

WSR 06-23-017
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

[Filed November 3, 2006, 1:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-19-095.

Title of Rule and Other Identifying Information: Amending WAC 390-24-010 relating to forms for statement of financial affairs consistent with the language of WAC 390-24-201 and pursuant to RCW 42.17.241.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on January 25, 2007, at 9:30 a.m.

Date of Intended Adoption: January 25, 2007.

Submit Written Comments to: Doug Ellis, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail dellis@pdc.wa.gov, fax (360) 753-1112, by January 22, 2007.

Assistance for Persons with Disabilities: Contact Kami Madsen by phone (360) 753-1111 or (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amended rule is designed to clarify, for reporting purposes on PDC Form F-1 and F-1 Supplement Page, WAC 390-24-201 relating to new entities such as limited liability partnerships (LLPs), limited liability companies (LLCs), and/or similar entities when a person files statements of personal financial affairs as required under RCW 42.17.240.

Reasons Supporting Proposal: To provide guidance and clarification to elected and appointed officials and other persons subject to the disclosure law when filing statements of personal financial affairs (PDC Form F-1).

Statutory Authority for Adoption: RCW 42.17.241 (1)(n) and 42.17.370.

Statute Being Implemented: RCW 42.17.241.

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 amended rule is designed to clarify the requirements of limited liability partnerships (LLPs), limited liability companies (LLCs), and/or similar entities when filing reports under RCW 42.17.241.

Name of Proponent: [PDC], governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Doug Ellis, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of this rule amendment has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to this rule adoption pursuant to subsection (5)(a)(i) of section 201, and, to date, the joint

administrative rules review committee has not made section 201 application [applicable] to the adoption of this rule.

November 3, 2006

Doug Ellis

Assistant Director

AMENDATORY SECTION (Amending WSR 06-18-034, filed 8/28/06, effective 9/28/06)

WAC 390-24-010 Forms for statement of financial affairs. The official form for statements of financial affairs as required by RCW 42.17.240 is designated "F-1," revised ((6/06)) 10/06. Copies of this form are available at the Commission Office, 711 Capitol Way, Room 206, Evergreen Plaza Building, PO Box 40908, Olympia, Washington 98504-0908. Any paper attachments must be on 8-1/2" x 11" white paper.

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PDC FORM F-1 (6/06)	PERSONAL FINANCIAL AFFAIRS STATEMENT	PDC OFFICE USE P M O S T R K R E C E I V E D
Refer to instruction manual for detailed assistance and examples. Deadlines: Incumbent elected and appointed officials -- by April 15. Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position.		
SEND REPORT TO PUBLIC DISCLOSURE COMMISSION		

Last Name _____ First _____ Middle Initial _____ Mailing Address (Use PO Box or Work Address) _____ City _____ County _____ Zip + 4 _____ Filing Status (Check only one box.) <input type="checkbox"/> An elected or state appointed official filing annual report <input type="checkbox"/> Final report as an elected official. Term expired: _____ year _____ <input type="checkbox"/> Candidate running in an election: month _____ year _____ <input type="checkbox"/> Newly appointed to an elective office <input type="checkbox"/> Newly appointed to a state appointive office <input type="checkbox"/> Professional Staff	Names of immediate family members. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse. See F-1 manual for details. Office Held or Sought Office title: _____ County, city, district or agency of the office, name and number: _____ Position number: _____ Term begins: _____ ends: _____
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1 INCOME List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member received \$1,500 or more during the period. (Report interest and dividends in Item 3 on reverse)

	Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)
Show Self (S) Spouse (SP) Dependent (D)			

Check Here if continued on attached sheet

2 REAL ESTATE List street address, assessor's parcel number, or legal description AND county for each parcel of Washington real estate with value of over \$7,500 in which you or a family member held a personal financial interest during the reporting period. (Show partnership, company, etc. real estate on F-1 supplement.)

Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser	Nature and Amount (Use Code) of Payment or Consideration Received		
Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original Current
All Other Property Entirely or Partially Owned					

Check here if continued on attached sheet

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3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS	List bank and savings accounts, insurance policies, stock, bonds and other intangible property held during the reporting period.		
<p>A. Name and address of each bank or financial institution in which you or a family member had an account over \$15,000 any time during the report period.</p> <p>B. Name and address of each insurance company where you or a family member had a policy with a cash or loan value over \$15,000 during the period.</p> <p>C. Name and address of each company, association, government agency, etc. in which you or a family member owned or had a financial interest worth over \$1,500. Include stocks, bonds, ownership, retirement plan, IRA, notes, and other intangible property.</p>	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)
Check here <input type="checkbox"/> if continued on attached sheet.			

4 CREDITORS	List each creditor you or a family member owed \$1,500 or more any time during the period. Don't include retail charge accounts, credit cards, or mortgages or real estate reported in Item 2.			AMOUNT (USE CODE)	
Creditor's Name and Address	Terms of Payment	Security Given	Original	Present	
Check here <input type="checkbox"/> if continued on attached sheet.					

5 All filers answer questions A thru D below. If the answer is YES to any of these questions, the F-1 Supplement must also be completed as part of this report. If all answers are NO and you are a candidate for state or local office, an appointee to a vacant elective office, or a state executive officer filing your initial report, no F-1 Supplement is required.

Incumbent elected officials and state executive officers filing an annual financial affairs report also must answer question E. An F-1 Supplement is required of these officeholders unless all answers to questions A thru E are NO.

A. Were you, your spouse or dependents an officer, director, general partner or trustee of any corporation, company, union, association, joint venture or other entity at any time during the reporting period? ___ If yes, complete Supplement, Part A.

B. Did you, your spouse or dependents have an ownership of 10% or more in any company, corporation, partnership, joint venture or other business at any time during the reporting period? ___ If yes, complete Supplement, Part A.

C. Did you, your spouse or dependents own a business at any time during the reporting period? ___ If yes, complete Supplement, Part A.

D. Did you, your spouse or dependents prepare, promote or oppose state legislation, rules, rates or standards for current or deferred compensation (other than pay for a currently-held public office) at any time during the reporting period? ___ If yes, complete Supplement, Part B.

E. **Only for Persons Filing Annual Report.** Regarding the receipt of items not provided or paid for by your governmental agency during the previous calendar year: 1) Did you, your spouse or dependents (or any combination thereof) accept a gift of food or beverages costing over \$50 per occasion? ___ or 2) Did any source other than your governmental agency provide or pay in whole or in part for you, your spouse and/or dependents to travel or to attend a seminar or other training? ___ If yes to either or both questions, complete Supplement, Part C.

<p>ALL FILERS EXCEPT CANDIDATES. Check the appropriate box.</p> <p><input type="checkbox"/> I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.</p> <p><input type="checkbox"/> I hold a local elected office. I have read and am familiar with RCW 42.17.130 regarding the use of public facilities in campaigns.</p>	<p>CERTIFICATION: I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.</p> <p>Signature _____ Date _____</p> <p>Contact Telephone: () _____</p> <p>Email: _____ (work)</p> <p>Email: _____ (Home)</p>
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REPORT NOT ACCEPTABLE WITHOUT FILER'S SIGNATURE

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PDC FORM F-1 SUPPLEMENT (6/06)	SUPPLEMENT PAGE PERSONAL FINANCIAL AFFAIRS STATEMENT
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PROVIDE INFORMATION FOR YOURSELF, SPOUSE, DEPENDENT CHILDREN AND OTHER DEPENDENTS IN YOUR HOUSEHOLD

Last Name	First	Middle Initial	DATE
<p>A OFFICE HELD, BUSINESS INTERESTS: For each corporation, non-profit organization, association, union, partnership, joint venture or other entity in which you, your spouse or dependents are an officer, director, general partner, trustee, or 10 percent or more owner – provide the following information:</p> <ul style="list-style-type: none"> • Legal Name: Report name used on legal documents establishing the entity. • Trade or Operating Name: Report name used for business purposes if different from the legal name. • Position or Percent of Ownership: The office, title and/or percent of ownership held. • Brief Description of the Business/Organization: Report the purpose, product(s), and/or the service(s) rendered. • Payments from Governmental Unit: If the governmental unit in which you hold or seek office made payments to the business entity concerning which you're reporting, show the purpose of each payment and the actual amount received. • Payments from Business Customers and Other Government Agencies: List each corporation, partnership, joint venture, sole proprietorship, union, association, business or other commercial entity and each government agency (other than the one you seek/hold office) which paid compensation of \$7,500 or more during the period to the entity. Briefly say what property, goods, services or other consideration was given or performed for the compensation. • Washington Real Estate: Identify real estate owned by the business entity if the qualifications referenced below are met. 			
ENTITY NO. 1		Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/>	
LEGAL NAME:		POSITION OR PERCENT OF OWNERSHIP	
TRADE OR OPERATING NAME:			
ADDRESS:			
BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:			
PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:			
Purpose of payments		Amount (actual dollars)	
		\$	
PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OF \$7,500 OR MORE:			
Customer name:		Purpose of payment (amount not required)	
WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):			
Check here <input type="checkbox"/> if continued on attached sheet			

CONTINUE PARTS B AND C ON NEXT PAGE

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Page 2

F-1 Supplement

Name				
ENTITY NO. 2		Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/>		
LEGAL NAME:		POSITION OR PERCENT OF OWNERSHIP		
TRADE OR OPERATING NAME:				
ADDRESS:				
BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:				
PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:				
Purpose of payments		Amount (actual dollars)		
		\$		
PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OF \$7,500 OR MORE:				
Customer name:		Purpose of payment (amount not required)		
WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):				
Check here <input type="checkbox"/> if continued on attached sheet				
B LOBBYING: List persons for whom you or any immediate family member lobbied or prepared state legislation or state rules, rates or standards for current or deferred compensation. Do not list pay from government body in which you are an elected official or professional staff member.				
Person to Whom Services Rendered		Description of Legislation, Rules, Etc.		Compensation (Use Code)
Check here <input type="checkbox"/> if continued on attached sheet				
C FOOD TRAVEL SEMINARS Complete this section if a source other than your own governmental agency paid for or otherwise provided all or a portion of the following items to you, your spouse or dependents, or a combination thereof: 1) Food and beverages costing over \$50 per occasion; 2) Travel occasions; or 3) Seminars, educational programs or other training.				
Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
			\$	
Check here <input type="checkbox"/> if continued on attached sheet				

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 <p>PUBLIC DISCLOSURE COMMISSION 711 CAPITOL WAY RM 206 PO BOX 40908 OLYMPIA WA 98504-0908 (360) 753-1111 TOLL FREE 1-877-601-2828</p>	PDC FORM <h1 style="font-size: 2em; margin: 0;">F-1</h1> (10/06)	<h2 style="text-align: center; margin: 0;">PERSONAL FINANCIAL AFFAIRS STATEMENT</h2>	PDC OFFICE USE P O S T R A R K R E C E I V E D																																										
Refer to instruction manual for detailed assistance and examples. Deadlines: Incumbent elected and appointed officials -- by April 15. Candidates and others -- within two weeks of becoming a candidate or being newly appointed to a position. SEND REPORT TO PUBLIC DISCLOSURE COMMISSION		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">DOLLAR CODE</th> <th style="text-align: left;">AMOUNT</th> </tr> <tr> <td>A</td> <td>\$1 to \$2,999</td> </tr> <tr> <td>B</td> <td>\$3,000 to \$14,999</td> </tr> <tr> <td>C</td> <td>\$15,000 to \$29,999</td> </tr> <tr> <td>D</td> <td>\$30,000 to \$74,999</td> </tr> <tr> <td>E</td> <td>\$75,000 or more</td> </tr> </table>	DOLLAR CODE	AMOUNT	A	\$1 to \$2,999	B	\$3,000 to \$14,999	C	\$15,000 to \$29,999	D	\$30,000 to \$74,999	E	\$75,000 or more																															
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Last Name <input style="width: 40%;" type="text"/> First <input style="width: 15%;" type="text"/> Middle Initial <input style="width: 20%;" type="text"/>		Names of immediate family members. If there is no reportable information to disclose for dependent children, or other dependents living in your household, do not identify them. Do identify your spouse. See F-1 manual for details.																																											
Mailing Address (Use PO Box or Work Address) <input style="width: 95%;" type="text"/>																																													
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Filing Status (Check only one box.) <input type="checkbox"/> An elected or state appointed official filing annual report <input type="checkbox"/> Final report as an elected official. Term expired: _____ <input type="checkbox"/> Candidate running in an election: month _____ year _____ <input type="checkbox"/> Newly appointed to an elective office <input type="checkbox"/> Newly appointed to a state appointive office <input type="checkbox"/> Professional staff of the Governor's Office and the Legislature		Office Held or Sought Office title: _____ County, city, district or agency of the office, name and number: _____ Position number: _____ Term begins: _____ ends: _____																																											
<h3 style="margin: 0;">1 INCOME</h3> <p style="margin: 0;">List each employer, or other source of income (pension, social security, legal judgment, etc.) from which you or a family member received \$1,500 or more during the period. (Report interest and dividends in Item 3 on reverse)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 5%;"></th> <th style="width: 45%;">Name and Address of Employer or Source of Compensation</th> <th style="width: 30%;">Occupation or How Compensation Was Earned</th> <th style="width: 20%;">Amount: (Use Code)</th> </tr> <tr> <td style="vertical-align: top; font-size: 0.8em;"> Show Self (S) Spouse (SP) Dependent (D) </td> <td colspan="3" style="height: 100px;"></td> </tr> <tr> <td colspan="4"> Check Here <input type="checkbox"/> if continued on attached sheet </td> </tr> </table>					Name and Address of Employer or Source of Compensation	Occupation or How Compensation Was Earned	Amount: (Use Code)	Show Self (S) Spouse (SP) Dependent (D)				Check Here <input type="checkbox"/> if continued on attached sheet																																	
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3	ASSETS / INVESTMENTS - INTEREST / DIVIDENDS	List bank and savings accounts, insurance policies, stock, bonds and other intangible property held during the reporting period.		
A.	Name and address of each bank or financial institution in which you or a family member had an account over \$15,000 any time during the report period.	Type of Account or Description of Asset	Asset Value (Use Code)	Income Amount (Use Code)
B.	Name and address of each insurance company where you or a family member had a policy with a cash or loan value over \$15,000 during the period.			
C.	Name and address of each company, association, government agency, etc. in which you or a family member owned or had a financial interest worth over \$1,500. Include stocks, bonds, ownership, retirement plan, IRA, notes, and other intangible property.			
Check here <input type="checkbox"/> if continued on attached sheet.				

4	CREDITORS	List each creditor you or a family member owed \$1,500 or more any time during the period. Don't include retail charge accounts, credit cards, or mortgages or real estate reported in Item 2.		AMOUNT (USE CODE)	
	Creditor's Name and Address	Terms of Payment	Security Given	Original	Present
Check here <input type="checkbox"/> if continued on attached sheet.					

5 All filers answer questions A thru D below. If the answer is YES to any of these questions, the F-1 Supplement must also be completed as part of this report. If all answers are NO and you are a candidate for state or local office, an appointee to a vacant elective office, or a state executive officer filing your initial report, no F-1 Supplement is required.

Incumbent elected officials and state executive officers filing an annual financial affairs report also must answer question E. An F-1 Supplement is required of these officeholders unless all answers to questions A thru E are NO.

- A. At any time during the reporting period were you, your spouse or dependents (1) an officer, director, general partner or trustee of any corporation, company, union, association, joint venture or other entity or (2) a partner or member of any limited partnership, limited liability partnership, limited liability company or similar entity including but not limited to a professional limited liability company? ___ If yes, complete Supplement, Part A.
- B. Did you, your spouse or dependents have an ownership of 10% or more in any company, corporation, partnership, joint venture or other business at any time during the reporting period? ___ If yes, complete Supplement, Part A.
- C. Did you, your spouse or dependents own a business at any time during the reporting period? ___ If yes, complete Supplement, Part A.
- D. Did you, your spouse or dependents prepare, promote or oppose state legislation, rules, rates or standards for current or deferred compensation (other than pay for a currently-held public office) at any time during the reporting period? ___ If yes, complete Supplement, Part B.
- E. **Only for Persons Filing Annual Report.** Regarding the receipt of items not provided or paid for by your governmental agency during the previous calendar year: 1) Did you, your spouse or dependents (or any combination thereof) accept a gift of food or beverages costing over \$50 per occasion? ___ or 2) Did any source other than your governmental agency provide or pay in whole or in part for you, your spouse and/or dependents to travel or to attend a seminar or other training? ___ If yes to either or both questions, complete Supplement, Part C.

<p>ALL FILERS EXCEPT CANDIDATES. Check the appropriate box.</p> <p><input type="checkbox"/> I hold a state elected office, am an executive state officer or professional staff. I have read and am familiar with RCW 42.52.180 regarding the use of public resources in campaigns.</p> <p><input type="checkbox"/> I hold a local elected office. I have read and am familiar with RCW 42.17.130 regarding the use of public facilities in campaigns.</p>	<p>CERTIFICATION: I certify under penalty of perjury that the information contained in this report is true and correct to the best of my knowledge.</p> <p>Signature _____ Date _____</p> <p>Contact Telephone: () _____</p> <p>Email: _____(work)</p> <p>Email: _____(Home)</p>
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REPORT NOT ACCEPTABLE WITHOUT FILER'S SIGNATURE

F-1

Information Continued

Name						
1 INCOME (continued)						
1 <small>Show Self (S) Spouse (SP) Dependent (D)</small>	Name and Address of Employer or Source of Compensation		Occupation or How Compensation Was Earned		Amount: (Use Code)	
2 REAL ESTATE (continued)						
Property Sold or Interest Divested	Assessed Value (Use Code)	Name and Address of Purchaser		Nature and Amount (Use Code) of Payment or Consideration Received		
Property Purchased or Interest Acquired		Creditor's Name/Address	Payment Terms	Security Given	Mortgage Amount - (Use Code) Original Current	
All Other Property Entirely or Partially Owned						
3 ASSETS / INVESTMENTS - INTEREST / DIVIDENDS (continued)						
A. Name and address of each bank or financial institution		Type of Account or Description of Asset		Asset Value (Use Code)	Income Amount (Use Code)	
B. Name and address of each insurance company						
C. Name and address of each company, association, government agency						
4 CREDITORS (continued)						
Creditor's Name and Address			Terms of Payment	Security Given	AMOUNT (USE CODE)	
					Original	Present

 PUBLIC DISCLOSURE COMMISSION 711 CAPITOL WAY RM 206 PO BOX 40908 OLYMPIA WA 98504-0908 (360) 753-1111 TOLL FREE 1-877-601-2828 EMAIL: pdcc@pdcc.wa.gov	PDC FORM F-1 SUPPLEMENT <small>(10/06)</small>	SUPPLEMENT PAGE PERSONAL FINANCIAL AFFAIRS STATEMENT							
PROVIDE INFORMATION FOR YOURSELF, SPOUSE, DEPENDENT CHILDREN AND OTHER DEPENDENTS IN YOUR HOUSEHOLD									
Last Name	First	Middle Initial	DATE						
<p>A OFFICE HELD, BUSINESS INTERESTS: Provide the following information if, during the reporting period, you, your spouse or dependents</p> <p>(1) were an officer, director, general partner, trustee, or 10 percent or more owner of a corporation, non-profit organization, union, partnership, joint venture or other entity; and/or</p> <p>(2) were a partner or member of a limited partnership, limited liability partnership, limited liability company or similar entity, including but not limited to a professional limited liability company.</p> <ul style="list-style-type: none"> • Legal Name: Report name used on legal documents establishing the entity. • Trade or Operating Name: Report name used for business purposes if different from the legal name. • Position or Percent of Ownership: The office, title and/or percent of ownership held. • Brief Description of the Business/Organization: Report the purpose, product(s), and/or the service(s) rendered. • Payments from Governmental Unit: If the governmental unit in which you hold or seek office made payments to the business entity concerning which you're reporting, show the purpose of each payment and the actual amount received. • Payments from Business Customers and Other Government Agencies: List each corporation, partnership, joint venture, sole proprietorship, union, association, business or other commercial entity and each government agency (other than the one you seek/hold office) which paid compensation of \$7,500 or more during the period to the entity. Briefly say what property, goods, services or other consideration was given or performed for the compensation. • Washington Real Estate: Identify real estate owned by the business entity if the qualifications referenced below are met. 									
<p>ENTITY NO. 1 Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/></p> <p>LEGAL NAME: POSITION OR PERCENT OF OWNERSHIP</p> <p>TRADE OR OPERATING NAME:</p> <p>ADDRESS:</p> <p>BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:</p> <p>PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Purpose of payments</td> <td style="width: 40%;">Amount (actual dollars)</td> </tr> <tr> <td></td> <td style="text-align: center;">\$</td> </tr> </table> <p>PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OVER \$7,500:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Customer name:</td> <td style="width: 40%;">Purpose of payment (amount not required)</td> </tr> </table> <p>WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):</p>				Purpose of payments	Amount (actual dollars)		\$	Customer name:	Purpose of payment (amount not required)
Purpose of payments	Amount (actual dollars)								
	\$								
Customer name:	Purpose of payment (amount not required)								
Check here <input type="checkbox"/> if continued on attached sheet									

CONTINUE PARTS B AND C ON NEXT PAGE

Name				
ENTITY NO. 2		Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/>		
LEGAL NAME:		POSITION OR PERCENT OF OWNERSHIP		
TRADE OR OPERATING NAME:				
ADDRESS:				
BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION:				
PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE:				
Purpose of payments		Amount (actual dollars)		
		\$		
PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OVER \$7,500:				
Customer name:		Purpose of payment (amount not required)		
WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):				
Check here <input type="checkbox"/> if continued on attached sheet				
B LOBBYING: List persons for whom you or any immediate family member lobbied or prepared state legislation or state rules, rates or standards for current or deferred compensation. Do not list pay from government body in which you are an elected official or professional staff member.				
Person to Whom Services Rendered		Description of Legislation, Rules, Etc.		Compensation (Use Code)
Check here <input type="checkbox"/> if continued on attached sheet				
C FOOD TRAVEL SEMINARS Complete this section if a source other than your own governmental agency paid for or otherwise provided all or a portion of the following items to you, your spouse or dependents, or a combination thereof: 1) Food and beverages costing over \$50 per occasion; 2) Travel occasions; or 3) Seminars, educational programs or other training.				
Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
			\$	
Check here <input type="checkbox"/> if continued on attached sheet				

Information Continued

F-1 Supplement

Name	
ENTITY NO. LEGAL NAME: TRADE OR OPERATING NAME: ADDRESS: BRIEF DESCRIPTION OF THE BUSINESS/ORGANIZATION: PAYMENTS ENTITY RECEIVED FROM GOVERNMENTAL UNIT IN WHICH YOU SEEK/HOLD OFFICE: Purpose of payments	Reporting For: Self <input type="checkbox"/> Spouse <input type="checkbox"/> Dependent <input type="checkbox"/> POSITION OR PERCENT OF OWNERSHIP Amount (actual dollars) \$ PAYMENTS ENTITY RECEIVED FROM BUSINESS CUSTOMERS AND OTHER GOVERNMENT AGENCIES OVER \$7,500: Customer name: Purpose of payment (amount not required)
WASHINGTON REAL ESTATE IN WHICH ENTITY HELD A DIRECT FINANCIAL INTEREST (Complete only if ownership in the ENTITY is 10% or more and assessed value of property is over \$15,000. List street address, assessor parcel number, or legal description and county for each parcel):	

B LOBBYING: (Continued)		
Person to Whom Services Rendered	Description of Legislation, Rules, Etc.	Compensation (Use Code)

C FOOD TRAVEL SEMINARS (continued)				
Date Received	Donor's Name, City and State	Brief Description	Actual Dollar Amount	Value (Use Code)
			\$	

WSR 06-23-029**PROPOSED RULES****DEPARTMENT OF LICENSING**

[Filed November 6, 2006, 9:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-19-102.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle licenses, WAC 308-96A-306 Definitions.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on December 27, 2006, at 2:00 p.m.

Date of Intended Adoption: January 23, 2006 [2007].

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48200, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-0140, by December 26, 2006.

Assistance for Persons with Disabilities: Contact Dale R. Brown by December 26, 2006, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to clean up rule chapters, chapter 308-96A WAC was included in the new chapter 308-96B WAC.

Reasons Supporting Proposal: The repeal of this rule will allow all disabled persons rules to be in the same chapter.

Statutory Authority for Adoption: RCW 46.16.381.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Dale R. Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Toni Wilson, 1125 Washington Street S.E., Olympia, WA, (360) 902-3811.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

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

November 6, 2006

Julie Knittle

for Glenn Ball, Administrator
Title and Registration Services

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-96A-306	Definitions—Individual with disabilities special parking privileges.
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WSR 06-23-032**PROPOSED RULES****GAMBLING COMMISSION**

[Filed November 6, 2006, 3:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-03-056.

Title of Rule and Other Identifying Information: Amending section WAC 230-40-855 Acceptance of tips from patrons for house-banked activities.

Hearing Location(s): DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220, on January 12, 2007, at 9:30 a.m.

Date of Intended Adoption: January 12, 2007.

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 January 1, 2007.

Assistance for Persons with Disabilities: Contact Shirley Corbett by January 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Card room tip reporting: The proposed rule change would require more detailed procedures for the accountability of tips received by card room employees in house-banked card rooms. Under the amendments:

1. Tip ("toke") drop boxes must be locked and remain under camera coverage at all times; and
2. Tips must be redeemed under surveillance; and
3. Card room employees (CRE) must accurately report all tips to their employer. This puts the burden on the CRE to report accurately; and
4. Tips received by the cage cashier must be counted by the shift/floor supervisor or security.

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: Sharon Rees, 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 change clarifies language of rules without changing the effect.

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.

October 31, 2006

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 383, filed 4/14/00, effective 5/15/00)

WAC 230-40-855 Acceptance of tips from patrons for house-banked activities. Licensees may allow selected employees to accept tips from patrons. If allowed, tips shall be controlled in a manner to ensure they are only received by authorized persons, properly accounted for, and maintained separate from all other gaming funds. The following restrictions and procedures apply:

(1) No employee directly concerned with management, supervision, accounting, security, or surveillance shall solicit, accept or otherwise share any tip originating from any player or patron: Provided, That cage cashiers shall be allowed to accept tips.

(2) Each licensee shall establish procedures necessary to ensure that the acceptance of tips by dealers is observed by the floor supervisor and surveillance. Procedures shall include an overt display of tips received, such as tapping the table with the tip prior to placing it in the tip container.

(3) All tips must be dropped into a locked tip container which prevents the removal of chips except by unlocking. Tip containers must remain under camera coverage of the closed circuit television system at all times.

(4) Tips to the cage cashier shall be deposited directly into the tip container by the patron. Cashier tip containers shall be located outside the cage enclosure. Tips received by a cage cashier must be counted by the shift/floor supervisor or security.

~~((4))~~ (5) Tips received shall be retained by employees or pooled among employees ~~((in such manner as determined by the licensee))~~ as described in the licensee's internal controls.

~~((5))~~ (6) Licensees shall establish and implement procedures for the ~~((proper))~~ accounting of tips received by authorized card room employees. The procedures shall be fully documented in the licensee's internal controls and shall describe in detail any methods used to allocate tips. ~~((Accounting and recording of tip income shall be in sufficient detail to meet federal income tax requirements.))~~

(7) All tips received by licensed card room employees must be redeemed under surveillance at the cashier's cage. Card room employees must accurately report all tips to their employer as described in the licensee's internal controls.

(8) All pooled tips must be redeemed under surveillance at the cashier's cage, count room or a gaming table.

WSR 06-23-042
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed November 7, 2006, 12:02 p.m.]

Supplemental Notice to WSR 06-18-078.

Preproposal statement of inquiry was filed as WSR 06-13-083.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, classifications,

audit and record keeping, rates and rating system for Washington workers' compensation insurance.

Date of Intended Adoption: November 21, 2006.

Submit Written Comments to: Ronald Moore, Acting Program Manager, Employer Services, P.O. Box 44140, Olympia, WA 98504-4140, e-mail mooa235@lni.wa.gov, fax (360) 902-4729, by 5 p.m., November 14, 2006.

Assistance for Persons with Disabilities: Contact Office of Information and Assistance by November 7, 2006, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to extend the comment period from 5 p.m., November 7, 2006, to 5 p.m., November 14, 2006. Please see proposal filed in WSR 06-18-078.

Statutory Authority for Adoption: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1).

Statute Being Implemented: RCW 51.16.035, 51.32.073, 51.08.010, and 51.04.020(1).

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

Name of Agency Personnel Responsible for Drafting: Bill Moomau, Tumwater, Washington, (360) 902-4774; Implementation: Ronald Moore, Tumwater, Washington, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

November 7, 2006
 Judy Schurke
 Acting Director

WSR 06-23-043
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed November 7, 2006, 1:37 p.m.]

We request the withdrawal of a proposed rule making (CR-102) having to do with ocean crab fishing seasons filed as WSR 06-19-021 on September 11, 2006, at 1:18 p.m.

We will be starting this process anew, working with the industry to develop a more contemporary proposal.

Morris Barker
 Rules Coordinator

WSR 06-23-045
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed November 7, 2006, 1:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-15-054.

Title of Rule and Other Identifying Information: New section WAC 220-20-005 Oregon-Washington commercial license reciprocity. Provides recognition of Oregon commer-

cial licenses in the common border area of the Columbia River when Oregon recognizes Washington commercial licenses.

Hearing Location(s): Washington Department of Fish and Wildlife, Region 5 Office, 2108 Grand Boulevard, Vancouver, WA, on January 4, 2007, at 1-3 p.m.

Date of Intended Adoption: January 5, 2007.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail barkemwb@dfw.wa.gov, fax (360) 902-2944, by December 20, 2006.

Assistance for Persons with Disabilities: Contact Nancy Burkhart by December 22, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of the proposal is to recognize the validity of Oregon commercial license when fishing the Washington side of the border where the Columbia River forms a common border between the two states. This allows both Washington and Oregon commercial license holders (charter and gillnet vessels) to fish the other states portion of the Columbia River but for Oregon charter vessels to not pick up or discharge passengers from the Washington shore.

Reasons Supporting Proposal: Reduces the need for each state commercial fishers to be licensed in both states in order to fish this area.

Statutory Authority for Adoption: RCW 77.65.010.

Statute Being Implemented: RCW 77.65.010.

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

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

Name of Agency Personnel Responsible for Drafting: Morris W. Barker, 1111 Washington Street S.E., Olympia, (360) 902-2826; Implementation: Phil Anderson, 1111 Washington Street S.E., Olympia, (360) 902-2720; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No costs or record-keeping requirements will occur; however, commercial charter and gillnet vessels will save money by not being required to buy a license in both states to fish the common border boundary of the Columbia River.

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

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

November 7, 2006

Morris Barker

Rules Coordinator

NEW SECTION

WAC 220-20-005 Oregon-Washington commercial license reciprocity. The following Oregon licenses are

equivalent to Washington licenses and are valid in the concurrent waters of the Columbia River:

(1) An Oregon Columbia River gill net salmon vessel permit issued under ORS 508.775 - ORS 508.796 is equivalent to a Washington salmon gill net fishery license issued under RCW 77.65.160 (1)(a) or (c) in the concurrent waters of the Columbia River. A person who holds an Oregon Columbia River gill net salmon vessel permit may land salmon in Washington that were taken in the Columbia River salmon gill net salmon fishery.

(2) An Oregon ocean charter vessel license issued under ORS 830.435 is equivalent to a Washington charter license issued under RCW 77.65.150 in the concurrent waters of the Columbia River downstream of the bridge at Longview, except that an Oregon vessel may not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington.

WSR 06-23-060

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 8, 2006, 3:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-19-023.

Title of Rule and Other Identifying Information: WAC 308-56A-310 Personal property lien—Chattel and 308-93-445 Personal property lien—Chattel.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on December 27, 2006, at 2 p.m.

Date of Intended Adoption: January 2, 2007.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48200, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-0140, by December 5, 2006.

Assistance for Persons with Disabilities: Contact Dale R. Brown by December 5, 2006, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Subsections (3)(a) of these rules say a court order is required when the vehicle/vessel is no longer in the possession of the person claiming the lien. However, RCW 60.08.010 says the chattel lien is valid even if the chattel is returned to the owner. RCW 60.80.020 also says a person has ninety days from the date of delivery of the chattel to the owner to file the lien. A rule change is required to bring these rules into compliance with applicable laws.

Reasons Supporting Proposal: To bring the rule into compliance with law.

Statutory Authority for Adoption: RCW 88.02.070 and 88.02.100.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Dale Brown, 1125 Washington Street S.E., Olympia, WA,

(360) 902-4020; Implementation: Eric Andersen, 1125 Washington Street S.E., Olympia, WA, (360) 902-4045; and Enforcement: Scott Black, 1125 Washington Street S.E., Olympia, WA, (360) 902-3826.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

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

Glenn S. Ball, Administrator
Title and Registration Services

AMENDATORY SECTION (Amending WSR 06-17-145, filed 8/22/06, effective 9/22/06)

WAC 308-56A-310 Personal property lien—Chattel.

(1) **What is a chattel lien?** For the purposes of this section a chattel lien is a process by which a person may sell or take ownership of a vehicle when:

(a) They provide services or materials for a vehicle at the request of the registered owner; and

(b) The person who provided the services and/or materials has not been compensated.

(2) **What documents are required to obtain a certificate of ownership for a vehicle?** The required documents include:

(a) A completed affidavit of sale chattel lien form provided or approved by the department; and

(b) A certified copy of the lien filing that is filed with the county auditor; and

(c) A copy of the letter(s) sent by the lien applicant via first class mail, and certified or registered mail, to the registered and legal owners of record, including the return receipt; and

(d) ~~((A copy of the certified or registered mail, including the return receipt, to the address of the current registered and legal owners of the lien filing; and~~

~~(e))~~ Affidavit of service by mail; and

~~((f))~~ (e) Application for certificate of ownership; and

~~((g))~~ (f) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a chattel lien?** A Washington court order is required when:

(a) ~~((The vehicle is no longer in the possession of the person claiming the chattel lien; or~~

~~(b))~~ Someone other than the owner of record requested the services and/or materials; or

~~((c))~~ (b) There is no record of the vehicle on file with the department~~((; or))~~.

(4) **What laws regulate chattel liens?** Chapter 60.08 RCW regulates chattel liens.

AMENDATORY SECTION (Amending WSR 06-17-145, filed 8/22/06, effective 9/22/06)

WAC 308-93-445 Personal property lien—Chattel.

(1) **What is a chattel lien?** For the purposes of this chapter, a chattel lien is a process by which a person may sell or take ownership of a vessel when:

(a) They provide services or materials for the vessel at the request of the registered owner; and

(b) The person who provided the services and/or materials has not been compensated.

(2) **What documents are required to issue a certificate of ownership for a vessel?** The required documents include:

(a) A completed affidavit of sale chattel lien form provided or approved by the department; and

(b) A certified copy of the lien filing that is filed with the county auditor; and

(c) A copy of the letter(s) sent by the lien applicant via first class mail, and certified or registered mail, to the registered and legal owners of record, including the return receipt; and

~~(d) ((A copy of the certified or registered mail, including the return receipt, to the address of the current registered and legal owner notifying the current registered and legal owner of the lien filing, and an))~~ Affidavit of service by mail; and

(e) Application for certificate of ownership; and

(f) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a chattel lien?** A court order is required when:

(a) ~~((The vessel is no longer in the possession of the person claiming the chattel lien; or~~

~~(b))~~ Someone other than the owner of record requested the services and/or materials; or

~~((c))~~ (b) There is no record of the vessel on file with the department.

(4) **What laws regulate chattel liens?** Chapters 60.08 and 60.10 RCW regulate chattel liens.

WSR 06-23-062

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 8, 2006, 4:24 p.m.]

Continuance of WSR 06-20-128.

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

Title of Rule and Other Identifying Information: The Washington state wine commission petitioned the Washington state department of agriculture to proceed with a proposal to increase the ceiling, or top range, of the winery and grape grower mandatory assessment rate.

Date of Intended Adoption: March 19, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends the winery and grape grower mandatory assessment by increasing the top end of the assessment range as follows: For vinifera grapes grown in this state, the assessment shall not be less than three dollars per ton nor more than twelve

dollars per ton; and the proposed assessment rate for wine producers shall not be less than \$0.02 per gallon nor more than \$0.08 per gallon.

Reasons Supporting Proposal: The Washington wine commission has developed a five-year strategic plan for marketing and developing the Washington wine industry. Amending the range off [of] the assessment paid by wineries and grape growers will allow the flexibility needed to implement and fund the activities approved by the Washington wine commission in its plan.

Statutory Authority for Adoption: RCW 15.88.110 and 66.24.215.

Statute Being Implemented: Chapter 15.88 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The adoption date is being extended to allow more time to prepare for and conduct a referendum of both wine producers and grape growers prior to any adoption.

Name of Proponent: Washington wine commission, public.

November 7, 2006
Valoria H. Loveland
Director

WSR 06-23-074
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
[Filed November 13, 2006, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-12-082.

Title of Rule and Other Identifying Information: WAC 139-25-110 Career-level certification for law enforcement and corrections personnel.

Hearing Location(s): Criminal Justice Training Commission (Training Academy), 19010 1st Avenue South, Burien, WA 98148, on March 14, 2007, at 10:00 a.m.

Date of Intended Adoption: March 15, 2007.

Submit Written Comments to: Cheryl Price, 19010 1st Avenue South, Burien, WA 98148, e-mail cprice@cjtc.state.wa.us, fax (206) 835-7924, by March 7, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update the rule to reflect the actual practices of the commission in the issuance of career level certification to law enforcement and corrections personnel, and to remove the requirement for executive level certification. The requirements for executive level certification were the result of a rule by the commission for which no funding was ever obtained. Sustaining this practice without funding is no longer reasonable. The requirement for seventy-two hours of electives has been reviewed by the commission staff and found to be in need of reduction and a specific menu of acceptable elective training subjects will be offered by the

commission for the purpose of career level certification requirements. The existing rule with changes is shown below.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: RCW 43.101.080(10).

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.

November 9, 2006
Cheryl A. Price
Accreditation and
Performance Analysis Manager

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-25-110 Career-level certification for law enforcement and corrections personnel. (1) For purposes herein:

(a) The term "first-level supervisory position" means a position above operational level for which commensurate pay is authorized and is occupied by an individual who, in the upward chain of command, principally is responsible for the direct supervision of nonsupervisory employees of an agency or is subject to assignment of such responsibilities;

(b) The term "middle-management position" means a position between a first-level supervisory position and an executive position and for which commensurate pay is authorized and is occupied by an individual who, in the upward chain of command, principally is responsible for the direct supervision of supervisory employees of an agency and/or command duties(;

~~(c) The term "executive position" means the head of an agency or those individuals occupying positions designated as executive positions by the agency head).~~

(2) Any law enforcement officer or corrections employee successfully completing the training requirements specified hereinafter shall be eligible to apply to the Washington state criminal justice training commission for issuance of the certification for which such requirements are prescribed. Such certification is intended to acknowledge the recipient's accomplishment of training and experience responsive to the specific functions and responsibilities of a first-level supervisory(;) or middle management(, ~~or executive~~) position. It is not intended to supplant an effective promotional or selection process or preclude consideration of a broad scope of qualifying factors within such process.

(3) The minimum requirements of supervisory certification are set forth as follows:

(a) Possession of a basic law enforcement or corrections certificate or basic equivalency certificate of the training commission or basic certificate of the Washington state patrol; and

~~(b) ((At least three years of regular and full-time law enforcement or corrections service in a patrol, line, or non-supervisory position; and~~

~~(c) Satisfactory completion of a probationary period made applicable by the employing agency to a first-level supervisory position or, in the absence of such period, satisfactory performance throughout the initial six months of service in such position; and~~

~~(d)) Successful completion of the first level ((or first and second level)) supervision course ((of the)) provided by the training commission; and~~

~~((e)) (c) Successful completion of at least ((72)) 40 additional elective training hours intended or approved for the first-level supervisory position.~~

(4) The minimum requirements for middle management certification are set forth as follows:

~~(a) ((At least two years of full-time and regular service in a first-level supervisory position; and~~

~~(b) Satisfactory completion of a probationary period made applicable by the employing agency to a middle management position or, in the absence of such period, satisfactory performance throughout the initial six months of service within such position; and~~

~~(e)) Possession of the supervisory certificate of the training commission; and~~

~~((d)) (b) Successful completion of a middle management course ((ef)) provided by the training commission; and~~

~~((e)) (c) Successful completion of at least ((72)) 40 additional elective training hours intended or approved for the middle management position.~~

(5) ~~((The minimum requirements for executive certification are set forth as follows:~~

~~(a) At least two years of full-time and regular service in a middle management position; and~~

~~(b) Possession of the middle management certificate of the training commission; and~~

~~(c) Successful completion of the agency administration and executive management core courses of the training commission; and~~

~~(d) Successful completion of at least 72 additional elective training hours intended or approved for the executive position.~~

~~(6) Any application for certification provided herein shall be submitted in writing on an approved form to the executive director of the training commission or designee.~~

~~(7)) Education and training programs successfully completed by the applicant and not sponsored or otherwise approved by the training commission may be considered in any determination of satisfaction of training requirements prescribed herein. Any such elective training must have been completed within four years of the date that application is made for certification. Such determinations and any other determinations relating to equivalent or alternative training shall be made by the executive director of the training commission or designee.~~

~~((8)) (6) Any requests for exception to or variance within any provision or requirements set forth herein may be submitted in writing by the individual seeking certification to the executive director or designee, who shall have dispositive authority in the matter.~~

WSR 06-23-076

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 06-14—Filed November 13, 2006, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-126.

Title of Rule and Other Identifying Information: This proposal will consolidate air quality program fees into a new chapter, chapter 173-455 WAC, Air quality fee rule, as well as add two new fees. The two new fees will be for air pollution standards variance and portable/temporary source permits. Ecology is proposing to move fee sections, without change, from the following existing chapters: Chapter 173-400 WAC, General regulations for air pollution sources; chapter 173-407 WAC, Carbon dioxide mitigation program for fossil-fueled thermal electric generating facilities; chapter 173-433 WAC, Solid fuel burning devices; chapter 173-491 WAC, Emission standards and controls for sources emitting gasoline vapors; and chapter 173-495 WAC, Weather modification.

Hearing Location(s): Department of Ecology Eastern Regional Office, 2nd Floor Large Conference Room, 4601 North Monroe Street, Spokane, WA 99205, on January 8, 2007, at 7:00 p.m.

Date of Intended Adoption: February 15, 2007.

Submit Written Comments to: Leigh Fiedler, P.O. Box 47600, Olympia, WA 98504-7600, e-mail lfie461@ecy.wa.gov, fax (360) 407-7534, received by 5:00 p.m. January 15, 2007.

Assistance for Persons with Disabilities: Contact Tami Dahlgren at (360) 407-6800, by December 29, 2006, TTY 1-800-833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Propose a new chapter 173-455 WAC, Air quality fee rule that will include air quality program fees (from existing chapters as well as some new fees). The new fees will be for the following activities: Air pollution standards variance; portable/temporary source permits; and move fees from existing WAC 173-400-045, 173-400-104, 173-400-116, 173-407-040, 173-433-170, 173-491-030, 173-495-060, 173-495-065, and 173-495-070, to incorporate those fees into the new chapter without change.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: Chapter 70.94 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: Leigh Fiedler, department of ecology,

(360) 407-7530; and Enforcement: Sarah Rees, department of ecology, (360) 407-6823.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule meets the exemptions "rules that set or adjust fees or rates pursuant to legislative standards," pursuant to chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. This rule meets the exemption "rules that set or adjust fees or rates pursuant to legislative standards" pursuant to RCW 34.05.328 (5)(b)(vi).

November 9, 2006
Polly Zehm
Deputy Director

Chapter 173-455 WAC

AIR QUALITY FEE REGULATION

NEW SECTION

WAC 173-455-010 Overview. It is the purpose of this chapter to consolidate most of the air quality related fees into one chapter. This will allow the regulated community easier access to applicable fees.

NEW SECTION

WAC 173-455-020 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings:

(1) **"Fossil fuel"** means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

(2) **"Solid fuel burning device"** (same as solid fuel heating device) means a device that burns wood, coal, or any other nongaseous or nonliquid fuels, and includes any device burning any solid fuel except those prohibited by WAC 173-433-120. This also includes devices used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one million British thermal units per hour.

(3) **"Weather modification and control"** means changing or attempting to change or control by artificial methods, the natural development of any or all atmospheric cloud forms or precipitation forms which occur in the troposphere.

NEW SECTION

WAC 173-455-030 Applicability. The provisions of this chapter apply to air quality related activities regulated by the department of ecology. The provisions of this chapter do not apply in counties regulated by a local air agency.

NEW SECTION

WAC 173-455-035 Fee requirement. All programs and services in this chapter require a fee. Unless otherwise stated, no approval of a permit or service for any activity cov-

ered in this chapter will be valid until the required fee is paid in full.

NEW SECTION

WAC 173-455-038 Fees not included. This chapter contains all fees required by the air quality program except the following:

(1) Air operating permit program - fees can be found in chapter 173-401 WAC.

(2) Ag burning - fees can be found in chapter 173-430 WAC.

(3) Motor vehicle emission inspection - fees can be found in chapter 173-422 WAC.

NEW SECTION

WAC 173-455-040 Air contaminant source registration fees. (1) Registration fee determination. In counties without an active local air pollution control authority, ecology shall establish registration fees based on workload using the process outlined below. The fees collected shall be sufficient to cover the direct and indirect costs of administering the registration program within ecology's jurisdiction.

(2) Budget preparation. Ecology shall conduct a workload analysis projecting resource requirements for administering the registration program. Workload estimates shall be prepared on a biennial basis and shall estimate the resources required to perform registration program activities listed in WAC 173-400-099(2). Ecology shall prepare a budget for administering the registration program using workload estimates identified in the workload analysis for the biennium.

(3) Registration fee schedule. Ecology's registration program budget shall be distributed to sources located in its jurisdiction according to the following:

(a) Sources requiring periodic registration and inspections shall pay an annual registration fee of four hundred dollars.

(b) Sources requiring annual registration and inspections shall pay a registration fee comprised of the following three components:

(i) Flat component. This portion of a source's fee shall be calculated by the equal division of thirty-five percent of the budget amount allocated to annual registration sources by the total number of sources requiring annual registration.

(ii) Complexity component. Each source is assigned a complexity rating of 1, 3, or 5 which is based on the estimated amount of time needed to review and inspect the source. This portion of the fee is calculated by dividing forty percent of the budget amount allocated to annually registered sources by the total complexity of sources located in ecology's jurisdiction. The quotient is then multiplied by an individual source's complexity rating to determine that source's complexity portion of the fee.

(iii) Emissions component. This portion of a source's fee is calculated by dividing twenty-five percent of the budget amount allocated to annually registered sources by the total billable emissions from those sources. The quotient is then multiplied by an individual source's billable emissions to determine that source's emissions portion of the fee. Billable

emissions include all air pollutants except carbon monoxide and total suspended particulate.

(4) Regulatory orders. Owners or operators registering a source as a synthetic minor must obtain a regulatory order which limits the source's emissions. The owner will be required to pay a fee based on the amount of time required to research and write the order multiplied by an hourly rate of sixty dollars.

(5) Fee reductions for pollution prevention initiatives. Ecology may reduce registration fees for an individual source if that source demonstrates the use of approved pollution prevention measures or best management practices beyond those required of the source.

(6) Fee reductions for economic hardships. If a small business owner believes the registration fee results in an extreme economic hardship, the small business owner may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the registration fee through to customers; average annual profits; and cumulative effects of multiple site ownership. In no case will a registration fee be reduced below two hundred dollars.

(7) Fee payments. Fees specified in this section shall be paid within thirty days of receipt of ecology's billing statement. All fees collected under this regulation shall be made payable to the Washington department of ecology. A late fee surcharge of fifty dollars or ten percent of the fee, whichever is more, may be assessed for any fee not received after the thirty-day period.

(8) Dedicated account. All registration fees collected by ecology shall be deposited in the air pollution control account.

(9) Tracking revenues, time, and expenditures. Ecology shall track revenues collected under this subsection on a source-specific basis. Ecology shall track time and expenditures on the basis of ecology budget functions.

(10) Additional registration fee for fossil-fueled electric generating facilities. A fossil-fueled electric generating facility subject to the provisions of chapter 80.70 RCW and RCW 70.94.892, is subject to additional fees pursuant to that chapter.

NEW SECTION

WAC 173-455-050 Carbon dioxide mitigation program fees. (1) **Statutory authorization.** RCW 70.94.892 authorizes the department to determine, assess, and collect fees sufficient to cover costs to review and approve or deny the carbon dioxide mitigation plan components of an order of approval. The order of approval will specify costs to monitor conformance related to the carbon dioxide mitigation plan.

(2) **Fees.** The fees for the carbon dioxide mitigation program are described in this section and listed in the table below. The fees listed are added to the fees established in

chapters 173-400 and 173-401 WAC, when the carbon dioxide mitigation plan requirements are triggered.

Activity	Fee
a. Application review	\$65.00/hr. not to exceed \$500.00
b. Mitigation plan approval	
i. Payment to third party	\$100.00
ii. Purchase of CO ₂ credits	\$65.00/hr.
iii. Direct investment	\$65.00/hr.
c. Routine compliance monitoring	
i. Payment to third party	\$100.00 annually until full amount paid
ii. Purchase of CO ₂ credits	\$65.00/hr.
iii. Applicant controlled project	\$65.00/hr.

(3) The department or authority may use RCW 70.94.085 to structure a cost-reimbursement agreement with the applicant.

NEW SECTION

WAC 173-455-060 Solid fuel retail sales fee. (1) A person selling a solid fuel burning device at retail shall collect a fee from the buyer, pursuant to RCW 70.94.483.

(2) The fee shall be:

(a) Set at a minimum of thirty dollars on January 1, 1992. Thereafter, ecology may annually adjust the fee to account for inflation as determined by the office of the state economic and revenue forecast council. Adjustments in the fee should be rounded down to the nearest dollar.

(b) Applicable to all new and used solid fuel burning devices.

(c) Procedures for masonry fireplaces. Generally, contractors will collect, pay, and report the fee to the department of revenue on the combined excise tax return for the tax reporting period during which the retail sales tax is billed to the customer for the construction of the masonry fireplace. (See WAC 458-20-170 for a detailed explanation.) Collection and payment of the fee by contractors shall be in accordance with the following:

(i) A masonry contractor or other subcontractor who builds a masonry fireplace. The retail sale occurs at the time the general or prime contractor or customer is billed for the work. The masonry contractor or other subcontractor must collect the fee and pay it to the department of revenue, unless the masonry contractor or other subcontractor has received a resale certificate from the general or prime contractor. The fee shall be reported on the combined excise tax return.

(ii) A general or prime contractor building a custom building. The retail sale occurs at the time the customer is billed for the construction. The fee is charged and reported with the first progress payment after the masonry fireplace has been substantially completed. If a general or prime contractor subcontracts the work on a custom building to a masonry or other contractor, the general or prime contractor may give the masonry or other subcontractor a resale certifi-

cate. The general or prime contractor is responsible to collect the fee and pay it to the department of revenue. The fee is reported on the combined excise tax return.

(iii) A general or prime contractor building a speculation building. The fee is required to be paid at the time the fireplace is complete. The fee must be reported to the department of revenue on a combined excise tax return and paid to the department of revenue. If the prime or general contractor subcontracts the building of the masonry fireplace to a masonry contractor or other subcontractor, the general or prime contractor may not give a resale certificate to the masonry or other subcontractor. The masonry or other subcontractor must collect and pay the fee to the department of revenue as provided in (c)(i) of this subsection.

(d) Procedures for all other solid fuel burning devices. Collected by the retailer at the time of sale and remitted to the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW.

(3) If the retailer or contractor fails to collect and remit the fee to the department of revenue as prescribed in chapter 82.08 RCW, the retailer or contractor shall be personally liable to the state for the amount of the fee, with subsequent actions taken in accordance with the collection provisions of chapter 82.32 RCW.

(4) Beginning July 1, 1990, and each calendar quarter thereafter, the funds collected under RCW 70.94.483 shall be used solely for the purposes of public education and enforcement of the solid fuel burning device program. The department shall distribute the funds from the woodstove education and enforcement account as follows:

(a) Sixty-six percent of the funds shall be distributed to those local air authorities with enforcement programs, based upon the fraction of the total state population residing in the counties within their respective jurisdictions. Population figures used to establish this fraction shall be determined by the office of financial management. Where an activated local air authority does not exist or does not implement an enforcement program, or elects not to receive the funds, ecology shall retain the funds that would otherwise be distributed under this subsection; and

(b) Thirty-four percent of the funds shall be distributed to ecology for the purposes of enforcement and educating the public about:

(i) The effects of solid fuel burning device emissions upon health and air quality; and

(ii) Methods of achieving better efficiency and emission performance from solid fuel burning devices.

NEW SECTION

WAC 173-455-070 Weather modification fees—Procedures for issuing license. In accordance with WAC 173-495-060, an applicant shall pay a fee of one hundred twenty-five dollars to the state of Washington for a license.

NEW SECTION

WAC 173-455-080 Weather modification fees—Period of license. In accordance with WAC 173-495-060, an applicant shall pay a fee of one hundred twenty-five dollars

made payable to the state of Washington for a license renewal.

NEW SECTION

WAC 173-455-090 Weather modification fees—Permit requirements. In accordance with WAC 173-495-070, the applicant shall pay a permit fee of one and six tenths of one percent of the estimated cost of the operation. The estimated cost will be computed by ecology from available data.

NEW SECTION

WAC 173-455-100 Control technology fees. (1) General. Ecology may assess and collect a fee as authorized in RCW 70.94.154 and described in subsections (2) through (5) of this section.

(2) Fee schedule for source-specific determinations where RACT analysis and determination are performed by ecology.

(a) Basic RACT analysis and determination fee:

(i) Low complexity (the analysis addresses one type of emission unit) - one thousand five hundred dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - seven thousand five hundred dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - fifteen thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, a fee will be required for a RACT analysis and determination for an emission unit or multiple emission units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - two thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, the following fees will be required as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ten tons per year of any toxic air pollutant - one thousand dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ten tons per year of any toxic air pollutant - two thousand dollars.

(3) Fee schedule for source-specific determinations where RACT analysis is performed by the source and review and determination conducted by ecology.

(a) Basic RACT review and determination fees:

(i) Low complexity (the analysis addresses one type of emission unit) - one thousand dollars;

(ii) Moderate complexity (the analysis addresses two to five types of emissions units) - five thousand dollars;

(iii) High complexity (the analysis addresses more than five types of emission units) - ten thousand dollars.

(b) Additional charges based on criteria pollutant emissions: In addition to those fees required under (a) of this subsection, a fee will be required for a RACT analysis and deter-

mination for an emission unit or multiple emissions units of uniform design that, individually or in the aggregate, emit one hundred tons per year or more of any criteria pollutant - one thousand dollars.

(c) Additional charges based on toxic air pollutant emissions: In addition to those fees required under (a) and (b) of this subsection, the following fees will be required as applicable:

(i) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than two tons per year but not more than ten tons per year of any toxic air pollutant - five hundred dollars; or

(ii) RACT analysis and determination for an emissions unit or multiple emissions units of uniform design that, individually or in the aggregate, emit more than ten tons per year of any toxic air pollutant - one thousand dollars.

(4) Fee schedule for reviews authorized under RCW 70.94.153 for the replacement or substantial alteration of control technology.

(a) Notice of construction application. Review and approval of notice of construction application (NOCA) for replacement or substantial alteration of control technology - three hundred fifty dollars.

(b) RACT analysis and determination. Review and approval of a RACT analysis and determination for affected emission unit - five hundred dollars.

(5) Fee schedule for categorical RACT determinations. Fees for categorical RACT determinations (for categories with more than three sources) shall be assessed as shown below. The fees described in (a) of this subsection shall be based on the most complex source within a category. Except as provided in (b) and (d) of this subsection, fees for individual sources in the category will be determined by dividing the total source category fee by the number of sources within the category.

(a) RACT analysis and determination (RACT analysis performed by ecology with assistance from sources):

(i) Low complexity source category (average source emissions of individual criteria pollutants are all less than twenty tons per year, average source emissions of individual toxic air pollutants are all less than two tons per year, or the analysis addresses one type of emission unit) - twenty-five thousand dollars;

(ii) Moderate complexity source category (average source emissions of one or more individual criteria pollutants are greater than twenty tons per year and less than one hundred tons per year, average source emissions of one or more individual toxic air pollutants are greater than two tons per year and less than ten tons per year, or the analysis addresses two to five types of emissions units) - fifty thousand dollars; or

(iii) High complexity source category (average source emissions of one or more individual criteria pollutants exceed one hundred tons per year, average source emissions of one or more individual toxic air pollutants exceed ten tons per year, or the analysis addresses more than five types of emission units) - one hundred thousand dollars.

(b) If an emission unit is being evaluated for more than one categorical RACT determination within a five-year

period, ecology will charge the owner or operator of that emission unit one fee and the fee will reflect the higher complexity categorical RACT determination.

(c) Ecology may adjust the fee to reflect workload savings from source involvement in source category RACT determination.

(d) Ecology may approve alternate methods for allocating the fee among sources within the source category.

(6) Small business fee reduction. The RACT analysis and determination fee identified in subsections (2) through (5) of this section may be reduced for a small business.

(a) To qualify for the small business RACT fee reduction, a business must meet the requirements of "small business" as defined in RCW 43.31.025.

(b) To receive a fee reduction, the owner or operator of a small business must include information in an application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the RACT analysis and determination fee shall be reduced to the greater of:

(i) Fifty percent of the RACT analysis and determination fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the RACT analysis and determination fees through to customers; and average annual profits. In no case will a RACT analysis and determination fee be reduced below one hundred dollars.

(7) Fee reductions for pollution prevention initiatives. Ecology may reduce RACT analysis and determination fees for an individual source if that source is using approved pollution prevention measures.

(8) Fee payments. Fees specified in subsection (4)(a) of this section shall be paid at the time a notice of construction applications is submitted to the department. Other fees specified in subsections (2) through (7) of this section shall be paid no later than thirty days after receipt of an ecology billing statement. For fees specified in subsection (5) of this section, a billing for one-half of the payment from each source will be mailed when the source category rule-making effort is commenced as noted by publication of the CR-101 form in

the *Washington State Register*. A billing for the second half of the payment will be mailed when the proposed rule is published in the *Washington State Register*. No order of approval or other action approving or identifying a source to be at RACT will be issued by the department until all fees have been paid by the source. All fees collected under this regulation shall be made payable to the Washington department of ecology.

(9) Dedicated account. All control technology fees collected by the department from permit program sources shall be deposited in the air operating permit account created under RCW 70.94.015. All control technology fees collected by the department from nonpermit program sources shall be deposited in the air pollution control account.

(10) Tracking revenues, time, and expenditures. Ecology shall track revenues on a source-specific basis. For purposes of source-specific determinations under subsections (2) through (4) of this section, ecology shall track time and expenditures on the basis of source complexity categories. For purposes of categorical determinations under subsection (5) of this section, ecology shall track time and expenditures on a source-category basis.

(11) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.

NEW SECTION

WAC 173-455-110 Registration fees for sources emitting gas vapors. Registration fees shall accompany the registration form outlined in WAC 173-491-030 and are as follows: Gasoline loading terminals: Five hundred fifty dollars; bulk gasoline plants: Two hundred twenty dollars; gasoline dispensing facilities: One hundred ten dollars, or a greater amount duly adopted by a local air pollution authority. The amount of the fees collected shall only be used to administer the registration program for facilities subject to this chapter.

NEW SECTION

WAC 173-455-120 New source review fees. (1) Applicability. Every person required to submit a notice of construction application to the department of ecology as authorized in RCW 70.94.152 for establishment of any proposed new source or emissions unit(s) shall pay fees as set forth in subsections (2) and (3) of this section. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee as required by the local permitting authority. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee to ecology to cover the costs of review pursuant to WAC 173-400-720, second tier analysis pursuant to WAC 173-460-090, and risk management decisions pursuant to WAC 173-460-100 as set forth in subsection (3) of this section. Fees assessed under this section shall apply without regard to whether an order of approval is issued or denied.

(2) Basic review fees. All owners or operators of proposed new sources are required to pay a basic review fee. The basic review fee covers the costs associated with preapplication assistance, completeness determination, BACT determination, technical review, public involvement and

approval/denial orders. Complexity determination shall be based on the project described in the notice of construction application. The basic review fees are either (a) or (b) of this subsection:

(a) Basic new source review fees.

Source type	Clarifying criteria	Fee
Basic Review Fees		
Low complexity source	Emissions increase of individual pollutants are all less than one-half of the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of individual toxic air pollutants are all less than 2.0 tons/year	\$1250
Moderate complexity	Emissions increase of one or more individual pollutants are greater than one-half of, and less than, the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than 2.0 tons/year and less than 10.0 tons/year	\$8000
High complexity	Emissions increase of one or more pollutants are greater than the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than 10.0 tons/year	\$18,000

(b) New source review fees for specific source categories.

Source type	Clarifying criteria	Fee
Dry cleaners		\$250
Gasoline stations		\$250
Storage tanks		
	< 20,000 gallons	\$250
	20,000 - 100,000 gallons	\$650
	> 100,000 gallons	\$900

Source type	Clarifying criteria	Fee
Chromic acid plating and anodizing identified in WAC 173-460-060		\$250
Solvent metal cleaners identified in WAC 173-460-060		\$250
Abrasive blasting identified in WAC 173-460-060		\$250
New emission units or activities that qualify as insignificant emission units under WAC 173-401-530 whether located at a chapter 173-401 WAC source or nonchapter 173-401 WAC source		\$250
Application for coverage under a general order of approval	WAC 173-400-560 and criteria included in a specific general order of approval	\$500
Nonroad engines		
Less than a total of 500 installed horsepower		\$500
More than 500 horsepower and less than a total of 2000 installed horsepower		\$900
More than 2000 horsepower and less than a total of 5000 installed horsepower		\$2000
More than 5000 horsepower and less than a total of 10,000 installed horsepower		\$4000
More than a total of 10,000 installed horsepower		\$7500

(c) Additional units. An owner or operator proposing to build more than one identical emission unit shall be charged a fee for the additional units equal to one-third the basic review fee of the first unit.

(3) Additional charges. In addition to those fees required under subsection (2)(a) through (c) of this section, the following fees will be required as applicable:

(a) Major NSR actions under WAC 173-400-720 and 173-400-112.

Activity	Clarifying criteria	Fee
Prevention of significant deterioration review or increase in a PAL limitation	WAC 173-400-720	\$15,000

Activity	Clarifying criteria	Fee
Establishing LAER and offset requirements	WAC 173-400-112	\$10,000
Establishing or renewal of clean unit status	Per 40 CFR 52.21(y)	\$1500
Pollution control project approval	Per 40 CFR 52.21(z)	\$1500
Establishment of a PAL	Per 40 CFR 52.21(aa)	\$4000
Renewal of a PAL	Per 40 CFR 52.21(aa)	\$4000
Expiration of a PAL	Per 40 CFR 52.21(aa)	\$12,000
PSD permit revisions		
All except administrative	WAC 173-400-750	\$10,000
Administrative revisions	WAC 173-400-750	\$1500

(b) Other actions.

Activity	Clarifying criteria	Fee
Tier II toxic air pollutant impact review		\$10,000
Tier III toxic air pollutant impact review		\$10,000
Case-by-case MACT determinations		\$12,500
Fossil-fueled electric generating unit	Applicability criteria found in chapter 80.70 RCW	Fees listed in rule implementing RCW 70.94.892 and chapter 80.70 RCW

Changes to existing orders of approval, Tier I review, Tier II review, or other action identified above.

Activity	Clarifying criteria	Fee
Modification to order of approval		50% of the fee charged in WAC 173-400-116 (2)(a)
Modification of Tier II approval		50% of the fee charged in WAC 173-400-116 (2)(b)

(4) Small business fee reduction. The new source review fee identified in subsections (2) and (3) of this section may be reduced for a small business.

(a) To qualify for the small business new source review fee reduction, a business must meet the requirements of

"small business" as defined in RCW 19.85.020. In RCW 19.85.020, "small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

(b) To receive a fee reduction, the owner or operator of a small business must include information in the application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and, if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the new source review fee shall be reduced to the greater of:

(i) Fifty percent of the new source review fee; or

(ii) Two hundred fifty dollars.

(e) If, due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the new source review fees through to customers; and average annual profits. In no case will a new source review fee be reduced below one hundred dollars.

(5) Fee reductions for pollution prevention initiatives. Ecology may reduce the fees defined in subsections (2) and (3) of this section where the owner or operator of the proposed source demonstrates that approved pollution prevention measures will be used.

(6) Fee payments. Fees specified in subsections (2) through (5) of this section shall be paid at the time a notice of construction application is submitted to the department. A notice of construction application is considered incomplete until ecology has received the appropriate new source review payment. Additional charges assessed pursuant to subsection (3) of this section shall be due thirty days after receipt of an ecology billing statement. All fees collected under this regulation shall be made payable to the Washington department of ecology.

(7) Dedicated account. All new source review fees collected by the department shall be deposited in the air pollution control account.

(8) Tracking revenues, time, and expenditures. Ecology shall track revenues collected under this subsection on a source-specific basis. Ecology shall track time and expenditures on the basis of complexity categories.

(9) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.

NEW SECTION

WAC 173-455-130 Air pollution standards variance fee. The department shall charge a fee of sixty-five dollars per hour to process a variance request in accordance with WAC 173-400-180.

NEW SECTION

WAC 173-455-140 Portable and temporary source permit fee. The department shall charge a fee of sixty-five dollars per hour to process and write a portable or temporary source permit issued under WAC 173-400-035.

WSR 06-23-084

WITHDRAWAL OF PROPOSED RULES GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed November 14, 2006, 7:59 a.m.]

WAC 230-12-340, proposed by the gambling commission in WSR 06-10-011 appearing in issue 06-10 of the State Register, which was distributed on May 17, 2006, 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 06-23-086

WITHDRAWAL OF PROPOSED RULES GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed November 14, 2006, 8:00 a.m.]

WAC 230-02-101, proposed by the gambling commission in WSR 06-10-026 appearing in issue 06-10 of the State Register, which was distributed on May 17, 2006, 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 06-23-087

WITHDRAWAL OF PROPOSED RULES GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed November 14, 2006, 8:00 a.m.]

WAC 230-40-610, proposed by the gambling commission in WSR 06-10-027 appearing in issue 06-10 of the State Register

ter, which was distributed on May 17, 2006, 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 06-23-093
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed November 15, 2006, 12:13 p.m.]

This letter is official notification that the department has withdrawn its rule-making proposal (CR-102) on WAC 296-20-03014 Which drugs have specific limitations. The proposed rule was published in WSR 06-21-092. Its purpose was to clarify the department's and self-insurers' coverage of intrathecal pumps and medications administered via the pump.

The department's primary concern continues to be safety and effectiveness for injured workers and victims of crime. This proposed rule making is being withdrawn pending review of safety data from the manufacturers of this device and the Food and Drug Administration.

If you have any questions about the withdrawal of this proposed rule making, please contact Jamie Lifka at (360) 902-4941 or Josh Swanson at (360) 902-6805.

Judy Schurke
Acting Director

WSR 06-23-099
PROPOSED RULES
HEALTH CARE AUTHORITY
(Community Health Services)

[Order 06-07—Filed November 16, 2006, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-19-082.

Title of Rule and Other Identifying Information: WAC 182-20-600 Community health care collaborative program, establish rules regarding the administration and implementing the community health care collaborative grant program established pursuant to E2SSB 6459, chapter 67, Laws of 2006. Chapter 182-20 WAC will be amended to implement the new collaborative grant program by establishing procedures for determining eligibility and distribution of funds.

Hearing Location(s): Washington State Health Care Authority, 676 Woodland Square Loop S.E., Lacey, WA 98504, on December 27, 2006, at 9:30 a.m.

Date of Intended Adoption: December 28, 2006.

Submit Written Comments to: Jan Ward Olmstead, 676 Woodland Square Loop S.E., P.O. Box 42721, Lacey, WA 98504, e-mail Jan Ward Olmstead, fax (360) 923-2605, by close of business on December 27, 2006.

Assistance for Persons with Disabilities: Contact Nikki Johnson by December 20, 2006, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to use a public process, allowing for input to the development and implementation of the community health care collaborative grant program. The rule will allow for community health services, under the direction of the administrator of the authority, to administer the program, determine eligibility, and allocate grant funds to community-based organizations to develop innovative health care delivery models that address: Access to medical treatment; efficient use of health care resources; or improve quality of care.

Reasons Supporting Proposal: The 2006 Washington state legislature created the community health care collaborative grant program and appropriated funds in the 2005-07 biennium to Washington state health care authority for the implementation of the program. The proposed rules are necessary to administer the program.

Statutory Authority for Adoption: RCW 41.05.160, 41.05.220, and 41.05.230.

Statute Being Implemented: Chapter 67, Laws of 2006.

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

Name of Proponent: Washington state health care authority, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jan Ward Olmstead, 676 Woodland Square Loop S.E., Lacey, WA (360) 923-2803.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the health care authority rules unless requested by the joint administrative rules committee or applied voluntarily.

November 15, 2006

Jason Siems

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-06, filed 2/7/01, effective 3/10/01)

WAC 182-20-001 Purpose. The purpose of this chapter is to establish procedures at the Washington state health care authority for determining eligibility and distribution of funds for:

(1) Medical, dental, and migrant services to community health clinics under section 214(3), chapter 19, Laws of 1989 1st ex. sess., including other state general fund appropriations for medical, dental, and migrant services in community health clinics since 1985; and

(2) Other grant programs assigned to the authority. The authority shall disburse grant awards to community-based organizations to develop innovative health care delivery models that address:

(a) Access to medical treatment;

- (b) Efficient use of health care resources; or
- (c) Improve quality of care.

NEW SECTION

WAC 182-20-600 Community health care collaborative program. The community health care collaborative grant program was established July 1, 2006, to develop innovative health care delivery models. The funding covers a two-year cycle; half of the award to be distributed throughout the first year and the final half distributed throughout the second year upon evidence of successful program progress and achieving grant objectives, based upon available funding.

NEW SECTION

WAC 182-20-610 Administration. The authority is responsible for:

- (1) Preaward development.
 - (a) Develop criteria for the selection of community-based organizations to receive grant funding;
 - (b) Develop equitable standards governing the granting of awards;
 - (c) Determine nature and format of the application and process.
- (2) Award determinations.
 - (a) Consult with representatives, appointed by the secretary of the department of health, the assistant secretary of health and recovery services administration within the department of social and health services, and the office of the insurance commissioner to make recommendations for final applicant selection and grant determination;
 - (b) The administrator will review recommendations and make final determination based upon recommendations, funds available and utilization of resources to meet the goals of the program;
 - (c) Conduct on-site visits to ensure applicant's ability to achieve grant objectives and performance measures identified in the application;
 - (d) Contract with successful applicants; and
 - (e) Disburse grant funds according to program policy.
- (3) Post-award actions.
 - (a) Review periodic progress reports from contractors;
 - (b) Conduct on-site visits of contractors to provide assistance and ensure compliance of grant objectives;
 - (c) Consult with representatives from department of health, the assistant secretary of health and recovery services administration within the department of social and health services, and office of the insurance commissioner, one year following initial disbursement, to make recommendations to administrator for disbursement of the second half of grant funds, based upon performance measures identified in the application and evidence of successful program progress and achieving grant objectives;
 - (d) The administrator will review and make final determination for grant disbursements; and
 - (e) Compile a report to the governor and legislature on July 1, 2008, which:
 - (i) Describes organizations and programs funded;
 - (ii) Describes and analyzes results achieved;

- (iii) Makes recommendations for improvements to the program; and
- (iv) Highlights best practices that can be replicated state-wide.

NEW SECTION

WAC 182-20-620 Application process. (1) Eligibility.

- (a) Applicants must provide the following in the application format prescribed by the authority:
 - (i) Evidence of private, nonprofit, tax exempt status incorporated in Washington state or public agency status under the jurisdiction of a local, county, or tribal government;
 - (ii) Evidence of the specific geographic region served and a formal collaborative governing structure by documentation that may include, but is not limited to:
 - (A) Bylaws;
 - (B) Agreements;
 - (C) Contracts;
 - (D) Memorandum of understanding;
 - (E) Minutes;
 - (F) Letters; or
 - (G) Other communications;
 - (iii) Amount of funds requested and how the dollars will be spent;
 - (iv) Data to evaluate program progress and grant objectives.
- (b) Applicants will be evaluated competitively on their ability to:
 - (i) Address documented health care needs in the specific region served;
 - (ii) Engage key community members;
 - (iii) Show evidence of matching funds of at least two dollars for each grant dollar requested. All matching fund contributions, including cash and in-kind, shall meet the criteria determined by the administrator and included in the application guidelines;
 - (iv) Ability to meet the documented health care needs and address sustainability of programs;
 - (v) Show innovation in program approaches that could be replicated throughout the state;
 - (vi) Make efficient and cost-effective use of funds by simplifying administration affecting the health care delivery system;
 - (vii) Clearly describe size of organization, program objectives, and populations served; and
 - (viii) Meet the reporting requirements of the authority.
- (c) Application access.
 - (i) The call for grant applications will be made by posting the announcement to the authority's official web site and by notification sent to interested parties.
 - (ii) To be placed on the interested parties distribution list, send contact information, including mailing and e-mail addresses to community health care collaboration at Washington State Health Care Authority, P.O. Box 42721, Olympia, Washington 98504-2721.
- (2) The guidelines and application forms will be available on the authority's official web site and included with the published guidelines distributed by e-mail to those who request an application. The application will be available in

hard copy and sent by United States mail upon request. Applications must be completed and submitted in the format and filed by the deadlines prescribed by the authority and published in the guidelines.

WSR 06-23-116
PROPOSED RULES
WASHINGTON STATE LOTTERY

[Filed November 20, 2006, 12:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-042.

Title of Rule and Other Identifying Information: Hit 5 Draw game rules, to create a new draw game where a Hit 5 ticket will be computer generated as a receipt evidencing payment. One or more plays will be evidenced in the Hit 5 ticket. Tickets will be issued by a licensed lottery retailer and will list the set of five-number plays that belong to the ticket holder. The game's top prize will be the cashpot. The lottery drawing official will be lottery personnel designated by the director to conduct the drawings. The game play will be a number of any play integers from 1 through 39 inclusive. The game grid will be a field of 39 numbers found on the play slip. Play will consist of one selection of five numbers. The play slip will be a mark-sensitive game card used by players of Hit 5 to select play. A player may choose number selections made by the lottery terminal, a random number generator operated by the computer, commonly referred to as "quick pick."

Hearing Location(s): Washington Lottery, 814 East 4th Avenue, Olympia, WA 98506, on January 2, 2007, at 10:00 a.m.

Date of Intended Adoption: January 3, 2007.

Submit Written Comments to: Jana Jones, P.O. Box 43000, Olympia, WA 98506, e-mail jjones@walottery.com, fax (360) 586-1039, by December 29, 2006.

Assistance for Persons with Disabilities: Contact Joan Reuell by December 29, 2006, TTY (360) 586-0933 or (360) 664-4818.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule creates a new lottery draw game to replace the current lottery draw game of quinto. It is proposed in order to produce the maximum amount of net revenues for the state, consonant with the dignity of the state and the general welfare of the people.

Reasons Supporting Proposal: The maximum net revenues produced by the draw game of quinto have progressively declined in recent years.

Statutory Authority for Adoption: RCW 67.70.040 (1)(3).

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Lottery commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jana Jones, Washington's Lottery, (360) 664-4833; Imple-

mentation: Michael Cousins, Washington's Lottery, (360) 664-4728; and Enforcement: Len Brudvik, Washington's Lottery, (360) 664-4742.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The only business allowed by law to sell lottery products are existing licensed lottery retailers.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule making is not subject to RCW 34.05.328 (5)(a)(i), nor is the agency applying this section to this rule making. See RCW 34.05.328 (5)(d).

Friday, November 17, 2006

Jana L. Jones

Director of Legal Services

Chapter 315-39 WAC

HIT 5 GAME RULES

NEW SECTION

WAC 315-39-010 Definitions for Hit 5 Game. (1) Number: Any play integer from 1 through 39 inclusive.

(2) Game grids: A field of 39 numbers found on the play slip.

(3) Play: One selection of five numbers.

(4) Play slip: A mark-sensitive game card used by players of Hit 5 Game to select plays.

(5) Hit 5 Game ticket: A computer-generated receipt evidencing payment for one or more plays in the Hit 5 Game. Tickets shall be issued by a licensed lottery retailer and shall list the set of five-number plays that belong to the ticket holder.

(6) Cashpot: The game's top prize.

(7) Lottery drawing official: Lottery personnel designated by the director to conduct drawings.

NEW SECTION

WAC 315-39-020 Price of Hit 5 Game play. The price of each Hit 5 Game play shall be \$1.00. Each Hit 5 Game ticket shall contain at least one Hit 5 Game play.

NEW SECTION

WAC 315-39-030 Play for Hit 5 Game. (1) Type of play: A Hit 5 Game player must select five numbers in each play. A winning play is achieved only when 2, 3, 4, or 5 of the numbers selected by the player match, in any order, the five winning numbers drawn by the lottery.

(2) Method of play: The player will use play slips to make number selections. The lottery terminal will read the play slip and issue ticket(s) with corresponding plays. If a play slip is not available, the lottery retailer may enter the selected numbers via the keyboard. A player may choose to have the number selections made by the lottery terminal, a random number generator operated by the computer, commonly referred to as "quick pick."

NEW SECTION

WAC 315-39-040 Prizes for Hit 5 Game. (1) The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the first prize category shall vary due to the parimutuel calculation of prizes. The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the second prize category shall be \$100. The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the third prize category shall be \$10.00. The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the fourth prize category shall be \$1.00.

WINNING COMBINATIONS	PRIZE CATEGORIES	ODDS OF WINNING (ONE PLAY)
All five winning numbers in one play	First Prize: Cashpot	1:575,757
Any four but not five winning numbers in one play	Second Prize: \$100.00	1:3,387
Any three but not four or five winning numbers in one play	Third Prize: \$10.00	1:102
Any two, but not three, four or five winning numbers in one play	Fourth Prize: \$1.00	1:9.6

(2) Prize amounts.

(a) First prize (cashpot). All first prizes will be the amount announced by the director as the Hit 5 Game cashpot. The cashpot will be divided equally among all players who selected all five winning numbers in one play (in any sequence).

(b) Second prize. A \$100 prize is to be paid to each player who holds four of the five winning numbers in one play in any sequence.

(c) Third prize. A \$10.00 prize is to be paid to each player who holds three of the five winning numbers in one play in any sequence.

(d) Fourth prize. A \$1.00 prize is to be paid to each player who holds two of the five winning numbers in one play in any sequence.

(e) The holder of a winning ticket may win only one prize per play.

(f) In the event any player who holds two, three, four or five of the five winning numbers does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for use, pursuant to RCW 67.70.190.

(3) Prize payments will be made in accordance with WAC 315-30-030(6). Each prize shall be paid in a single payment. Federal income tax shall be withheld from prize payments as required by law.

NEW SECTION

WAC 315-39-050 Ticket purchases. (1) Hit 5 Game tickets may be purchased daily in accordance with a schedule to be determined by the director. Licensed lottery retailers shall sell and redeem tickets only during their normal business hours. Hit 5 Game tickets may be purchased only from a licensed lottery retailer.

(2) Hit 5 Game tickets shall, on the front of the ticket, contain the selection of numbers, amount, drawing date, ticket serial number and reference numbers. The back of the ticket shall contain overall odds of winning, player instructions, player information, signature area, governing statutes and rules, and the ticket stock number. The front of the ticket may include the overall odds of winning.

NEW SECTION

WAC 315-39-060 Drawings. (1) The Hit 5 Game drawings shall be held pursuant to WAC 315-30-040.

(2) The drawing will be conducted by lottery drawing officials.

(3) Each drawing shall randomly select five winning numbers. The drawing method shall be tested before and after each drawing. Any drawn numbers are not declared winners until the drawing is certified by the lottery. The winning numbers shall be used in determining all Hit 5 Game winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

(4) The drawing shall not be invalidated based on the liability of the lottery.

WSR 06-23-122

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 06-13—Filed November 21, 2006, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-18-040.

Title of Rule and Other Identifying Information: Chapter 173-322 WAC, Remedial action grants and loans, this chapter establishes requirements for a program of grants and loans to local governments for remedial actions pursuant to RCW 70.105D.070. The proposed amendments will create a new extraordinary financial hardship loan program. This rule making will also address general housekeeping.

Hearing Location(s): Washington Department of Ecology, Headquarters Building, 300 Desmond Drive S.E., Lacey, WA, on January 17, 2007, at 1:00 p.m.

Date of Intended Adoption: March 21, 2007.

Submit Written Comments to: Diane Singer, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail dire461@ecy.wa.gov, fax (360) 407-6102, by 5:00 p.m., January 25, 2007.

Assistance for Persons with Disabilities: Contact Michelle Payne by TTY (360) 407-6006 or phone/voice (360) 407-6109.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule amendments will affect local governments that have limited finances.

In addition, this rule making will propose a new type of loan, the extraordinary financial hardship loan. This new loan includes deferred terms and conditions for repayment, where deferred terms and conditions may not be indefinite and any such loan must be approved by the director. This rule making will propose a new definition in WAC 173-322-020 where "director" means the director of the department of ecology.

Statutory Authority for Adoption: RCW 70.105D.-070(7).

Statute Being Implemented: Chapter 70.105D 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, Implementation and Enforcement: Diane Singer, Olympia, Washington, (360) 407-6062.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule does not affect small businesses because the rule provides the framework for the state to provide grants and/or loans only to local governments to clean up their own remedial action sites.

A cost-benefit analysis is not required under RCW 34.05.328. The department has determined that this rule is an interpretive rule, not requiring a cost-benefit analysis under RCW 34.05.328.

November 22, 2006

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order 04-06, filed 3/18/05, effective 4/18/05)

WAC 173-322-020 Definitions. Unless otherwise defined in this chapter, words and phrases used in this chapter shall be defined according to WAC 173-340-200.

"Abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel.

"Area-wide ground water contamination" means multiple adjacent properties with different ownership affected by hazardous substances from multiple sources that have resulted in commingled plumes of contaminated ground water that are not practicable to address separately.

"Cleanup action" means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with WAC 173-340-350 through 173-340-390.

"Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future water system concerns

and sets forth a means for meeting those concerns in the most efficient manner possible pursuant to chapter 246-293 WAC.

"Decree" or "consent decree" means a consent decree issued under WAC 173-340-520 or the federal cleanup law.

"Department" means the department of ecology.

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

"Economically disadvantaged county" means a county that meets the following criteria:

- The per capita income of the county, as measured by the latest official estimate of the Washington state office of financial management, is in the lower twenty counties in the state; and

- The county is economically distressed, as defined by chapter ((43.165)) 43.168 RCW.

The department will include a list of counties which are economically disadvantaged in the following publication: Washington state department of ecology, "*Remedial Action Program Guidelines*," Publication No. 99-505.

"Federal cleanup law" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq.

"Grant agreement" means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government to reimburse it for a portion of expenditures in support of a specified scope of services.

"Hazard ranking" means the ranking for hazardous waste sites used by the department pursuant to RCW 70.105D.030 (2)(b) and WAC 173-340-330.

"Hazardous substances" means any hazardous substance as defined in WAC 173-340-200.

"Hazardous waste site" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

"Independent remedial actions" means remedial actions conducted without department oversight or approval and not under an order or consent decree.

"Initial containment of methamphetamine lab sites" means the first location where hazardous substances are confined by a container, vessel, barrier, or structure, whether natural or constructed, with a defined boundary, and that prevents or minimizes its release into the environment.

"Innovative technology" means new technologies that have been demonstrated to be technically feasible under certain site conditions, but have not been widely used under different site conditions. Innovative technology also means the innovative use of existing technologies that have been established for use under certain site conditions, but not the conditions that exist at the hazardous waste site for which a remedial action grant is sought. Innovative technology has limited performance and cost data available.

"Interim action" means a remedial action conducted under WAC 173-340-430.

"Loan agreement" means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government that must be repaid. The loan agreement includes terms such as interest

rates and repayment schedule, scope of work, performance schedule, and project budget.

"Local government" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county.

"Methamphetamine lab site assessment" means the actions taken by a local health department or district under WAC 246-205-520 through 246-205-560, including posting the property, inspecting the property, determining whether the property is contaminated, posting contaminated property, and notifying occupants, property owners, and other persons with an interest in the contaminated property.

"Model Toxics Control Act" or "act" means chapter 70.105D RCW, first passed by the voters in the November 1988 general election as Initiative 97 and as since amended by the legislature.

"National Priorities List" or "NPL" means a list of hazardous waste sites at which the U.S. Environmental Protection Agency intends to proceed with enforcement or cleanup action.

"No further action (NFA) determination" means a written opinion issued by the department under WAC 173-340-515 (5)(b) that the independent remedial actions performed at a hazardous waste site meet the substantive requirements of chapter 173-340 WAC and that no further remedial action is required at the hazardous waste site. The opinion is advisory only and not binding on the department.

"Order" means an order issued under chapter 70.105D RCW, including enforcement orders issued under WAC 173-340-540 and agreed orders issued under WAC 173-340-530, or an order issued under the federal cleanup law, including unilateral administrative orders (UAO) and administrative orders on consent (AOC).

"Oversight costs" are remedial action costs of the department or the U.S. Environmental Protection Agency reasonably attributable to the administration of an order or decree for remedial action at a hazardous waste site.

"Oversight remedial actions" means remedial actions conducted under an order or decree.

"Partial funding" means funding less than the maximum percentage of eligible costs allowed under this chapter.

"Pilot study" means an experiment in remedial action method, with the purpose of testing the suitability of a particular cleanup technology or process for remedial action at a particular site.

"Potentially liable person" or "PLP" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

"Potentially responsible party" or "PRP" means "covered persons" as defined under section 9607 (a)(1) through (4) of the federal cleanup law (42 U.S.C. Sec. 9607(a)).

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system and collection or pre-

treatment storage facilities not under control of the purveyor but primarily used in connection with such system.

"Purveyor" means an agency or subdivision of the state or a municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity that owns or operates a public water system, or the authorized agent of such entities.

"Recycling" means a remedial action which permanently removes hazardous substances from the site and successfully directs the material into a new product suitable for further industrial or consumer use.

"Remedial action" means any action or expenditure consistent with the purposes of chapter 70.105D RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

"Remedial design (RD)" means an engineering study during which technical plans and specifications are developed to guide subsequent cleanup action at a hazardous waste site.

"Remedial investigation/feasibility study" or "RI/FS" means a remedial action that consists of activities conducted under WAC 173-340-350 intended to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup action under WAC 173-340-360 through 173-340-390.

"Retroactive costs" means costs incurred before the date of the grant agreement.

"Safe drinking water" means water meeting drinking water quality standards set by chapter 246-290 WAC.

"Safe drinking water action" means an action by a local government purveyor or other purveyor to provide safe drinking water through public water systems to areas contaminated by or threatened by contamination from hazardous waste sites.

"Site" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a legal consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Site hazard assessment" means a remedial action that consists of an investigation performed under WAC 173-340-320.

"Treatment" means a remedial action which permanently destroys, detoxifies, or recycles hazardous substances.

AMENDATORY SECTION (Amending Order 04-06, filed 3/18/05, effective 4/18/05)

WAC 173-322-130 Loans. (1) Purpose. This section establishes requirements for a program of remedial action loans to local governments under RCW 70.105D.070 (3)(a) and (7). The loan program shall be limited to providing loans to supplement local government funding and funding from

other sources to meet the match requirements for oversight remedial action grants. The intent of the loan program is to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup cost on ratepayers and taxpayers.

(2) **Types of loans.** The loan program includes two different types of loans, a standard loan and an extraordinary financial hardship loan. The two types of loans have different applicant eligibility requirements and different terms and conditions for repayment based upon the applicant's ability to repay the loan.

(a) **Standard loan.** A standard loan is a loan that includes the terms and conditions for repayment.

(b) **Extraordinary financial hardship loan.** An extraordinary financial hardship loan is a loan that includes deferred terms and conditions for repayment. Deferred terms and conditions may not be indefinite. Any such loan must be approved by the director.

(3) **Applicant eligibility.** To be eligible for a loan, the applicant must meet the following requirements:

(a) The applicant must be a local government, as defined in WAC 173-322-020;

(b) The applicant must meet the eligibility requirements for an oversight remedial action grant set forth in WAC 173-322-070(2);

(c) The applicant must agree to undergo an independent third-party financial review to determine its financial need for the loan, ability to repay the loan, and inability to obtain funds from ~~((any))~~ other sources. The financial review shall be conducted at the direction and cost of the department ~~((; and))~~. Based on that financial review, the applicant must demonstrate the following:

(i) For a standard loan, its financial need for the loan, ability to repay the loan, and inability to obtain funds from any other source;

(ii) For an extraordinary financial hardship loan, its financial need for the loan, inability to repay the loan under present circumstances, inability to obtain funds from any other source, and inability to bond or raise its tax base;

(d) The hazardous waste site must present an immediate danger to human health and the environment; and

(e) The inability to obtain a loan would significantly delay the cleanup and subsequent use, sale or redevelopment of the properties affected by the hazardous waste site.

~~((3))~~ (4) **Application process.**

(a) **Submittal.** The loan application must be submitted to the department at the same time as the associated oversight remedial action grant application.

(b) **Content.** The loan application must be completed on forms provided by the department and include the following:

(i) Sufficient evidence to demonstrate the following:

(A) For a standard loan, the applicant's financial need for the loan, ability to repay the loan, and inability to obtain matching funds from any other source;

(B) For an extraordinary financial hardship loan, the applicant's financial need for the loan, inability to repay the loan under present circumstances, inability to obtain funds from any other source, and inability to bond or raise its tax base;

(ii) Sufficient evidence that the hazardous waste site presents an immediate danger to human health and the environment; ~~((and))~~

(iii) Sufficient evidence that the inability to obtain a loan would significantly delay the cleanup and subsequent use, sale or redevelopment of the properties affected by the hazardous waste site; and

(iv) A copy of the applicant's most recent Comprehensive Annual Financial Report.

~~((4))~~ (5) **Application evaluation and prioritization.**

(a) The department will evaluate the loan application together with the associated oversight remedial action grant application. The grant and loan applications will be evaluated by the department for completeness and adequacy. After the grant and loan applications have been completed, the department and the applicant will negotiate a scope of work and budget for the grant and loan. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant and loan.

(b) If the department determines that the applicant meets eligibility requirements for an extraordinary financial hardship loan in subsection (3) of this section, then the department may, upon the approval by the director, provide such a loan to the applicant instead of a standard loan.

(c) The department will fund the loan from the same fund allocation used to fund the associated oversight remedial action grant. When the demand for funds allocated for oversight remedial action grants and loans exceeds the amount of funds available, the department will prioritize the associated grant and loan applications together using the criteria set forth in WAC 173-322-070(5).

~~((5))~~ (6) **Cost eligibility.** The eligible costs for the loan program shall be the same as the eligible costs for the oversight remedial action grant program set forth in WAC 173-322-070(6).

~~((6))~~ (7) **Retroactive cost eligibility.** The eligibility of retroactive costs for the loan program shall be the same as the eligibility of retroactive costs for the oversight remedial action grant program set forth in WAC 173-322-070(7).

~~((7))~~ (8) **Funding and repayment.**

(a) **General.** If the department provides the applicant an oversight remedial action grant and the grant is funded to the maximum extent allowed under WAC 173-322-070(8), then the department may also provide the applicant a loan to enable the applicant to meet the match requirement for the grant. The loan shall be used to supplement local government funding and funding from other sources to meet the match requirement.

(b) **Department funding of match requirement.** The department may provide a loan to the applicant for up to one hundred percent of the match requirement for the oversight remedial action grant.

(c) **Local government funding of match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant or loan. The applicant may not use in-kind services or proceeds from contribution claims to meet the match requirement.

(d) **Repayment of loan.** The terms and conditions for repayment of the loan shall be based on the applicant's ability to repay the loan, as determined by an independent third-

party financial review. The independent third-party financial review shall be conducted at the direction and cost of the department. For extraordinary financial hardship loans, the repayment terms and conditions can be deferred. Deferred terms are dependent on periodic review of the applicant's ability to pay. Deferred terms and conditions may not be indefinite.

WSR 06-23-124
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
(Medical Assistance)

[Filed November 21, 2006, 11:17 a.m.]

Supplemental Notice to WSR 06-19-098 and 06-19-100.
Preproposal statement of inquiry was filed as WSR 05-17-140.

Title of Rule and Other Identifying Information: New section WAC 388-501-0070 Healthcare coverage—Noncovered services and amending WAC 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered.

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/tpau/docket.html> or by calling (360) 664-6097), on December 27, 2006, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2006.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on December 27, 2006.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by December 22, 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: These rules were originally proposed under WSR 06-19-098 and 06-19-100, respectively. This proposal addresses a commenter's concern about removing a sentence in WAC 388-543-1300(3) related to a client's right to request a fair hearing in the event the client's request for a noncovered service is denied. In response, health and recovery services administration (HRSA) has added new language to WAC 388-501-0070 stating a client has the right to a fair hearing when denied a noncovered service by the department.

Reasons Supporting Proposal: It will make HRSA's rules regarding covered and noncovered medical services clearer and easier to understand for our clients and medical providers.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700.

Statute Being Implemented: RCW 74.04.050, 74.08.-090, 74.09.530, and 74.09.700.

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

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

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: Gail Kreiger, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1681.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kevin Sullivan, HRSA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-4405, phone (360) 725-1344, fax (360) 586-9727, e-mail sullikm@dshs.wa.gov, TTY/TDD 1-800-848-5429.

November 17, 2006

Andy Fernando, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-501-0070 Healthcare coverage - noncovered services. (1) The department does not pay for any service, treatment, equipment, drug or supply not listed or referred to as a covered service in WAC 388-501-0060, regardless of medical necessity. Circumstances under which clients are responsible for payment of services are described in WAC 388-502-0160.

(2) This section does not apply to services provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program as described in chapter 388-534 WAC.

(3) The department does not pay for any ancillary service(s) provided in association with a noncovered service.

(4) The following list of noncovered services is not intended to be exhaustive. Noncovered services include, but are not limited to:

(a) Any service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanipractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related services and supplies, not specifically allowed under WAC 388-531-0100(4).

(e) Ear or other body piercing;

(f) Face lifts or other facial cosmetic enhancements;

(g) Gender reassignment surgery and any surgery related to transsexualism, gender identity disorders, and body dysmorphism, and related services, supplies, or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(h) Hair transplants, epilation (hair removal), and electrolysis;

(i) Fertility, infertility or sexual dysfunction testing, care, drugs, and treatment including but not limited to:

- (i) Artificial insemination;
- (ii) Donor ovum, sperm, or surrogate womb;
- (iii) In vitro fertilization;
- (iv) Penile implants;
- (v) Reversal of sterilization; and
- (vi) Sex therapy.
- (j) Marital counseling;
- (k) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;
- (l) Nonmedical equipment;
- (m) Penile implants;
- (n) Prosthetic testicles;
- (o) Psychiatric sleep therapy;
- (p) Subcutaneous injection filling;
- (q) Tattoo removal;
- (r) Transport of Involuntary Treatment ACT (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities; and
- (s) Vehicle purchase - new or used vehicle.

(5) For a specific listing of noncovered services in the following service categories, refer to the accompanying WAC citation:

- (a) Ambulance transportation as described in WAC 388-546-0250;
- (b) Dental services (for clients twenty-one years of age and younger) as described in Chapter 388-535 WAC;
- (c) Dental services (for clients twenty-one years of age and older) as described in Chapter 388-535 WAC;
- (d) Durable medical equipment as described in WAC 388-543-1300;
- (e) Hearing care services as described in WAC 388-544-1400;
- (f) Home health services as described in WAC 388-551-2130;
- (g) Hospital services as described in WAC 388-550-1600;
- (h) Physician-related services as described in WAC 388-531-0150;
- (i) Prescription drugs as described in WAC 388-530-1150; and
- (j) Vision care services as described in WAC 388-544-0475.

(6) A client has a right to request an administrative hearing when a service is denied as noncovered. When the department denies all or part of a request for a noncovered service(s) or equipment, the department sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

- (a) A statement of the action the department intends to take;
- (b) Reference to the specific WAC provision upon which the denial is based;
- (c) Sufficient detail to enable the recipient to:
 - (i) Learn why the department's action was taken; and
 - (ii) Prepare a response to the department's decision to classify the requested service as noncovered.
- (d) The specific factual basis for the intended action;

(e) The following information:

- (i) The client's administrative hearing rights;
 - (ii) Instructions on how to request the hearing;
 - (iii) Acknowledgement that a client may be represented at the hearing by legal counsel or other representative;
 - (iv) Upon the client's request, the name and address of the nearest legal services office;
 - (v) Instructions on how to request an exception to rule (ETR); and
 - (vi) Information regarding department-covered services, if any, as an alternative to the requested noncovered service.
- (7) If a client's eligibility for medical assistance is newly established and the client had been receiving a service prior to becoming eligible that is not covered by the department, and the client requests a hearing, the department will not pay for the service pending the outcome of the hearing.
- (8) A client can request an ETR as described in WAC 388-501-0160.

AMENDATORY SECTION (Amending WSR 02-16-054, filed 8/1/02, effective 9/1/02)

WAC 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered. (1) ((MAA)) The department pays only for DME and related supplies, medical supplies and related services that are medically necessary, listed as covered in this chapter, and meet the definition of DME and medical supplies as defined in WAC 388-543-1000 and prescribed per WAC 388-543-1100 and 388-543-1200.

(2) ((MAA)) The department pays only for prosthetics or orthotics that are listed as such by the Centers for Medicare and Medicaid Services (CMS), formerly known as HCFA, that meet the definition of prosthetic and orthotic as defined in WAC 388-543-1000 and are prescribed per WAC 388-543-1100 and 388-543-1200.

(3) ((MAA)) The department considers all requests for covered DME, related supplies and services, medical supplies, prosthetics, orthotics, and related services (~~and non-covered equipment, related supplies and services, supplies and devices;~~) under the provisions of WAC 388-501-0165. ~~((When MAA considers that a request does not meet the requirement for medical necessity, the definition(s) of covered item(s), or is not covered, the client may appeal that decision under the provisions of WAC 388-501-0165.))~~

(4) ((MAA)) The department evaluates a request for any DME item listed as noncovered in this chapter under the provisions of WAC 388-501-0160.

(5) The department specifically excludes services and equipment in this chapter from fee-for-service (FFS) scope of coverage when the services and equipment do not meet the definition for a covered item, or the services are not typically medically necessary. This exclusion does not apply if the services and equipment are:

- (a) Included as part of a managed care plan service package;
- (b) Included in a waived program;
- (c) Part of one of the Medicare programs for qualified Medicare beneficiaries; or

(d) Requested for a child who is eligible for services under the EPSDT program. ~~((MAA))~~ The department reviews these requests according to the provisions of chapter 388-534 WAC.

~~((5))~~ (6) Excluded services and equipment include, but are not limited to:

(a) Services, procedures, treatment, devices, drugs, or the application of associated services that the ~~((department of the))~~ Food and Drug Administration (FDA) and/or the Centers for Medicare and Medicaid Services (CMS)~~((, formerly known as the Health Care Financing Administration (HCFA)))~~ consider investigative or experimental on the date the services are provided;

(b) Any service specifically excluded by statute;

(c) A client's utility bills, even if the operation or maintenance of medical equipment purchased or rented by ~~((MAA))~~ the department for the client contributes to an increased utility bill (refer to the aging and ~~((adult))~~ disability services administration's ~~((AASA))~~ (ADSA) COPES program for potential coverage);

(d) Hairpieces or wigs;

(e) Material or services covered under manufacturers' warranties;

(f) Shoe lifts less than one inch, arch supports for flat feet, and nonorthopedic shoes;

(g) Outpatient office visit supplies, such as tongue depressors and surgical gloves;

(h) Prosthetic devices dispensed solely for cosmetic reasons (refer to WAC 388-531-0150 (1)(d));

(i) Home improvements and structural modifications, including but not limited to the following:

(i) Automatic door openers for the house or garage;

(ii) Saunas;

(iii) Security systems, burglar alarms, call buttons, lights, light dimmers, motion detectors, and similar devices;

(iv) Swimming pools;

(v) Whirlpool systems, such as jacuzzies, hot tubs, or spas; or

(vi) Electrical rewiring for any reason;

(vii) Elevator systems and elevators; and

(viii) Lifts or ramps for the home; or

(ix) Installation of bathtubs or shower stalls.

(j) Nonmedical equipment, supplies, and related services, including but not limited to, the following:

(i) Back-packs, pouches, bags, baskets, or other carrying containers;

(ii) Bed boards/conversion kits, and blanket lifters (e.g., for feet);

(iii) Car seats for children under five, except for positioning car seats that are prior authorized. Refer to WAC 388-543-1700(13) for car seats;

(iv) Cleaning brushes and supplies, except for ostomy-related cleaners/supplies;

(v) Diathermy machines used to produce heat by high frequency current, ultrasonic waves, or microwave radiation;

(vi) Electronic communication equipment, installation services, or service rates, including but not limited to, the following:

(A) Devices intended for amplifying voices (e.g., microphones);

(B) Interactive communications computer programs used between patients and healthcare providers (e.g., hospitals, physicians), for self care home monitoring, or emergency response systems and services (refer to ~~((AASA))~~ ADSA COPES or outpatient hospital programs for emergency response systems and services);

(C) Two-way radios; and

(D) Rental of related equipment or services;

(vii) Environmental control devices, such as air conditioners, air cleaners/purifiers, dehumidifiers, portable room heaters or fans (including ceiling fans), heating or cooling pads;

(viii) Ergonomic equipment;

(ix) Exercise classes or equipment such as exercise mats, bicycles, tricycles, stair steppers, weights, trampolines;

(x) Generators;

(xi) Computer software other than speech generating, printers, and computer accessories (such as anti-glare shields, backup memory cards);

(xii) Computer utility bills, telephone bills, internet service, or technical support for computers or electronic notebooks;

(xiii) Any communication device that is useful to someone without severe speech impairment (e.g., cellular telephone, walkie-talkie, pager, or electronic notebook);

(xiv) Racing strollers/wheelchairs and purely recreational equipment;

(xv) Room fresheners/deodorizers;

(xvi) Bidet or hygiene systems, paraffin bath units, and shampoo rings;

(xvii) Timers or electronic devices to turn things on or off, which are not an integral part of the equipment;

(xviii) Vacuum cleaners, carpet cleaners/deodorizers, and/or pesticides/insecticides; or

(xix) Wheeled reclining chairs, lounge and/or lift chairs (e.g., geri-chair, posture guard, or lazy boy).

(k) Personal and **comfort items** that do not meet the DME definition, including but not limited to the following:

(i) Bathroom items, such as antiperspirant, astringent, bath gel, conditioner, deodorant, moisturizer, mouthwash, powder, shampoo, shaving cream, shower cap, shower curtains, soap (including antibacterial soap), toothpaste, towels, and weight scales;

(ii) Bedding items, such as bed pads, blankets, mattress covers/bags, pillows, pillow cases/covers and sheets;

(iii) Bedside items, such as bed trays, carafes, and over-the-bed tables;

(iv) Clothing and accessories, such as coats, gloves (including wheelchair gloves), hats, scarves, slippers, and socks;

(v) Clothing protectors and other protective cloth furniture coverings;

(vi) Cosmetics, including corrective formulations, hair depilatories, and products for skin bleaching, commercial sun screens, and tanning;

(vii) Diverter valves for bathtub;

(viii) Eating/feeding utensils;

(ix) Emesis basins, enema bags, and diaper wipes;

(x) Health club memberships;

- (xi) Hot or cold temperature food and drink containers/holders;
 - (xii) Hot water bottles and cold/hot packs or pads not otherwise covered by specialized therapy programs;
 - (xiii) Impotence devices;
 - (xiv) Insect repellants;
 - (xv) Massage equipment;
 - (xvi) Medication dispensers, such as med-collators and count-a-dose, except as obtained under the compliance packaging program. See chapter 388-530 WAC;
 - (xvii) Medicine cabinet and first-aid items, such as adhesive bandages (e.g., Band-Aids, Curads), cotton balls, cotton-tipped swabs, medicine cups, thermometers, and tongue depressors;
 - (xviii) Page turners;
 - (xix) Radio and television;
 - (xx) Telephones, telephone arms, cellular phones, electronic beepers, and other telephone messaging services; and
 - (xxi) Toothettes and toothbrushes, waterpics, and periodontal devices whether manual, battery-operated, or electric.
- (l) Certain wheelchair features and options are not considered by ~~((MAA))~~ the department to be medically necessary or essential for wheelchair use. This includes, but is not limited to, the following:
- (i) Attendant controls (remote control devices);
 - (ii) Canopies, including those for strollers and other equipment;
 - (iii) Clothing guards to protect clothing from dirt, mud, or water thrown up by the wheels (similar to mud flaps for cars);
 - (iv) Identification devices (such as labels, license plates, name plates);
 - (v) Lighting systems;
 - (vi) Speed conversion kits; and
 - (vii) Tie-down restraints, except where medically necessary for client-owned vehicles.

WSR 06-23-128
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 21, 2006, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-097.

Title of Rule and Other Identifying Information: Chapter 296-150M WAC, Manufactured homes.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., S119, Tumwater, WA, on January 4, 2007, at 1:30 p.m.

Date of Intended Adoption: February 20, 2007.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by January 4, 2006 [2007].

Assistance for Persons with Disabilities: Contact Sally Elliott by December 15, 2006, (360) 902-6411 or yous235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to make clarifying and housekeeping changes to the factory assembled structure rules. The program is implementing a new online permitting system and these clarifying changes will help alleviate questions from our customers.

The proposed changes will:

- Incorporate interpretive bulletins regarding design requirements for structural alterations into the rules.
- Outline when structural alterations need engineered designed and/or plan review conducted by central office.
- Amends the wind zone requirement set by HUD and removes the ability for the local jurisdiction to impose higher wind zone tie downs requirements.
- Incorporate language that requires pellet stoves to meet the requirements listed by a nationally recognized testing laboratory.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 43.22 RCW.

Statute Being Implemented: Chapter 43.22 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Pete Schmidt, Tumwater, (360) 902-5571; Implementation and Enforcement: Patrick Woods, Tumwater, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not require a small business economic impact statement because the proposed amendments make housekeeping changes that will clarify the rule without changing its effect (see RCW 19.85.025 referencing see RCW 34.05.310 (4)(d)).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not require a small cost-benefit analysis because the proposed amendments make housekeeping changes that will clarify the rule without changing its effect (see RCW 19.85.025 referencing see RCW 34.05.310 (4)(d)).

November 21, 2006

Judy Schurke

Acting Director

AMENDATORY SECTION (Amending WSR 05-24-020, filed 11/29/05, effective 1/1/06)

WAC 296-150M-0306 What codes are used when altering a manufactured/mobile home? Alterations to a manufactured/mobile home must be in compliance with the Manufactured Home Construction and Safety Standards, 24 CFR Part 3280, as adopted by the Secretary for the Department of Housing and Urban Development (HUD) and the amendments to that federal standard adopted in this WAC chapter. The department will accept the following provisions,

which supersede the applicable requirements in 24 CFR Part 3280.

(1) Tested equivalent air conditioning/heat pump components that have been tested and listed for use with a particular furnace by a nationally recognized testing laboratory.

(2) Water heaters that are listed by a nationally recognized testing laboratory and installed per the manufacturer's installation instructions.

Note: For installation of electrical furnaces and/or water heater in pre-HUD homes, the requirement of 24 CFR Part 3280.203 for flame spread limitations is waived as long as the installation meets the requirement of the installed appliance for distance from combustibles.

(3) Pellet stoves for installation that have been listed by a department approved nationally recognized testing laboratory. For a current list of approved laboratories, contact any department field office or the department at the address shown in WAC 296-150M-0020.

(4) All electrical alterations and additions to the manufactured/mobile home shall comply with the current edition of the National Electrical Code.

(5) The International Residential Code for structural alterations.

Note: The replacement of exterior siding is an alteration and requires the approval of the department and an alteration insignia.

(6) The use of corrugated stainless steel tubing (CSST) is allowed when installed according to the manufactured installations instructions for mobile/manufactured homes by the following CSST manufacturers:

- (a) Gastite;
- (b) TracPipe;
- (c) Pro-Flex.

(7) Installation of gas room heaters in bedrooms must:

(a) Have direct vented (sealed combustion) and be listed as UL 307A for liquid fuel burning heater or ANSI Z21.88 for vented gas fireplaces.

(b) Not be able to draw combustion air from the living space and must be designed so that it will become inoperative if any door, latch, or opening is not properly sealed.

(c) Have a smoke detector, listed to UL 217. The smoke detector can either be hardwired or battery powered and installed according to the manufacturer's installation requirements.

(d) Have a carbon dioxide (CO₂) detector, listed to UL 2034. The CO₂ detector must be installed according to the manufacturer's installation requirements.

(e) Have at least one means of egress.

NEW SECTION

WAC 296-150M-0323 What is the requirement for energy conservation inspection? Energy conservation inspections are random inspections for utilities and/or their contractors who have prior approval from the department and who provide energy conservation related equipment which affects the electrical systems of a manufactured or mobile home.

See WAC 296-150M-3000 for the fee for an energy conservation permit.

NEW SECTION

WAC 296-150M-0410 What are the requirements for altering mobile/manufactured homes? (1) Roof over framing (dormer) additions to manufactured/mobile homes must meet the following requirements:

(a) Maintain a minimum twenty pound roof, live load, and provide documentation to the department.

(b) The dead load for the dormer must be the difference between the live load design of the roof and the roof design snow load of the manufactured/mobile home location (as per Snow Load Analysis for Washington, by Structural Engineers Association of Washington).

(c) Existing roofing material, other than the sheathing, must be completely removed under the dormer.

(d) An engineering analysis shall take into account the wind load on the structure, when the dormer extends above the original ridge line of the manufactured/mobile home.

(e) The engineer or architect of record must clarify in writing on the original stamped drawings that the design plans may be used on other manufactured/mobile homes of the same live load, for generic designs that are to be used more than one time.

(f) Submit all manufactured/mobile home alterations to the department to be reviewed by plan review for compliance.

(2) Reroofing of a manufactured/mobile home must be installed and vented according to the manufacturer's installation instructions.

(a) Existing asphalt roof will require removal of the original asphalt roofing material prior to the installation of new asphalt roofing.

(b) If the original asphalt roofing material is not removed and a second layer of asphalt roofing is added, an engineering analysis must be completed to ensure that the existing roof structure can support the additional load while maintaining a 20 psf live roof load.

(c) Metal roofing with or without insulation board applied after removing existing asphalt shingles must:

(i) Follow the roofing manufacturer's installation requirements.

(ii) Maintain minimum pitch of the roof as required by the roofing manufacturer's installation requirements.

(d) Metal roofing with or without insulation board over an existing metal roof must:

Allow the metal roof to be installed over another metal roof as required by the manufacturer's installation requirements.

(3) Replacing floor decking must meet the following requirements:

(a) Plan review is not required for the following:

(i) The floor decking being replaced is not bigger than forty-eight inches by ninety-six inches (each section of home).

(ii) Two-by-six blocking is added to each floor joist and secured with 16d nails at six inches on center.

(iii) Two-by-six blocking is added at the ends of the cut such that one-half is under the existing decking and one-half is under the decking being replaced and is secured with 16d nails, two at each joint.

(iv) Adding floor decking that is the same thickness and grade as originally installed.

(v) Adding decking that is secured with construction adhesive bead and #8x1-3/4 inch screws at six inches on center.

(b) Plan review is required, but engineering will not be required under the following condition:

(i) The floor decking being replaced is greater than forty-eight inches by ninety-six inches.

(ii) The decking being replaced is no more than fifty percent of the floor length, each section of home.

(iii) The decking being replaced is no more than seventy-five percent of the floor width, each section of home.

(c) If the floor decking being replaced is larger than forty-eight inches by ninety-six inches, both plan review and engineering will be required.

(d) On generic designs that are to be used more than once, an engineer or architect must clearly state in writing on the original stamped drawings that the design plans may be used on other manufactured/mobile homes of the same manufacturer.

(4) Additions (i.e., rooms, garages, carports, etc.) added to manufactured/mobile homes.

(a) Labor and industries factory assembled structures section is responsible for any alterations to the manufactured/mobile home. This includes:

(i) Any opening that is added or changed.

(ii) Electrical circuits added to the addition that come from the electrical panel in the manufactured/mobile home.

(iii) Using the manufactured/mobile home for support of the addition.

(b) A plan review is required when adding an addition to a manufactured/mobile home for:

(i) Openings not constructed per the department.

(ii) Manufactured/mobile homes which use the structure for support of the addition.

(iii) Adding a dormer on the home.

Note: An engineer or architect licensed in Washington state must design the plans and seal the plans and calculations. The department's FAS plan review section will perform a plan review.

(c) Labor and industries electrical section is responsible for any electrical circuits added to the manufactured/mobile home that come from the pedestal where the electrical section has electrical inspection authority. Some cities have electrical inspection authority and would make those electrical inspections in their jurisdiction.

(d) Local jurisdiction (city or county) is responsible for the inspection of the addition except as noted above.

(e) Items to pay particular attention to:

(i) If the addition is being served by a required egress door:

- The lock must be removed and nonlocking passage hardware installed or the door may be removed entirely leaving a passageway.

- An exit door equal in size to the one removed must be installed in the addition.

(ii) If the addition is being served by a 3rd door and the other doors meet the egress requirements outlined above, no changes to the exterior door are required.

(ii) Electrical circuits run from the manufactured/mobile home electrical panel must:

- Be in conduit if routed under the home; and
- Terminate at the edge of the home in a junction box.

(iv) The addition may be flashed to the manufactured/mobile home for purposes of sealing the exterior joint and may have trim installed on the interior for finishing.

(5) Attaching awnings and carports and garages.

(a) Self-supporting awnings and carports.

When awnings and carports are self-supporting they may be flashed to the manufactured/mobile home and no permit is required from L&I FAS section. Please check with your local jurisdiction building department for any permits required by them.

(b) Awnings and carports using the home for support.

Aluminum or wood awnings and carports that use the manufactured/mobile home for support will need to:

- Have the connections to the home designed and the additional load on the home analyzed by an engineer or architect licensed in Washington state. The engineer or architect will need to seal these designs and calculations;

- The installer must submit the designs to the FAS plan review section for a review; and

- The installer must have the installation inspected, after the plans are approved.

(c) Manufactured home comes from factory garage ready.

If the manufactured home comes from the factory garage ready, no inspection is required by L&I. Garage ready from the factory means:

- Dormers, if required, are installed by the factory;

- All gypsum board required on the home has been installed at the factory;

- Any door between the home and the garage meets the requirements for separation of a residence from a garage as required by the building code;

- All electrical installations meet the requirements of the National Electrical Code for one hour walls;

- The dryer outlet termination has been designed at the factory to not exhaust into the garage; and

- No other changes are required to the manufactured home at the installation site.

Note: If any changes are required to the manufactured home at the installation site, an alteration permit is required from the department.

(d) Manufactured/mobile home is not garage ready.

If the manufactured/mobile home is not garage ready when it leaves the factory, an alteration permit is required. Engineering analysis and plan review may also be required if additional loads are placed upon the home or openings are made or changed.

The following are some examples of when a plan review would be required:

- A dormer is added;

- An opening in the home is made or changed (Note: Openings constructed to the department's approved details would not require a plan review); and

- Gypsum board is added to the wall of the home.

Items to also be aware of:

When a garage is to be attached to a manufactured/mobile home, the following must also be considered:

- The means of egress through exterior doors is not compromised (two are required);
- The means of egress from the bedroom(s) is not compromised (one egress directly to the exterior from each); and/or endwalls are usually shearwalls and any additional openings in them will need an engineering analysis and plan review to substantiate.

(6) Decertification of a manufactured/mobile home.

(a) Can only be decertified if the jurisdiction having authority will allow the unit to remain on the property.

(b) All electrical components, including the electrical panel, receptacles, switches and light must be removed and wires cut to where they enter the device.

(c) All plumbing fixtures and exposed plumbing water, drain and waste lines must be cut off where they enter any wall, floor or ceiling.

(d) All mechanical components including water heaters, furnaces, and kitchen appliances must be removed from the home.

AMENDATORY SECTION (Amending WSR 99-13-010, filed 6/4/99, effective 7/5/99)

WAC 296-150M-0600 Who establishes standards for installation of manufactured homes? (1) The director of labor and industries is responsible for establishing uniform installation standards where possible and practical for persons or entities engaged in performing the installation of manufactured homes within the state.

(2) Local jurisdictions may adopt additional installation requirements only for those installation situations not covered by federal standards. For example, local jurisdictions may impose noise control construction ordinances, prescribe the frost depth and soil bearing capacity at the installation site, and adopt requirements to protect manufactured homes in hazardous areas, (see WAC 296-150M-0620).

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-150M-3000 Manufactured/mobile home fees.

INITIAL FILING FEE	\$32.20
DESIGN PLAN FEES:	
STRUCTURAL ALTERATION - MASTER DESIGN (CODE CYCLE)	\$130.10
STRUCTURAL ALTERATION - ONE YEAR DESIGN	\$87.20
RENEWAL FEE	\$38.80
RESUBMITTAL FEE	\$64.80
ADDENDUM (Approval expires on the same date as original plan.)	\$64.80
ELECTRONIC PLAN SUBMITTAL FEE \$4.90 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
INSPECTION	
MECHANICAL	
Heat Pump	\$31.80
Combination Heat Pump (new) and Furnace (replacement)	\$42.40

Also, local jurisdictions may impose their requirements for snow ((~~and wind~~)) loads as long as all structures within their jurisdiction are required to comply with the same standard and provided those installing the manufactured home are given options in satisfying that standard. Such an option might include, but not be limited to, allowing an installer to erect an additional structure, which meets local standards, and protects the manufactured home. For example, an installer could erect a free standing ramada over a manufactured home to protect it from local snow loads.

Local jurisdictions **may not:**

(a) Dictate foundation design and construction which is built according to either the manufacturer's installation instructions or a design created by an engineer or architect licensed in Washington state.

(b) Impose regulations on smoke detectors because they are regulated by federal standards.

AMENDATORY SECTION (Amending WSR 05-01-102, filed 12/14/04, effective 2/1/05)

WAC 296-150M-0614 How may I obtain a copy of the American National Standards Institute (ANSI) A225.1-Manufactured Homes Installation? Copies of the standard are available from:

((National Fire Protection Agency
 Item Number: ~~ANSIA2251~~
 Phone: 800-344-3555
 Address: 1 Batterymarch Park
 P.O. Box 9104
 Quincy, MA 02269-9104)) Office of Manufactured Housing, Installer Certification, Department of Community, Trade and Economic Development
Post Office Box 42525
Olympia, Washington 98505-2525
Or call 1-800-946-0852

Air Conditioning	\$31.80
Combination Air Conditioning (new) and Furnace (replacement)	\$42.40
Furnace Installation (gas*** or electric)	\$31.80
Gas*** Piping	\$31.80
Wood Stove	\$31.80
Pellet Stove	\$31.80
Gas*** Room Heater	\$31.80
Gas*** Decorative Appliance	\$31.80
Range: Changing from electric to gas***	\$31.80
Gas*** Water Heater Replacement	\$21.20
Water Heater: Changing from electric to gas***	\$21.20
Any combination of Furnace, Range, and Water Heater changing from electric to gas*** and includes Gas Piping charge	\$63.70
ELECTRICAL	
Heat Pump	\$42.40
Heat Pump (when home is prewired for a heat pump)	\$10.60
Combination Heat Pump (new) and Furnace (replacement)	\$53.10
Air Conditioner	\$42.40
Air Conditioner (when home is prewired for an air conditioner)	\$10.60
Combination Air Conditioner (new) and Furnace (replacement)	\$53.10
Furnace Installation (gas or electric)	\$42.40
Wood Stove (if applicable)	\$42.40
Pellet Stove (if applicable)	\$42.40
Gas*** Room Heater (if applicable)	\$42.40
Gas*** Decorative Appliance (if applicable)	\$42.40
Range: Changing from gas*** to electric	\$42.40
Electric Water Heater Replacement	\$42.40
Electric Water Heater replacing Gas*** Water Heater	\$42.40
Each added or modified 120 volt circuit (maximum charge is two circuits)	\$42.40
Each added 240 volt circuit (for other than Heat Pumps, Air Conditioners, Furnaces, Water Heaters, Ranges, Hot Tubs or Spas)	\$42.40
Hot Tub or Spa (power from home electrical panel)	\$42.40
Replace main electrical panel	\$42.40
Low voltage fire/intrusion alarm	\$42.40
Fire Safety	\$42.40
Any combination of Furnace, Range and Water Heater changing from electric to gas***	\$42.40
PLUMBING	
Fire sprinkler system (also requires a plan review)	\$21.20
Each added fixture	\$21.20
Replacement of water piping system (this includes two inspections)	\$95.60
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	\$42.40
Reroofs (may require a plan review)	\$74.30
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	\$74.30
Other structural changes (may require a plan review)	\$74.30
Fire Safety (may also require an electrical fire safety inspection)	\$42.40
MISCELLANEOUS	
Other structural changes (may require a plan review)	\$74.30
Plan Review	\$84.90
OTHER REQUIRED INSPECTIONS (Per hour*)	\$58.40
ALL REINSPECTIONS (Per hour*)	\$58.40
Refund	\$10.60
INSIGNIA FEES:	

ALTERATION	\$10.60
FIRE SAFETY CERTIFICATE	\$10.60
REISSUED - LOST/DAMAGED	\$10.60
IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	\$29.50
Second and succeeding inspections of unlabeled sections (Per hour*)	\$64.80
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (Per hour*separate from other fees)	\$64.80
Red tag removal at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$64.80
Increased frequency surveillance (Per hour* plus travel time* and mileage**)	\$64.80
Attendance at manufacturers training classes (Per hour* only)	\$64.80
Subpart "I" investigations (Per hour* plus travel time* and mileage**)	\$64.80
Alterations to a labeled unit (Per hour* plus travel time* and mileage**)	\$64.80
IPIA Issues/Responses (Per hour* Plus travel time* and mileage**)	\$64.80
Monthly surveillance during a regularly scheduled IPIA audit (Per hour*plus travel time* and mileage**)	\$64.80
Monthly surveillance at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$64.80
Plant certifications, recertifications and addenda updates (Per hour* plus travel time* and mileage** per each inspector)	\$64.80
Response to HBT Audit during a regularly scheduled IPIA audit (Per hour*)	\$64.80
Response to HBT Audit at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time*and mileage**)	\$64.80
Alternative construction (AC) letter inspections at placement site (Per hour* plus travel time*and mileage**)	\$64.80
Replacement of HUD labels (Per hour* plus travel time* and mileage**)	\$64.80
State Administrative Agency (SAA) inspection fee (Per hour* plus travel time* and mileage**)	\$64.80
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour plus travel time* and mileage**)	\$60.00
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$11.90
VARIANCE INSPECTION FEE	\$84.90
HOMEOWNER REQUESTED INSPECTION	\$84.90
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	\$84.90
DEMOLITION OF A MOBILE/MANUFACTURED HOME	\$84.90
ENERGY CONSERVATION PERMIT	\$15.00
NOTE: Local jurisdictions may have other fees that apply.	
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Gas means all gases; natural, propane, etc.	

WSR 06-23-129
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed November 21, 2006, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-098.

Title of Rule and Other Identifying Information: Chapter 296-150F WAC, Factory-built housing and commercial structures.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., S119, Tumwater, WA, on January 4, 2007, at 1:30 p.m.

Date of Intended Adoption: February 20, 2007.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by January 4, 2006 [2007].

Assistance for Persons with Disabilities: Contact Sally Elliott by December 15, 2006, (360) 902-6411 or yous235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to amend the factory-built housing and commercial structure rules in order to be consistent with the statute.

The rule making will:

- Correct contradictions between the rule and statute.
- Add definitions to be consistent with the state building code council.
- Make housekeeping changes through the rule. For example, correct the inconsistency in number of plans that must be submitted to the department.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 43.22 RCW.

Statute Being Implemented: Chapter 43.22 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Pete Schmidt, Tumwater, (360) 902-5571; Implementation and Enforcement: Patrick Woods, Tumwater, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not require a small business economic impact statement because the proposed changes update the rule to be consistent with the statute and make housekeeping changes to clarify the rule (see RCW 19.85.025 referencing RCW 34.05.310 (4)(d) and (e)).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not require a cost-benefit analysis because the proposed changes update the rule to be consistent with the statute and make housekeeping changes to clarify the rule (see RCW 19.85.025 referencing RCW 34.05.310 (4)(d) and (e)).

November 21, 2006

Judy Schurke

Acting Director

AMENDATORY SECTION (Amending WSR 05-23-002, filed 11/3/05, effective 12/4/05)

WAC 296-150F-0020 What definitions apply to this chapter? "Approved" is approved by the department of labor and industries.

"Building site" is a tract, parcel, or subdivision of land on which a factory-built house or commercial structure will be installed.

~~("Commercial structure" is a structure designed or used for human habitation (such as a dormitory) or human occupancy for industrial, educational, assembly, professional, or commercial purposes. It may also include a component.)~~

"Component" is a ~~((discrete element that cannot be inspected at the time of installation either in the factory or in a site-built unit, but))~~ part or element of another system as defined by the International Building Code, section 202, and is:

- Designed to be installed in a structure;

- Manufactured as a unit; and
- Designed for a particular function or group of functions.

A component may be a ~~((floor, wall panel, roof panel, plumbing wall, electrical service wall, or heating assembly.~~

~~It may also be a service core. A))~~ service core or other assembly that is a factory assembled((,-three-dimensional)) section of a building. It may include mechanical, electrical, plumbing, and related systems. It may be a complete kitchen, bathroom, or utility room. Service cores are referred to as "wet boxes," "mechanical cores," or "utility cores."

Note: A roof truss is not considered a component.

"Damaged in transit" is damage that effects the integrity of the structural design or damage to any other system referenced in the codes required by the State Building Code, or other applicable codes.

"Department" is the department of labor and industries. The department may also be referred to as "we" or "us" in this chapter. Note: You may contact us at: Department of Labor and Industries, Specialty Compliance, PO Box 44440, Olympia, WA 98504-4440.

"Design plan" is a plan for the construction of factory-built housing, commercial structures, or components that includes floor plans, elevation drawings, specifications, engineering data, or test results necessary for a complete evaluation of the design.

"Design option" is a design that a manufacturer may use as an option to its design plan.

"Educational facility" is a building or portion of a building used primarily for educational purposes by six or more persons at one time for twelve hours per week or four hours in any one day. Educational occupancy includes: Schools (preschool through grade twelve), colleges, academies, universities, and trade schools.

"Equipment" is all material, appliances, devices, fixtures, fittings, or accessories used in the manufacture, assembly, installation, or alteration of factory-built housing, commercial structures, and components.

"Factory assembled structure (FAS) advisory board" is a board authorized to advise the director of the department regarding the issues and adoption of rules relating to factory-built housing, commercial structures and components. (See RCW 43.22.420.)

~~("Factory-built housing" is housing designed for human occupancy such as a single family dwelling. The structure of any room is entirely or substantially prefabricated or assembled at a place other than a building site. It may also include a component. A factory-built house is also referred to as a "modular" structure. Factory-built housing does not include manufactured (mobile) housing. (See RCW 43.22.450(3)-))~~

"Health or personal care facilities" are buildings or parts of buildings that contain, but are not limited to, facilities that are required to be licensed by the department of social and health services or the department of health (e.g., hospitals, nursing homes, private alcoholism hospitals, private psychiatric hospitals, boarding homes, alcoholism treatment facilities, maternity homes, birth centers or childbirth centers, residential treatment facilities for psychiatrically impaired

children and youths, and renal hemodialysis clinics) and medical, dental or chiropractic offices or clinics, outpatient or ambulatory surgical clinics, and such other health care occupancies where patients who may be unable to provide for their own needs and safety without the assistance of another person are treated. (Further defined in WAC 296-46B-010.)

"Insignia" is a label that we attach to a structure to verify that a factory-built house or commercial structure meets the requirements of this chapter. It could also be a stamp or label attached to a component to verify that it meets the requirements of this chapter.

"Install" is to erect or set in place a structure at a building site. It may also be the construction or assembly of a component as part of a factory-built house or commercial structure.

"Institutional facility" is a building or portion of a building used primarily for detention and correctional occupancies where some degree of restraint or security is required for a time period of twenty-four or more hours. Such occupancies include, but are not restricted to: Penal institutions, reformatories, jails, detention centers, correctional centers, and residential-restrained care.

~~("Listed" is a piece of equipment, a component, or an installation that appears in a list published by a testing or listing agency and is suitable for use in a specified manner.)~~

"Listing agency" is an organization whose business is approving equipment, components, or installations for publication.

"Local enforcement agency" is an agency of city or county government with power to enforce local regulations governing the installation of factory-built housing and commercial structures.

"Master design plan" is a design plan that expires when a new State Building Code has been adopted.

"Manufacturing" is making, fabricating, forming, or assembling a factory-built house, commercial structure, or component.

"One-year design plan" is a design plan that expires one year after approval or when a new State Building Code has been adopted.

"Repair" is the replacement, addition, modification, or removal of any construction, equipment, system, or installation to correct damage in transit or during on-site installation before occupancy.

"Unit" is a factory-built house, commercial structure, or component.

"Used structure" is a building as defined by section 202 of the International Building Code that has been given a certificate of occupancy by the local building department and has been occupied.

AMENDATORY SECTION (Amending WSR 05-23-002, filed 11/3/05, effective 12/4/05)

WAC 296-150F-0320 What must I provide with my request for design-plan approval by the department? All requests for design-plan approval must include:

- (1) A completed design-plan approval request form;
- (2) ~~(One)~~ **Two** complete sets of design plans, specifications, engineering analysis, test procedures and results plus

one additional set for each manufacturing location where the design plan will be used (see WAC 296-150F-0340 and 296-150F-0350);

(3) At least one set of design plans must have an original wet stamp from a professional engineer or architect licensed in Washington state. All new, renewed, and resubmitted plans, specifications, reports and structural calculations prepared by or prepared under his or her direct supervision shall be signed, dated and stamped with their seal. Specifications, reports, and structural calculations may be stamped only on the first sheet, provided this first sheet identifies all of the sheets that follow are included and identified in the same manner. Plans that have not been prepared by or under the engineer's or architect's supervision shall be reviewed by them and they shall prepare a report concerning the plans reviewed. This report shall:

- (a) Identify which drawings have been reviewed by drawing number and date;
- (b) Include a statement that the plans are in compliance with current Washington state regulations; and
- (c) The report shall be stamped and signed by the reviewer.

Any deficiencies shall be corrected on the drawings before submitting to the department or be included in the report and identify as to how they are to be corrected. This report shall be attached to the plan(s) that were reviewed. We will retain the set with the original wet stamp;

(4) A one-time initial filing fee and the design-plan fee (see WAC 296-150F-3000); and

(5) A "key drawing" to show the arrangement of modules if the plan covers three or more modules.

(6) Electrical plan review for educational, institutional or health care facilities and other buildings. Plan review is a part of the electrical inspection process; its primary purpose is to determine:

- (a) That loads and service/feeder conductors are calculated and sized according to the proper ~~(NCE)~~ NEC or WAC article or section;
- (b) The classification of hazardous locations; and
- (c) The proper design of emergency and standby systems.

(7) All electrical plans for new or altered electrical installations in educational, institutional, and health or personal care occupancies classified or defined in this chapter must be reviewed and approved before the electrical installation or alteration is started. Approved plans must be available for use during the electrical installation or alteration and for use by the electrical inspector.

(8) All electrical plans for educational facilities, hospitals and nursing homes must be prepared by, or under the direction of, a consulting engineer registered under chapter 18.43 RCW in compliance with chapters 246-320, 180-29, and 388-97 WAC as applicable and stamped with the engineer's mark and signature.

(9) Plans to be reviewed by the department must be legible, identify the name and classification of the facility, clearly indicate the scope and nature of the installation and the person or firm responsible for the electrical plans. The plans must clearly show the electrical installation or alteration in floor plan view, include switchboard and/or panel

board schedules and when a service or feeder is to be installed or altered, must include a riser diagram, load calculation, fault current calculation and interrupting rating of equipment. Where existing electrical systems are to supply additional loads, the plans must include documentation that proves adequate capacity and ratings. The plans must be submitted with a plan review submittal form available from the department.

AMENDATORY SECTION (Amending WSR 96-21-146, filed 10/23/96, effective 11/25/96)

WAC 296-150F-0580 Must I obtain an insignia for used factory-built structures? All used factory-built housing and commercial structures that are to be installed on a building site in Washington state must have an insignia of approval from ~~((as))~~ the department prior to being installed on a building site or it must be approved by the local building official as a moved building as allowed by section 101.2 of the International Building Code.

AMENDATORY SECTION (Amending WSR 06-10-066, filed 5/2/06, effective 6/30/06)

WAC 296-150F-3000 Factory-built housing and commercial structure fees.

INITIAL FILING FEE	\$58.90
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (CODE CYCLE)	\$290.70
INITIAL FEE - ONE YEAR DESIGN	\$170.30
RENEWAL FEE	\$58.90
RESUBMIT FEE	\$85.10
ADDENDUM (Approval expires on same date as original plan.)	\$85.10
ELECTRONIC PLAN SUBMITTAL FEE \$4.80 per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW (Plan review for educational, institutional or health care facilities and other buildings):	
Electrical Plan submission fee	\$64.80
Service/feeder Ampacity:	
0 - 100	\$28.70
101 - 200	\$35.80
201 - 400	\$67.10
401 - 600	\$79.20
601 - 800	\$102.10
801 - 1000	\$124.90
Over 1000	\$135.50
Over 600 volts surcharge	\$21.40
Thermostats:	
First	\$12.70
Each additional	\$3.00
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$11.60
Each additional circuit or zone	\$2.00
Generators, refer to appropriate service/feeder ampacity fees	
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) will be charged per hour or fraction of an hour*	\$76.70
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service /feeders Ampacity	212.80 plus
Service/feeder	\$195.10
Additional Feeder	\$37.00

ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders	212.80 plus
Service/feeder	\$103.50
Additional Feeder	\$26.40
MEDICAL GAS PLAN REVIEW:	
SUBMISSION FEE	\$80.80
FIRST STATION	\$80.80
EACH ADDITIONAL STATION	\$29.40
RECIPROCAL PLAN REVIEW:	
INITIAL FEE-MASTER DESIGN	\$130.00
INITIAL FEE-ONE YEAR DESIGN	\$78.60
RENEWAL FEE	\$78.60
ADDENDUM	\$78.60
PLANS APPROVED BY DESIGN PROFESSIONALS	
	\$58.90
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST (TWO) <u>THREE</u> SETS	
	\$15.20
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$75.30
TRAVEL (Per hour*)	\$75.30
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$75.30
TRAVEL (Per hour*)	\$75.30
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION	\$240.30
EACH ADDITIONAL SECTION	\$21.70
REISSUED-LOST/DAMAGED	\$58.90
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$75.30
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	\$32.60
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$12.20
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

WSR 06-23-139

PROPOSED RULES

ENVIRONMENTAL HEARINGS OFFICE

[Filed November 21, 2006, 4:17 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4). Rules to be amended are procedural rules relating to agency hearings.

Title of Rule and Other Identifying Information: Chapter 371-08 WAC is the chapter that contains the procedural rules governing the conduct of pollution control hearings board hearings. Chapter 461-08 WAC is the chapter that contains the procedural rules governing the conduct of shorelines hearings board hearings.

Hearing Location(s): Environmental Hearings Office, 4224 6th Avenue S.E., Building 2, Lacey, WA 98504-0903, on January 3, 2007, at 1:30 p.m.

Date of Intended Adoption: January 16, 2007.

Submit Written Comments to: Kay Brown, Environmental Hearings Office, 4224 6th Avenue S.E., Building 2, Lacey, WA 98504-0903, e-mail eho@eho.wa.gov, fax (360) 438-7699.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose in making the changes to chapter 371-08 WAC, Pollution control hearings board rules and chapter 461-08 WAC, Shorelines hearings board rules, is to make the procedural rules for the two boards more consistent, except where differences are driven by the underlying statutes. Increased consistency would make the hearings process easier for persons appearing before the boards, and for the staff and board members that serve both boards.

Statutory Authority for Adoption: RCW 43.21B.170, 90.58.175, chapters 43.21B, 34.05, 90.58 RCW.

Statute Being Implemented: Chapters 43.21B and 90.58 RCW.

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

Name of Proponent: Environmental hearings office, governmental.

Name of Agency Personnel Responsible for Drafting: Kay Brown, Environmental Hearings Office, (360) 459-6327; Implementation and Enforcement: William H. Lynch, Environmental Hearings Office, (360) 459-6327.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No statement is required for adoption of rules described in RCW 34.05.-310(4) (amendment to rules relating to procedure, practice, or requirements related to agency hearings.)

A cost-benefit analysis is not required under RCW 34.05.328. The environmental hearings office is not an agency specifically listed in RCW 34.05.328.

William H. Lynch

AMENDATORY SECTION (Amending WSR 05-15-017, filed 7/7/05, effective 8/7/05)

WAC 371-08-305 Definitions. ~~((As used in this chapter))~~ The following terms ((shall)) apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in RCW 34.05.010. The term "adjudicative proceeding" is used interchangeably with the terms "case" and "appeal" in this chapter.

(2) "Agency" means any state governmental entity, air pollution control authority, local health department or other agency whose decisions are subject to the board's jurisdiction.

(3) "Board" means the pollution control hearings board, a quasi-judicial board created pursuant to chapter 43.21B RCW and described in WAC 371-08-315. Where appropriate, the term "board" also refers to the designated agents of the pollution control hearings board.

(4) "Business days" means Monday through Friday exclusive of any state or federal holidays.

(5) "Department" refers to and means the department of ecology.

(6) "Filing" of a document means actual receipt by the board during regular office hours. Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency and parties. Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.

(7) "Party" means:

(a) A person to whom any agency decision is specifically directed; or

(b) A person named as a party to the adjudicative proceeding, allowed to intervene or joined as a party by the board.

(8) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

(9) "Presiding officer" means a member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or vice-chairperson.

(10) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) Facsimile transmission with mailing or submission to commercial delivery service of copies on the same day. Service by facsimile is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to delivery service of the copies.

(d) Commercial parcel delivery service. Service by commercial parcel delivery service is regarded as complete upon delivery to the parcel delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

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

WAC 371-08-310 Computation of time. (1) The time within which any act shall be done, as provided by these rules, (~~shall be~~) is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays (~~shall be~~) are excluded in the computation.

(2) This section also pertains to the period for filing an appeal with the board, petition for rule making, petition for declaratory ruling or any other adjudication authorized by this chapter.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-325 Public information about practice before the board and public records. (1) Questions about practicing before the board may be directed to the environmental hearings office by mail or, during regular office hours, by telephone or by telefacsimile.

(2) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-12 WAC are available for public inspection and copying during regular office hours at the environmental hearings office. The form for requests for public records is set forth in WAC 198-12-140. Any person seeking to make copies of such public records may copy the documents at the environmental hearings office for a reasonable charge per page.

(3) The environmental hearings office maintains a web site with information on the pollution control hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a handbook with helpful information for practice before the board, sample forms, and links to the board's rules of practice and other pertinent statutes and rules. This web site may be accessed via the internet at <http://www.eho.wa.gov>.

AMENDATORY SECTION (Amending WSR 05-15-017, filed 7/7/05, effective 8/7/05)

WAC 371-08-335 Filing a timely appeal with the board. (1) An appeal before the board (~~shall be begun~~) is initiated by filing a notice of appeal with the board at the environmental hearings office and by serving a copy of the appeal notice on the agency whose decision is being

appealed. For the board to acquire jurisdiction both such filing and such service must be timely accomplished.

(2) The notice of appeal shall be filed with the board within thirty days of the date of receipt of the order or decision. The board's rule governing the computation of time (WAC 371-08-310) shall determine how the thirty-day appeal period is calculated. The "date of receipt" of an order or decision means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

(3) An appeal may be filed with the board by personal delivery, commercial delivery, facsimile, or first-class, registered or certified mail. An appeal is filed with the board on the date the board actually receives the notice of the appeal, not the date that the notice is mailed. Upon receiving the notice of appeal, the board will acknowledge receipt. The date stamped on the appeal notice shall be prima facie evidence of the filing date. The board may thereafter require that additional copies be filed.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-405 Jurisdictional requirements of the board—Dismissal on jurisdictional grounds. (1) Timely filing of the notice of appeal with the board and timely service of the notice of appeal on the appropriate agency (~~must both be accomplished~~) are required for the board to acquire jurisdiction.

(2) Any party may challenge the jurisdiction of the board to hear an appeal, and the board may independently raise the jurisdictional issue. The board shall, when satisfied that it does not have jurisdiction, dismiss an appeal.

AMENDATORY SECTION (Amending WSR 05-15-017, filed 7/7/05, effective 8/7/05)

WAC 371-08-450 Motions. (1) An application to the board for an order (~~shall~~) must be by motion which, unless made during a hearing, (~~shall~~) must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order (~~shall be submitted~~) with a motion (~~only at the request of~~) unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request (~~that the board hold a motion hearing~~), or the board may independently set, an oral argument on the motion. The presiding officer will decide whether or not (~~a motion hearing~~) oral argument will be held and notify the parties accordingly. At (~~a motion hearing~~) oral argument, the board will consider the arguments of the parties but will not take evidence.

~~((Unless a motion hearing is requested by one or more parties, or the board independently sets a motion hearing date, the board will normally decide the motion exclusively on the parties' written submissions.))~~

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than sixty days before the secondary hearing date, or, if no secondary date applies, the primary hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion ~~((dispositive of all or part of an appeal shall))~~ must be filed and served fourteen days from the receipt of the motion by the nonmoving party. The moving party ~~((shall))~~ then ~~((have))~~ has ten days from receipt of the response to file and serve a reply.

~~((b))~~ (c) All responses to any nondispositive motion ~~((shall))~~ must be filed and served five days from receipt of the motion by the nonmoving party. The moving party ~~((shall))~~ then ~~((have))~~ has three days from receipt of the response to file and serve a reply.

~~((c))~~ ~~All dispositive motions shall be filed and served not later than sixty days before the secondary hearing date, or, if no secondary date applies, the primary hearing date, unless the presiding officer by order allows otherwise.))~~

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) ~~((The board will decide a motion on the written record unless the presiding officer orders a motion hearing.))~~ Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-460 Postponements or continuances of hearings. (1) Postponement or continuance of a hearing is within the discretion of the ~~((board))~~ presiding officer, whether contested or uncontested by the parties. The board may postpone or continue a hearing on its own motion.

(2) A party may seek the postponement or continuance of a hearing ~~((shall be sought))~~ by written motion and according to the procedure set forth in WAC 371-08-450.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-470 Hearing briefs. Hearing briefs, if filed, ~~((shall))~~ must be submitted to the board at least seven days before the hearing or such other time as ~~((the board may prescribe))~~ directed by the presiding officer. ~~((A))~~ The original ~~((and three copies of the))~~ brief ~~((shall))~~ must be filed with the board and a copy served on the other parties or their attorneys. Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order. The board may permit or require the filing of additional briefs.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-475 Procedures at hearings. (1) **Presiding officer.** All hearings ~~((shall be))~~ are conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** ~~((Oaths shall be administered by the presiding officer or other officer with authority to administer oaths.))~~ All testimony to be considered by the board ~~((shall))~~ must be sworn or affirmed. The presiding officer, or other authorized officer, shall administer the oath to witnesses.

(3) **Recording.**

(a) An official record of all evidentiary hearings ~~((shall))~~ must be made by manual, electronic, or other type of recording device.

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, anyone seeking to use such equipment must consult first with the presiding officer ~~((shall be consulted first and))~~, who may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) **Order of presentation of evidence.**

(a) The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence, except that in case of an appeal from a regulatory order or an order assessing a penalty, the issuing agency shall initially introduce all evidence necessary to its case.

(b) The opposing party shall present its evidence after the party initially presenting evidence has rested.

(c) Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

(d) Witnesses may be called out of turn in contravention of this rule by agreement of all parties.

(5) **Opening statements.** Unless the presiding officer rules otherwise, parties may present an oral opening statement setting out briefly a statement of the basic facts, disputes and issues of the case.

(6) **Written statement of qualifications of expert witnesses.** Any party who plans to introduce the testimony of any expert witness at the hearing shall submit as an exhibit to the board and all parties at the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(7) **Former employee as an expert witness.** Except when permitted by applicable state conflict of interest law, no former employee of the department ~~((shall at any time after leaving the employment of the department appear, except when permitted by applicable state conflict of interest law.))~~ may appear as an expert witness on behalf of other parties in a formal board proceeding in which he or she took an active part in the ~~((investigation))~~ matter giving rise to the appeal as ~~((a representative))~~ an employee of the department ~~((was taken)).~~

(8) **Objections and motions to strike.** Objections to the admission or exclusion of evidence ~~((shall))~~ must be in short form stating the legal grounds of objection relied upon.

(9) **Rulings.** The presiding officer, on objection or independently, shall exclude all irrelevant or unduly repetitious evidence and all rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 371-08-480 through 371-08-515.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-535 Final decisions and orders. (1) When the hearing on the appeal has been concluded, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by a majority of the board may be adopted which shall contain findings and conclusions as to each contested issue of fact and law.

(2) The record before the board shall be considered by at least two of the members of the board: Provided, That if two members cannot agree on a decision, the third member must consider the record before the board: And provided further, That if two members cannot agree on a decision in any case, the substantive decision of the agency (or authority) will control ~~((in those cases where the appealing party has the burden of proof)).~~

(3) The board shall mail copies of the final decision and order ~~((shall be mailed by the board))~~ to each party to the appeal or to the attorney or representative of record, if any. Service upon the representative ~~((shall))~~ constitutes service upon the party.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-550 Petitions for reconsideration. (1)(a) After issuance of a final decision, any party may file a petition for reconsideration with the board. Such petition must be filed and served on all parties within ten days of mailing of the final decision. The board may require an answer, or parties may elect to file an answer, to the petition for reconsideration. ~~((Copies of the petition for reconsideration, and an answer, if required, shall be served on the other parties of record.))~~ Any answer to a petition for reconsideration must be filed and served on all parties within five days of the receipt of the petition.

(b) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the board.

(c) In response to a petition for reconsideration, the board may deny it, or may reverse or modify its decision or may reopen the hearing. The board is deemed to have denied the petition if, within twenty days from the date the petition is filed, the board does not act on the petition or specify a date by which it will act on the petition.

(2) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

(3) The board shall mail copies of the final decision and order and of the board's disposition of any petition for reconsideration ~~((shall be mailed by the board))~~ to each party to the appeal or to the attorney or representative of record. Service

on the representative ~~((shall be deemed to be))~~ constitutes service on the party.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-560 Direct review to the court of appeals upon certification by the board. (1) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and must serve the board and all parties of record. The application for direct review shall request the board to file a certificate of appealability.

(2) If the board's jurisdiction is among the issues on review to the superior court, the board may, on its own motion, file an application for direct review with the superior court on the jurisdictional issue.

(3) From the date the board is served a copy of the application for direct review under subsection (1) of this section, the board shall have thirty days to grant or deny the request to file a certificate of appealability. The board shall file its decision granting or denying the certificate of appealability ~~((or its decision denying the certificate, together with the board's final order being appealed.))~~ with the superior court and serve the parties of record.

(4) The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest, and either of the following:

(a) Fundamental and urgent statewide or regional issues are raised; or

(b) The proceeding is likely to have significant precedential value.

(5) The board shall state in the certificate of appealability, or in its decision denying the certificate, which criteria set forth in subsection (4) of this section it applied and how those criteria were or were not met.

(6) Where the board issues a certificate of appealability, the parties ~~((shall))~~ have fifteen days from the date the certificate is served to file a notice of discretionary review in the superior court. The notice ~~((shall))~~ must include a copy of both the certificate of appealability and the final order or decision of the board being appealed.

(7) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(8) If the certificate of appealability is denied, review of the board's decision shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-305 Definitions. ~~((As used in this chapter))~~ The following terms ((shall)) apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Agency" means any state governmental entity.

(2) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in chapter 34.05 RCW. The terms "appeal," "adjudi-

cative proceeding" and "case" are used interchangeably in this chapter.

(3) "Board" means the shorelines hearings board, a quasi-judicial body created pursuant to chapter 90.58 RCW and described in WAC 461-08-315.

(4) "Date of filing" as used in this chapter and RCW 90.58.140(6) has different meanings depending upon the type of local government decision that is being appealed.

(a) "Date of filing" of a local government's approval or denial of a substantial development permit, or local government's denial of a variance or conditional use permit, is the date that the department actually receives a completed filing.

(b) "Date of filing" of a local government's approval of a conditional use permit or variance is the date that the department transmits its final decision or order to local government.

(c) For substantial development permits filed simultaneously with approvals of conditional use permits or variances, the "date of filing" is the date that the department transmits its final decision or order on the variance or conditional use permit to local government.

(5) "Department" refers to and means the department of ecology.

(6) "Filing" of a document means actual receipt by the board during regular office hours. Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency, local government and parties. Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.

(7) "Local government" means any county, incorporated city or town which contains within its boundaries any lands or water subject to chapter 90.58 RCW.

(8) "Party" means:

(a) A person to whom any local government or agency decision is specifically directed; or

(b) A person named as a party to the appeal, or allowed to intervene or joined as a party by the board.

(9) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

(10) "Petition for review" is a document that when properly filed with the board initiates an adjudicative proceeding before the board.

(11) "Presiding officer" means any member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or the vice-chairperson.

(12) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) Facsimile transmission with mailing or submission to a commercial delivery service of copies on the same day. Ser-

vice by facsimile is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to a delivery service of the copies.

(d) Commercial delivery service. Service by commercial delivery service is regarded as complete upon delivery to the delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

AMENDATORY SECTION (Amending WSR 97-19-063, filed 9/15/97, effective 10/16/97)

WAC 461-08-310 Computation of time. (1) ~~(In computing any period of time prescribed or allowed by these rules or applicable statute, the day of the act after which the designated period of time begins to run is not to be included.)~~ The time within which any act shall be done, as provided by these rules, ~~((shall be))~~ is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays ~~((shall be))~~ are excluded in the computation.

(2) This section also pertains to the period for filing with the board any petition for review, petition for rule making, petition for declaratory ruling or any other adjudication ~~((which this chapter authorizes))~~ authorized by this chapter.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-325 Public information about practice before the board and public records. (1) Questions about board procedures may be directed to the environmental hearings office by mail or, during regular office hours, by telephone or by telefacsimile.

(2) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-12 WAC are available for public inspection and copying during regular office hours at the environmental hearings office. The form for requests for public records is set forth in WAC 198-12-140. Any person seeking to make copies of such public records may copy the documents at the environmental hearings office for a reasonable charge per page.

(3) The environmental hearings office maintains a web site with information on the shorelines hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a handbook with helpful information for practice before the board, sample forms, and links to the board's rules of practice and other pertinent statutes and rules. This web site may be accessed via the internet at <http://www.eho.wa.gov>.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-330 Board decision making on appeals.

The number of board members required to make a decision on a case differs depending on the type of case.

(1) **Short-board appeals.** Pursuant to RCW ((90.58.170)) 90.58.185, petitions for review that involve a single-family residence or an appurtenance to a single-family residence, including a dock or pier for a single-family residence, and petitions for review involving a penalty of fifteen thousand dollars or less, may be heard by a panel of three board members((-)). A short-board appeal panel must have at least one ((and)) but not more than two ((of whom shall also be)) members of the pollution control hearings board. Two members of the panel must agree to issue a final decision. The decision of the panel ((shall be)) is the final decision of the full board.

(2) **Full-board appeals.** All other appeals are full-board appeals. Four members of the board ((shall)) constitute a quorum for making a decision and may act even if the other two members are unavailable or have not yet been appointed.

(3) **Administrative appeals judges.** For both full-board and short-board cases, the chairperson may appoint an administrative appeals judge from the environmental hearings office to be the presiding officer.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-340 Where to file a petition for review and number of copies.

(1) An adjudicative proceeding before the board ((shall be begun)) is initiated by filing a petition for review ((and one copy)) with the board at the environmental hearings office. The board shall acknowledge filing of the petition for review by a stamp and the board's stamp on the petition ((shall be)) is prima facie evidence of the date of filing. The board may thereafter require that additional copies be filed.

(2) **Deadlines for filing a petition for review.** ((There are)) Different deadlines for filing a petition for review apply depending upon the type of decision or government action being appealed.

(a) A petition for review by any person aggrieved by the granting, denying or rescinding of a permit on shorelines of the state ((shall)) must be filed with the board within twenty-one days of the "date of filing" as defined in WAC 461-08-305.

(b) A petition for review by any person aggrieved by a penalty assessment ((shall)) must be filed with the board within thirty days of the date the penalty notice is received.

(c) A petition for review by any person aggrieved by the department's decision to approve, reject or modify a proposed or final shoreline master program, or program amendment, by a local government that is not planning under the Growth Management Act, RCW 36.70A.300, ((shall)) must be filed with the board within thirty days of the date of the department's written notice of its decision to the local government.

(d) A petition for review by any person aggrieved by any rules, regulations or guidelines adopted or approved by the department pursuant to chapter 90.58 RCW((-, shall)) must be

filed with the board within thirty days of the date of adoption or approval.

AMENDATORY SECTION (Amending WSR 02-06-009, filed 2/22/02, effective 3/25/02)

WAC 461-08-355 Service of petitions for review with department and attorney general—Intervention by the department and attorney general.

(1) For a petition pertaining to a local government's final decision on a permit, the petitioner shall serve a copy of the petition with the department, the attorney general and that local government within seven days of filing the petition with the board.

(2) Within fifteen days of the date of receipt of the petition for review described in subsection (1) of this section, the department or the attorney general may intervene in the case before the board to protect the public interest and to insure compliance with chapter 90.58 RCW. Nothing in WAC 461-08-345, setting a twenty-one day limit on when the department or the attorney general can directly file a petition for review, limits the right of the department or attorney general to intervene under this section in a board proceeding.

(3) Service on the local government shall be accomplished in one of the following ways:

(a) The petitioner shall serve local government as designated on the permit decision within seven days of filing the petition with the board; or

(b) The petitioner shall serve the department or office within the local government that issued the permit decision within seven days of filing the petition with the board; or

(c) The petitioner shall serve local government pursuant to RCW 4.28.080 within seven days of filing the petition with the board.

(4) When the petitioner is not the permit applicant, the petitioner shall serve the permit applicant with a copy of the petition for review.

(5) For purposes of this rule, the date of service ((shall be)) is the date of mailing.

~~((6) The board may dismiss a petition for review where there has not been substantial compliance with the filing and service requirements of RCW 90.58.180 and this rule. Substantial compliance will include actual notice of a petition for review.))~~

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-425 Dismissal of petitions for review on jurisdictional grounds.

(1) Timely filing of the petition for review with the board, and other petitions within the board's jurisdiction under chapter 90.58 RCW, ((is)) and timely service on the appropriate agencies are required for the board to acquire jurisdiction.

(2) Any party may challenge the jurisdiction of the board to hear a petition for review or other petition under chapter 90.58 RCW on jurisdictional grounds, and the board may independently raise the jurisdictional issue. The board may, when satisfied that it does not have jurisdiction, dismiss the petition for review.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-470 Use of telephone conferences, motion hearings and hearings. Upon the motion of any party or independently, the presiding officer may decide to conduct any conference, ~~((motion hearing))~~ oral argument on a motion, or hearing by telephone conference call to promote the fair, speedy and economical processing of a matter. ~~((If the presiding officer grants the party's request for a telephone conference, the requesting party shall initiate and pay for the conference call.))~~

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-475 Motions. (1) An application to the board for an order ~~((shall))~~ must be by motion which, unless made during a hearing, ~~((shall))~~ must be in writing, state with particularity the grounds therefor and set forth the relief sought. ~~((Each written motion shall have appended to it the order which the motion seeks.))~~ A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request ~~((that the board hold a motion hearing)),~~ or the board may independently set, an oral argument on the motion. The presiding officer will decide whether or not an oral argument will be held and notify the parties accordingly. At ~~((a motion hearing))~~ oral argument, the board will consider the arguments of the parties but will not take evidence. ~~((Unless a motion hearing is requested by one or more parties, or the board independently sets a motion hearing date, the board will normally decide the motion exclusively on the parties' written submissions. Where any party requests a motion hearing, that party shall procure from the hearing coordinator an available date for the motion hearing and prepare a note that sets the time, date and location of the motion hearing. The moving party shall note the motion for hearing on a date deemed by the hearing coordinator to be available for that purpose. The motion, order and note for motion hearing shall then be filed and served. Where the hearing coordinator specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call. The presiding officer will decide whether or not a motion hearing will be held, and notify the parties accordingly.))~~

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than sixty days before the hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion ~~((shall))~~ must be filed and served ~~((ten))~~ fourteen days from the ~~((date the motion is received))~~ receipt of the motion by the nonmoving

party. The moving party ~~((shall))~~ then ~~((have seven))~~ has ten days from receipt of the response to file and serve a reply.

~~((b))~~ In cases where the moving party requests a motion hearing, all dispositive motions shall be filed and served not later than twenty-eight days before the motion hearing.

~~((c))~~ All dispositive motions shall be filed and served not later than forty-five days before the hearing date, unless the presiding officer by order allows otherwise.)) (c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party. The moving party then has three days from receipt of the response to file and serve a reply.

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) ~~((The board will decide a motion on the written record unless the presiding officer orders a motion hearing.))~~ Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-480 Postponements and continuances of hearings. (1) Postponement or continuance of a hearing is within the discretion of the presiding officer, whether contested or uncontested by the parties. The board may postpone or continue a hearing on its own motion.

(2) A party may seek the postponement or continuance of a hearing ~~((shall be sought))~~ by written motion and according to the procedure set forth in WAC 461-08-475.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-490 Hearing briefs. Hearing briefs, if filed, ~~((should))~~ must be submitted to the board at least seven days before the time of hearing or other such time as ~~((the board may prescribe. For a full board case, an original and six copies must be filed. In a short board case, an original and three copies must be filed. In all cases where briefs are filed, a copy shall also be served on the other parties or their attorneys))~~ directed by the presiding officer. The original brief must be filed with the board and a copy served on the other parties or their attorneys. Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order. The board may permit or require the filing of additional briefs.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-495 Procedures at hearings. (1) **Presiding officer.** All hearings ~~((shall be))~~ are conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** ~~((Oaths shall be administered by the presiding officer or other officer with authority to administer oaths.))~~ All testimony to be considered by the

board ~~((shall))~~ must be sworn or affirmed. The presiding officer, or other authorized officer, shall administer the oath to witnesses.

(3) Recording.

(a) An official recording of all evidentiary hearings ~~((shall))~~ must be made by manual, electronic, or other type of recording device.

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, anyone seeking to use such equipment must consult first with the presiding officer ~~((shall be consulted first and)),~~ who may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) Order of presentation of evidence.

(a) The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence except that in the case of an appeal from a regulatory order or an order assessing a penalty, the issuing agency shall initially introduce all evidence necessary to its case.

(b) The opposing party shall introduce its evidence after the ~~((appellant))~~ party initially presenting evidence has rested. Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

(c) Witnesses may be called out of turn in contravention of this rule by agreement of all parties.

(5) Opening statements. Unless the presiding officer rules otherwise, parties shall present an oral opening statement setting out briefly a statement of the basic facts, disputes and issues of the case.

(6) Written statement of qualifications of expert witnesses. Any party who plans to introduce the testimony of any expert witness at the hearing shall submit as an exhibit to the board and all parties at the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(7) Former employee as an expert witness. Except when permitted by applicable state conflict of interest law, no former employee of the department or the board or the attorney general ~~((shall at any time after leaving the employment with the department appear, except when permitted by applicable state conflict of interest law;))~~ may appear as an expert witness on behalf of other parties in a formal board proceeding in which he or she took an active part in the ~~((investigation))~~ matter giving rise to the appeal as ~~((a representative))~~ an employee of the department or board ~~((was taken)).~~

(8) Objections and motions to strike. Objections to the admission or exclusion of evidence ~~((shall))~~ must be in short form, stating the legal grounds of objection relied upon ~~((and the transcript shall not include extended argument or debate)).~~

(9) Rulings. The presiding officer, on objection or independently, shall exclude all irrelevant or unduly repetitious evidence and all rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 461-08-515 through 461-08-535.

AMENDATORY SECTION (Amending WSR 99-23-038, filed 11/12/99, effective 12/13/99)

WAC 461-08-555 Final decisions and orders. (1) Full-board cases. When the hearing on the petition for review has been heard by a majority of the board in a full-board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law: Provided, That in the event that the full board considers the record and that four of the members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order ~~((= Provided further, That this subsection does not apply to a request for review filed under RCW 90.58.210)).~~

(2) Short-board cases. When the hearing on the petition for review has been heard by two or more board members in a short-board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law: Provided, That in the event that the three board members consider the record and two members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order.

(3) The board shall mail copies of the final decision and order ~~((shall be mailed by the board))~~ to each party to the petition for review or to the attorney or representative of record, if any. Service upon the representative ~~((shall))~~ constitutes service upon the party.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-565 Petitions for reconsideration. (1)(a) After issuance of a final decision, any party may file a petition for reconsideration with the board. Such petition must be filed and served on all parties within ten days of mailing of the final decision. The board may require an answer, or parties may elect to file an answer, to the petition for reconsideration. ~~((Copies of the petition for reconsideration, and an answer, if required, shall be served on the other parties of record.))~~ Any answer to a petition for reconsideration must be filed and served on all parties within five days of the date of receipt of the petition.

(b) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the board.

(c) In response to a petition for reconsideration, the board may deny it, or may reverse or modify its decision or may reopen the hearing. The board is deemed to have denied the petition if, within twenty days from the date the petition is filed, the board does not act on the petition or specify a date by which it will act on the petition.

(2) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

(3) The board shall mail copies of the final decision and order and of the board's disposition of any petition for reconsideration (~~shall be mailed by the board~~) to each party to the appeal or to the attorney or representative of record. Service on the representative (~~shall~~) constitutes service on the party.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-575 Direct review to the court of appeals based upon an accepted certificate of appealability by the board. (1) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and must serve the board and all parties of record. The application for direct review shall request the board to file a certificate of appealability.

(2) If the board's jurisdiction is among the issues on review to the superior court, the board may, on its own motion, file an application for direct review with the superior court on the jurisdictional issue.

(3) From the date the board is served a copy of the application for direct review under subsection (1) of this section, the board shall have thirty days to grant or deny the request for a certificate of appealability. The board shall file its decision granting or denying the certificate of appealability with the superior court and serve the parties of record.

(4) The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest, and either of the following:

(a) Fundamental and urgent statewide or regional issues are raised; or

(b) The proceeding is likely to have significant precedential value.

(5) The board shall state in the certificate of appealability, or in its decision denying the certificate, which criteria set forth in subsection (4) of this section it applied and how those criteria were or were not met.

(6) Where the board issues a certificate of appealability, the parties (~~shall~~) have fifteen days from the date (~~of service~~) the certificate is served to file a notice of discretionary review in the superior court. The notice (~~shall~~) must include a copy of both the certificate of appealability and the final order or decision of the board being appealed.

(7) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(8) If the certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

Preproposal statement of inquiry was filed as WSR 06-19-019.

Title of Rule and Other Identifying Information: The securities division proposes to amend the multijurisdictional disclosure system (MJDS) rules contained in chapter 460-11A WAC which provide for a streamlined registration process for securities offerings of certain Canadian issuers.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Room 220, Tumwater, WA 98501, on December 27, 2006, at 1:00 p.m.

Date of Intended Adoption: December 28, 2006.

Submit Written Comments to: Faith L. Anderson, Associate General Counsel, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail fanerson@dfi.wa.gov, fax (360) 725-7825, by December 26, 2006.

Assistance for Persons with Disabilities: Contact Kelli Skeels, P.O. Box 9033, Olympia, WA 98507-9033, by December 19, 2006, TTY (360) 664-8126 or (360) 902-8774.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules contained in chapter 460-11A WAC were adopted by the securities division in 1991. The NASAA model rules on which these rules are based were updated in 2005. These rules promote uniformity with respect to securities offerings by Canadian issuers, which furthers the uniformity goals of RCW 21.20.450. The securities division proposes to amend these rules to maintain their uniformity in light of the 2005 amendments to the NASAA model rule.

The amendments proposed would:

1. Revise WAC 460-11A-020 to reduce the period of time a registration statement must be on file before it becomes effective from seven full business days to three days for a multijurisdictional offering; and

2. Create a new exemption from securities registration to be codified as WAC 460-11A-050 that would exempt a non-issuer transaction in any class of the issuer's securities, whether or not the transaction is effected through a broker-dealer, after the issuer's multijurisdictional securities offering has been declared effective by the Securities and Exchange Commission.

The text of chapter 460-11A WAC marked to show the proposed amendments is filed with this notice.

Reasons Supporting Proposal: These rules should be amended as proposed to maintain their uniformity with those of Canadian regulators and other states.

Statutory Authority for Adoption: RCW 21.20.450, [21.20].240.

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: Department of financial institutions, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Faith L. Anderson, 150 Israel Road S.W., Olympia, WA 98501, (360) 725-7825; Implementation: Scott Jarvis, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700; and Enforcement: Michael E. Stevenson, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8760.

WSR 06-23-161
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed November 22, 2006, 9:44 a.m.]

Original Notice.

No small business economic impact statement has been prepared under chapter 19.85 RCW. If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328.

November 21, 2006

Scott Jarvis

Director

AMENDATORY SECTION (Amending WSR 91-18-014, filed 8/26/91, effective 9/26/91)

WAC 460-11A-020 Time for taking effect of multi-jurisdictional registration statement. The period of time under RCW 21.20.190(2) a registration statement must be on file before it becomes automatically effective shall be reduced from ten full business days to ~~((seven full business))~~ three days for a multijurisdictional offering.

NEW SECTION

WAC 460-11A-050 Exemption for secondary trading of certain multijurisdictional registered securities. After a multijurisdictional offering has been declared effective by the SEC, a nonissuer transaction in any class of the issuer's securities is exempt from registration, whether or not the transaction is effected through a broker-dealer.

