component parts.

(b) **Tax adjustments for the aluminum smelter industry:**

(i) The B&O tax rate provided by RCW 82.04.2909 for aluminum smelters;

(ii) The B&O tax credit for property taxes provided by RCW 82.04.4481 for aluminum smelter property;

(iii) The retail sales and use tax exemption provided by RCW 82.08.805 and 82.12.805 for property used at aluminum smelters; and

(iv) The use tax exemption provided by RCW 82.12.022(5) for the use of natural gas;

(c) **Tax adjustment for the electrolytic processing industry.** The public utility tax exemption provided by RCW 82.16.0421 for sales of electricity to electrolytic processing businesses.

(d) **Tax adjustment for the solar electric manufacturing industry.** The B&O tax rate for manufacturers of solar energy systems using photovoltaic modules, or silicon components of such systems provided by RCW 82.04.294.

(3) **How to file annual reports.**

(a) **Forms and formats.** A person must use forms or the on-line filing format developed by the department to complete the annual report unless a person obtains prior approval from the department to file the annual report in an alternative format. The department has developed a form that taxpayers may use to complete the survey. Report forms may be obtained by downloading from the department's web site (www.dor.wa.gov). A report form may also be obtained at department district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
Fax: 360-586-2163

(b) **First report.** The first report filed under this subsection must also include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax adjustment. In order to meet this requirement, a person must complete a report for the calendar year immediately preceding the first use of a tax adjustment.

(c) **Due date.** The report must be filed by March 31st following any calendar year in which any tax adjustment is taken against taxes due.

(d) **Examples.**

(i) An aerospace firm begins taking the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts on October 1, 2005. By March 31, 2006, the aerospace firm must provide two annual reports, one covering calendar year 2004 and another covering calendar year 2005. If the aero-

space firm continues to take the B&O tax rate provided by RCW 82.04.260(13) during calendar year 2006, a single annual report is due on March 31, 2007, covering calendar year 2006.

(ii) An aluminum smelter begins taking the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 1, 2004. By March 31, 2005, the aluminum smelter must provide two annual reports, one covering calendar year 2003 and another covering calendar year 2004. If the aluminum smelter continues to take the B&O tax rate provided by RCW 82.04.2909 during calendar year 2005, a single annual report is due on March 31, 2006, covering calendar year 2005.

(4) What manufacturing site(s) are included in the annual report?

(a) There must be a separate annual report filed for each manufacturing site at which activities are conducted that qualifies for a tax adjustment.

(b) **What is a "manufacturing site"?** For purposes of the annual report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax adjustment. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports nonqualifying activities such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities.

(i) **Which manufacturing site is included in the annual report for the aerospace manufacturing industry tax adjustments?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration ("FAA") for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

(ii) **Which manufacturing site is included in the annual report for the aluminum industry tax adjustments?** The location(s) where a person who is an aluminum smelter engaging in the business of manufacturing aluminum within this state is the manufacturing site(s) included in the annual report. An "aluminum smelter" means the manufacturing facility of any direct service industrial customer that processes alumina into aluminum. A "direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than 50% owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(iii) **Which manufacturing site is included in the annual report for the electrolytic processing industry tax adjustments?** The location(s) where a person is engaged in a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process within this state is the manufacturing site(s) included

in the annual report. A "chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "chlor-alkali electrolytic processing business" and "sodium chlorate electrolytic processing business" do not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville Power Administration as of June 10, 2004.

(iv) **Which manufacturing site is included in the annual report for the solar electric manufacturing industry tax adjustments?** The location(s) where a person who is manufacturing solar energy systems using photovoltaic modules, or silicon components of such systems, within this state is the manufacturing site(s) included in the annual report. A "solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity. A "photovoltaic cell" means a device that converts light directly into electricity without moving parts. A "module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. A "silicon component" is an ingredient or component part comprised of fifty percent or more solar grade silicon that is used in a solar energy system using photovoltaic modules.

(c) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual report provided that the jobs located at the manufacturing sites have equivalent employment positions, wages, and employer-provided health and retirement benefits. A person may request written approval to consolidate manufacturing sites by contacting the department's special programs division at:

Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
Fax: 360-586-2163

(d) Examples.

(i) ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC

Airplanes assembles the landing gear using the components manufactured in Spokane, WA. ABC Airplanes must file separate annual reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(ii) Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. Acme Engines must file an annual report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(iii) Tacoma Rivets, located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA certified rivets under the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts. Tacoma Rivets must file an annual report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax adjustment.

(iv) Dynamic Aerospace Composites is a company that only manufactures FAA certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts. Dynamic Aerospace Composites must file separate annual reports for each of its three manufacturing sites. Dynamic Aerospace Composites can make a request to the department to consolidate its employment positions into a single annual report if the jobs located at the three manufacturing sites have equivalent employment, wages, and employer-provided health and retirement benefits.

(v) Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in twenty locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(13) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Because Worldwide Aerospace has no manufacturing sites in Washington state, it is not required to complete the annual report.

(5) What jobs are included in the annual report?

(a) The annual report covers all full-time, part-time, and temporary jobs at the manufacturing site as of December 31st

of the calendar year for which an applicable tax adjustment is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying activities for a tax adjustment are included in the report if the job is located at the manufacturing site.

(b) Examples.

(i) XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. Its management and human resources divisions are located in an administrative office across the street from its Tacoma, WA aluminum smelter. XYZ Aluminum's annual report for its Tacoma, WA location will include the employment positions in its administrative offices because those jobs are located at the Tacoma, WA manufacturing site.

(ii) AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(13) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

(6) How is employment detailed in the annual report?

The annual report is organized by employee occupational groups, consistent with the United States Department of Labor's Standard Occupation Codes (SOC) System. The SOC System is a universal occupational classification system used by government agencies and private industries to produce comparable occupational data. The SOC classifies occupations at four levels of aggregation:

- (a) Major group;
- (b) Minor group;
- (c) Broad occupation; and
- (d) Detailed occupation.

All occupations are clustered into one of twenty-three major groups. The annual report uses the SOC major groups to detail the levels of employment, wages, and employer-provided health and retirement benefits at the manufacturing site. A detailed description of the SOC System is available by contacting the department's special programs division or by consulting the United States Department of Labor, Bureau of Labor Statistics online at www.bls.gov/soc. The annual report does not require names of employees.

(7) What is total employment at the manufacturing site? The annual report must state the total number of employees for each SOC major group that are currently employed on December 31st of the calendar year for which an applicable tax adjustment is taken. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(8) What are full-time, part-time and temporary employment positions? An employer must provide infor-

mation on the number of employees, as a percentage of total employment in the SOC major group, that are employed in full-time, part-time or temporary employment positions on December 31st of the calendar year for which an applicable tax adjustment is claimed. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(a) **Full-time and part-time employment positions.** In order for a position to be treated as full time or part time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements, but receives wages equivalent to a full-time job. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive full-time wages, the position should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for period of less than twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing companies regardless of the duration of the placement with the person required to file the annual report.

(c) **Examples.** Assume these facts for the following examples. National Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. National Airplane Inc. employs one hundred people. Seventy-five of the employees work directly in the manufacturing operation and are classified as SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns work twenty hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions

are intended to be filled for a period of less than twelve consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of eleven employment positions in SOC Architect and Engineering Occupations with 45% in full-time employment positions and 55% in temporary employment positions.

(ii) National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 am to 5:00 pm Monday thru Friday. The second shift works six hours from 6:00 pm to midnight Monday thru Friday. The second shift works fewer hours per week (thirty hours) than the first shift (forty hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work forty hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) On December 1st, ten National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for twelve weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ten employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of eighty employment positions in SOC Production Occupations with 93.8% in full-time employment positions and 6.2% in temporary employment positions.

(iv) On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work forty hours a week, fifty-two weeks a year. On November 1st, one employee must limit the number of hours worked to thirty hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than thirty-five hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with 80% in full-time employment positions and 20% in part-time employment positions.

(9) **What are wages?** For the purposes of the annual report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether

denominated as wages, salary, commission, or otherwise. Compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(10) How are wages detailed for the annual report?

(a) An employer must provide information on the number of employees, as a percentage of the total employment in the SOC major group, paid a wage within the following five hourly wage bands:

- Up to \$10.00 an hour;
- \$10.01 an hour to \$15.00 an hour;
- \$15.01 an hour to \$20.00 an hour;
- \$20.01 an hour to \$30.00 an hour; and
- \$30.01 an hour or more.

Percentages should be rounded to the nearest 1/10th of 1% (XX.X%). For purposes of the annual report, wages are measured on December 31st of the calendar year for which an applicable tax adjustment is claimed.

(b) **Examples.** Assume these facts for the following examples. Washington Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. Washington Airplane Inc. is claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. Washington Airplane Inc. employs five hundred people at the manufacturing site. Four hundred employees engage in activities that are classified as SOC Production Occupations. Fifty employees engage in activities that are classified as SOC Architect and Engineer Occupations. Twenty-five employees are engaged in activities classified as SOC Management Occupations. Twenty employees are engaged in activities classified as SOC Office and Administrative Support Occupations. Five employees are engaged in activities classified as SOC Sales and Related Occupations.

(i) One hundred employees classified as SOC Production Occupations are paid \$12.00 an hour. Two hundred employees classified as SOC Production Occupations are paid \$17.00 an hour. One hundred employees classified as SOC Production Occupations are paid \$25.00 an hour. For SOC Production Occupations, Washington Airplane Inc. will report 25% of employment positions are paid \$10.01 an hour to \$15.00 an hour; 50% are paid \$15.01 an hour to \$20.00 an hour; and 25% are paid \$20.01 an hour to \$30.00 an hour.

(ii) Ten employees classified as SOC Architect and Engineering Occupations are paid an annual salary of \$42,000; another ten employees are paid \$50,000 annually; and the remaining employees are all paid over \$70,000 annually. In order to report wages, the annual salaries must be converted to hourly amounts by dividing the annual salary by 2080 hours. For SOC Architect and Engineering Occupations, Washington Airplane Inc. will report 40% of employment positions are paid \$20.01 an hour to \$30.00 an hour and 60% are paid \$30.00 an hour or more.

(iii) All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive \$10.00 commission for each nav-

igation system sold. Three sales representatives sell 2,500 navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a \$10,000 bonus for exceeding company's sales goals. In order to report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations are paid \$10.01 an hour to \$15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment positions classified as SOC Sales and Related Occupations are paid \$15.01 an hour to \$20.00 an hour.

(iv) Ten of the employees classified as SOC Office and Administrative Support Occupations earn \$9.50 an hour. The remaining ten employees classified as SOC Office and Administrative Support Occupations earn wages between \$10.01 an hour to \$15.00 an hour. On December 1st, Washington Airplane Inc. announces that effective December 15th, all employees classified as SOC Office and Administrative Support Occupations will earn wages of at least \$10.50 an hour, but no more than \$15.00 an hour. Because wages are measured on December 31st, Washington Airplane Inc. will report 100% of employment positions classified as SOC Office and Administrative Support Occupations Sales and Related Occupations are paid \$10.01 an hour to \$15.00 an hour.

(11) Reporting workers furnished by staffing companies. For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual report must provide the following information:

- (a) Total number of staffing company employees furnished by staffing companies;
- (b) Top three occupational codes of all staffing company employees; and
- (c) Average duration of all staffing company employees.

(12) What are employer-provided health benefits? For purposes of the annual report, "health benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A health plan that is equally available to employees and the general public is not an "employer-provided" health benefit.

(a) "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(b) "Dental care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' dental care services.

(c) "Health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical care and dental care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA"

as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans.

(d) "Medical care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(e) "Medical care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' medical care services.

(13) How are employer-provided health benefits detailed in the annual report? The annual report is organized by SOC major group and by type of health plan offered to or with enrolled employees on December 31st of the calendar year for which an applicable tax adjustment is claimed.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided medical care plan. An employee is "eligible" if the employee can currently participate in a medical care plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, preexisting conditions, and other limitations may prevent an employee from being eligible for coverage in an employer's medical care plan. If an employer provides multiple medical care plans, an employee is "eligible" if the employee can currently participate in one of the medical care plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(b) Examples.

(i) On December 31st, Acme Engines has one hundred employees classified as SOC Production Occupations. It offers these employees two medical care plans. Plan A is available to all employees at the time of hire. Plan B is available to employees after working ninety days. For SOC Production Occupations, Acme Engines will report 100% of its employees are eligible for employer-provided medical benefits because all of its employees are eligible for at least one medical care plan offered by Acme Engines.

(ii) Apex Aluminum has fifty employees classified as SOC Transportation and Material Moving Occupations, all of whom have worked for Apex Aluminum for over five years. Apex Aluminum offers one medical care plan to its employees. Employees must work for Apex Aluminum for six months to participate in the medical care plan. On October 1st, Apex Aluminum hires ten new employees classified as SOC Transportation and Material Moving Occupations. For SOC Transportation and Material Moving Occupations, Apex Aluminum will report 83.3% of its employees are eligible for employer-provided medical benefits.

(c) **Detail by type of health plan.** The report also requires detailed information about the types of health plans the employer provides. If an employer has more than one type of health plan, it must report each health plan separately. If a person offers more than one of the same type of health plan as described in (c)(i) of this subsection, the person may consolidate the detail required in (c) through (e) of this sub-

section by using ranges to describe the information. The details include:

(i) A description of the type of plan in general terms such as self-insured, fee for service, preferred provider organization, health maintenance organization, health savings account, or other general description. The report does not require a person to disclose the name(s) of their health insurance carrier(s).

(ii) The number of employees eligible to participate in the health plan, as a percentage of total employment at the manufacturing site. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the health plan, as a percentage of employees eligible to participate in the health plan at the manufacturing site. An employee is "enrolled" if the employee is currently covered by or participating in an employer-provided health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The average percentage of premium paid by employees enrolled in the health plan. "Premium" means the cost incurred by the employer to provide a health plan or the continuance of a health plan, such as amounts paid to health carriers or costs incurred by employers to self-insure. Employers are generally legally responsible for payment of the entire cost of the premium for enrolled employees, but may require enrolled employees to share in the cost of the premium to obtain coverage. State the amount of premium, as a percentage, employees must pay to maintain enrollment under the health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(v) If necessary, the average monthly contribution to enrolled employees. In some instances, employers may make contributions to an employee health plan, but may not be aware of the percentage of premium cost borne by the employee. For example, employers may contribute to a health plan sponsored by an employee organization, or may sponsor a medical savings account or health savings account. In those instances where the employee's contribution to the health plan is unknown, an employer must report its average monthly contribution to the health plan by dividing the employer's total monthly costs for the health plan by the total number of employees enrolled in the health plan.

(vi) Whether legal spouses and unmarried dependant children can obtain coverage under the health plan and if there is an additional premium for such coverage.

(vii) Whether part-time employees are eligible to participate in the health plan.

(d) **Medical care plans.** In addition to the detailed information required for each health plan, report the amount of enrolled employee point of service cost-sharing for hospital services, prescription drug benefits, and primary care physician services for each medical care plan. If differences exist within a medical care plan, the lowest cost option to the enrolled employee must be stated in the report. For example, if employee point of service cost-sharing is less if an enrolled employee uses a network of preferred providers, report the amount of point of service cost-sharing using a preferred provider. Employee point of service cost-sharing is generally stated as a percentage of cost, a specific dollar amount, or both.

(i) "Employee point of service cost-sharing" means amounts paid to health carriers directly providing medical care services, health care providers, or health care facilities by enrolled employees in the form of co-payments, co-insurance, or deductibles. Co-payments and co-insurance mean an amount specified in a medical care plan which is an obligation of enrolled employees for a specific medical care service which is not fully prepaid. A deductible means the amount an enrolled employee is responsible to pay before the medical care plan begins to pay the costs associated with treatment.

(ii) "Hospital services" means covered in-patient medical care services performed in a hospital licensed under chapter 70.41 RCW.

(iii) "Prescription drug benefit" means coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy.

(iv) "Primary care provider services" means nonemergency medical care services provided in an office setting by the employee's primary care provider.

(e) **Dental care plans.** In addition to the health plan information required for each dental care plan, the annual maximum benefit for each dental care plan must be stated in the report. Most dental care plans have an annual dollar maximum benefit. This is the maximum dollar amount a dental care plan will pay toward the cost of dental care services within a specific benefit period, generally one year. The enrolled employee is personally responsible for paying costs above the annual maximum.

(f) Examples.

(i) Assume the following facts for the following examples. Mosaic Aerospace employs one hundred employees and offers two medical care plans as health benefits to employees at the time of hire. Plan A is a managed care plan (HMO). Plan B is a fee for service medical care plan.

(A) Forty Mosaic Aerospace employees are enrolled in Plan A. It costs Mosaic Aerospace \$750 a month for each employee covered by Plan A. Enrolled employees must pay \$150 each month to participate in Plan A. If an enrolled employee uses its network of physicians, Plan A will cover 100% of the cost of primary care provider services with employees paying a \$10.00 co-payment per visit. If an enrolled employee uses its network of hospitals, Plan A will cover 100% of the cost of hospital services with employees paying a \$200 deductible. If an enrolled employee does not use a network provider, Plan A will cover only 50% of the cost of any service with a \$500 employee deductible. An enrolled employee must use a network of retail pharmacies to receive any prescription drug benefit. Plan A will cover the cost of prescription drugs with enrolled employees paying a \$10.00 co-payment. If an enrolled employee uses the mail-order pharmacy option offered by Plan A, co-payment for prescription drug benefits is not required.

Mosaic Aerospace will report Plan A separately as a managed care plan. One hundred percent of its employees are eligible to participate in Plan A. The percentage of eligible employees enrolled in Plan A is 40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a \$10.00 co-payment for primary care provider services and a \$200 deductible for hospital services because this is the lowest cost option within

Plan A. Mosaic Aerospace will report that employees have a \$10.00 co-payment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit co-payment because "prescription drug benefit" is defined as coverage to purchase a thirty-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.

(B) Fifty Mosaic Aerospace employees are enrolled in Plan B. It costs Mosaic Aerospace \$1,000 a month for each employee covered by Plan B. Enrolled employees must pay \$300 a month to participate in Plan B. Plan B covers 100% of the cost of primary care provider services and 100% of the cost of prescription drugs with employees paying a \$200 annual deductible for each covered service. Plan B covers 80% of the cost of hospital services with employees paying a \$250 annual deductible.

Mosaic Aerospace will report Plan B separately as a fee for service medical care plan. One hundred percent of its employees are eligible to participate in Plan B. The percentage of eligible employees enrolled in Plan B is 50%. The percentage of premium paid by an employee is 30%. Mosaic Aerospace will also report that employees have a \$200 annual deductible for both primary care provider services and prescription drug benefits. Hospital services have a \$250 annual deductible and 20% co-insurance obligation.

(C) On December 1st, Mosaic Aerospace acquires General Aircraft Inc., a company claiming all the tax adjustments available for manufacturers and processors for hire of commercial airplanes and component parts. General Aircraft Inc. had fifty employees, all of whom were retained by Mosaic Aerospace. At General Aircraft Inc., employees were offered one managed care plan (HMO) as a benefit. The former General Aircraft Inc. employees will retain their current managed care plan until the following June when employees would be offered Mosaic Aerospace benefits. On December 31st, Mosaic Aerospace is offering employees two managed care plans. Mosaic Aerospace may report each managed care plan separately or may consolidate the detail required in (c) through (e) of this subsection for this type of medical care plan by using ranges to report the information.

(ii) Aero Turbines employs one hundred employees. It offers employees health savings accounts as a benefit to employees who have worked for the company for six months. Aero Turbines established the employee health savings accounts with a local bank and makes available to employees a high deductible medical care plan to be used in conjunction with the account. Aero Turbines deposits \$500 a month into each employee's health savings account. Employees deposit a portion of their pretax earnings into a health savings account to cover the cost of primary care provider services, prescription drug purchases, and the high deductible medical care plan for hospital services. The high deductible medical care plan has an annual deductible of \$2,000 and covers 75% of the cost of hospital services. Sixty-six employees open health savings accounts. Four employees have not worked for Aero Turbines for six months.

Aero Turbines will report the medical care plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The percentage of eligible employees enrolled in health savings

accounts is 68.8%. Because the amount of employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of \$500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not include these services. Because the high deductible medical care plan covers the costs of hospital services, Aero Turbines will report that the medical care plan has an annual deductible of \$2,000 and employees have 25% co-insurance obligation.

(14) What are employer-provided retirement benefits? For purposes of the annual report, "retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods extending to the termination of employment or beyond. Retirement plans include pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code. A retirement plan that is equally available to employees and the general public is not an "employer-provided" retirement benefit.

(15) How are employer-provided retirement benefits detailed in the annual report? The annual report is organized by SOC major group and by type of retirement plans offered to employees or with enrolled employees on December 31st of the calendar year for which an applicable tax adjustment is claimed. Inactive or terminated retirement plans are excluded from the annual report. An inactive retirement plan is a plan that is not offered to new employees, but has enrolled employees, and neither enrolled employees nor the employer are making contributions to the retirement plan.

(a) Detail by SOC major group. For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided retirement plan. An employee is "eligible" if the employee can currently participate in a retirement plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, and other limitations may prevent an employee from being eligible for coverage in an employer's retirement plan. If an employer provides multiple retirement plans, an employee is "eligible" if the employee can currently participate in one of the retirement plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(b) Examples.

(i) Lincoln Airplane has one hundred employees classified as SOC Production Occupations. Fifty employees were enrolled in defined benefit pension at the time of hire. All employees are eligible to participate in a 401(k) Plan. For SOC Production Occupations, Lincoln Airplane will report 100% of its employees are eligible for employer-provided

retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane.

(ii) Fly-Rite Airplanes has fifty employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical Occupations have worked for the company more than one year. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits.

(c) Detail by retirement plan. The report also requires detailed information about the types of retirement plans an employer offers employees. If an employer offers multiple retirement plans, it must report each type of retirement plan separately. If an employer offers more than one of the same type of retirement plan, but with different levels of employer contributions, it may consolidate the detail required in (i) through (iv) of this subsection by using ranges to describe the information. The report includes:

(i) The type of plan in general terms such as 401(k) Plan, SEP IRA, SIMPLE IRA, cash balance pension, or defined benefit plan.

(ii) The number of employees eligible to participate in the retirement plan, as a percentage of total employment at the manufacturing site. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the retirement plan, as a percentage of employees eligible to participate in the retirement plan at the manufacturing site. An employee is "enrolled" if the employee currently participates in an employer-provided retirement plan, regardless of whether the employee has a vested benefit. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The maximum benefit the employer will contribute into the retirement plan for enrolled employees. The maximum benefit an employer will contribute is generally stated as a percentage of salary, specific dollar amount, or both. This information is not required for a defined benefit plan meeting the qualification requirements of Employee Retirement Income Security Act (ERISA) that provides benefits according to a flat benefit, career-average, or final pay formula.

(d) Examples.

(i) General Airspace is a manufacturer of airplane components located in Centralia, WA. General Airspace employs one hundred employees. Fifty employees are eligible for and enrolled in a defined benefit pension with a flat benefit at the time of retirement. Twenty-five employees are eligible for and enrolled in a cash balance pension with General Airspace contributing 7% of an employee's annual compensation with a maximum annual contribution of \$10,000. All General Airspace employees can participate in a 401(k) Plan. Sixty-five employees are participating in the 401(k) Plan. General Airspace does not make any contributions into the 401(k) Plan. Five employees are former employees of United Skyways, a company General Airspace acquired. United Skyways employees were enrolled in a cash balance pension at the time of hire. When General Airspace acquired United Skyways, it did not terminate or liquidate the United Skyways

cash balance plan. Rather, General Airspace maintains cash balance plan only for former United Skyways employees, allowing only interest to accrue to the plan.

(A) General Airspace will report that it offers three retirement plans - A defined benefit pension, a cash-balance pension, and a 401(k) Plan. General Airspace will not report the inactive cash balance pension it maintains for former United Skyways employees.

(B) For the defined benefit pension, General Airspace will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

(C) For the cash-balance pension, General Airspace will report 25% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled. General Airspace will report a maximum contribution of \$10,000 or 7% of an employee's annual compensation.

(D) For the 401(k) Plan, General Airspace will report 100% of its total employment positions are eligible to participate in the retirement plan. Of the employment positions eligible to participate, 65% are enrolled. General Airspace will report that it does not make any contributions into the 401(k) Plan.

(ii) Washington Alloys is an aluminum smelter located in Grandview, WA. Washington Alloys employs two hundred employees. Washington Alloys offers a 401(k) Plan to its employees after one year of hire. One hundred seventy-five employees have worked for Washington Alloys for one year or more. Of that amount, seventy-five have worked more than five years. Washington Alloys will match employee contributions up to a maximum 3% of annual compensation. If an employee has worked for Washington Alloys for more than five years, Washington Alloys will contribute 5% of annual compensation regardless of the employee's contribution. One hundred employees receive a 3% matching contribution from Washington Alloys. Fifty employees receive a contribution of 5% of annual compensation.

(A) Washington Alloys can report each 401(k) Plan separately - A 401(k) Plan with a maximum employer contribution of 3% of annual compensation and a 401(k) Plan with a maximum employer contribution to 5% of annual compensation. Alternatively, Washington Alloys can report that it offers a 401(k) Plan with a maximum employer contribution ranging from 3% to 5% of annual compensation.

(B)(I) If Washington Alloys reports each 401(k) Plan separately, for the 401(k) Plan with a maximum employer contribution of 3% of annual compensation, Washington Alloys will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

For the 401(k) Plan with a maximum employer contribution of 5% of annual compensation, Washington Alloys will report 37.5% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 66.6% are enrolled.

(II) If Washington Alloys consolidates its detailed information about its 401(k) Plans, it will report that 87.5% of its total employment positions are eligible to participate in

401(k) Plans. Of the employment positions eligible to participate in the 401(k) Plans, 85.7% are enrolled.

(16) **Additional reporting for aluminum smelters and electrolytic processing businesses.** Annual reports must include data for actual levels of employment for each quarter of the calendar year covered by the report. In addition, the report must identify the number of jobs affected by any employment reductions that have been publicly announced within sixty days of the date the report is submitted to the department. For an aluminum smelter, the annual report must indicate the quantity of aluminum smelted at the plant during the time period covered by the report. For an electrolytic processing business, the annual report must indicate the quantity of product produced at the plant during the time period covered by the report.

(17) **Are annual reports confidential?** Annual reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(18) **What are the consequences for failing to file a complete annual report?**

(a) If a person fails to submit a complete annual report by March 31st, the department will declare the amount of taxes against which the tax adjustment was taken during the previous calendar year to be immediately due and payable. Interest, but not penalties, will be assessed retroactively to the date the tax adjustment was taken and accrues until taxes for which the tax adjustment was taken are repaid. Interest will be assessed at the rate provided for delinquent excise taxes as provided under chapter 82.32 RCW.

(b) **Complete annual report.** An annual report is complete if:

(i) The annual report is filed on the form required by this section; and

(ii) The person makes a good faith effort to substantially respond to all report questions required by this section.

The answer "varied," "various," or "please contact for information" is not a good faith response to a question.