

WSR 07-24-013
WITHDRAWAL OF PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed November 27, 2007, 11:09 a.m.]

The professional educator standards board requests the withdrawal of proposed rule making filed as WSR 07-20-107 on October 2, 2007 (WAC 181-79A-221).

If you have any questions, please contact Nasue Nishida by phone at (360) 725-6238 or e-mail at nasue.nishida@k12.wa.us.

Nasue Nishida
 Policy and Research Analyst

WSR 07-24-015
PROPOSED RULES
GAMBLING COMMISSION

[Filed November 27, 2007, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-005.

Title of Rule and Other Identifying Information: WAC 230-16-060 Assembly and packaging of pull-tab series and 230-14-260 Inventory control.

Hearing Location(s): DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220, on January 11, 2008, at 9:30 a.m.

Date of Intended Adoption: January 11, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by January 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by January 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Richard Newgard, representing the Washington Charitable and Civic Gaming Association, petitioned for this rule change. The petitioner is requesting that manufacturers be allowed to package pull-tab series containing more than 10,000 tickets in multiple packages, boxes, or containers. The following security requirements would be added to the rule:

- (1) Each container must be labeled to show the total shipping units, series number, and WSGC I.D. stamp number; and
- (2) Containers must be sealed and shrink wrapped; and
- (3) Cases (containing multiple containers) must be marked to identify contents; and
- (4) All containers in a series must be shipped together; and
- (5) Packaging containers must be identical within a series.

At staff's suggestion, the petitioner also requests adding a requirement for operators to attach a packing slip to the series invoice and have the invoice maintained as part of the permanent gambling record.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Richard Newgard, representing the Washington Charitable and Civic Gaming Association, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

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 because the change would not impose additional costs on businesses. Pull-tabs already have to be packaged for shipment and the proposed rule change merely allows pull-tabs to be shipped in multiple packages rather than one package.

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.

November 27, 2007
 Susan Arland
 Rules Coordinator

AMENDATORY SECTION (Amending Order 615, filed 9/17/07, effective 1/1/08)

WAC 230-16-060 Assembly and packaging of pull-tab series. When assembling and packaging a pull-tab series, manufacturers must:

(1) Place each pull-tab series in one packaging container, unless the number of tickets in the series exceeds 10,000. For pull-tab series that contain more than 10,000 tickets, manufacturers may package the pull-tab series in more than one container if they:

(a) Seal all containers with a sticker or seal and shrink wrap them; and

(b) Identically label each container with a referencing system that identifies at least:

(i) The series number; and

(ii) The total boxes per series; and

(iii) The I.D. stamp numbers; and

(c) Mark the cases to identify the contents during shipping, including:

(i) The series number; and

(ii) The total cases per set; and

(d) Package and ship each box or case together; and

(e) Package the packing slip and flare with one box of the series; and

(f) Ensure that no case, package, box or container shall be marked to make it distinguishable from any other case, package, box or container within the series; and

(2) Not assemble the winning and losing pull-tabs in a way that would allow prize manipulation; and

(3) Mix pull-tabs before placing them in their final container to ensure pull-tabs are separated from their original collated row position and dispersed among all rows in the container; and

(4) Place a packing slip inside the container with the name of manufacturer, series number, date of packaging, and the name or identification of the person who packaged the series. Manufacturers may print this information on the flare or the outside of the container. Manufacturers must have this information readily available if we request it; and

(5) Print on the outside of the container a message stating that operators must remove the pull-tabs from the container and thoroughly mix them before putting them out for play. Manufacturers must:

(a) Print the information on:

(i) A crack-and-peel sticker and place it on the outside of the packaging container; or

(ii) A packing slip placed inside the container; or

(b) Request our approval to exempt packages of jar tickets from this requirement.

AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

WAC 230-14-260 Inventory control. (1) Punch board and pull-tab operators must control and account for each punch board and pull-tab series they obtain. Operators must:

(a) Enter the ((Washington state-))I.D. ((stamp)) stamp numbers for the series in all records; and

(b) Attach the packing slip to the original invoice if the pull-tab series is packed in more than one container; and

(c) Record each pull-tab dispenser they purchase.

(2) Distributors must record every purchase of punch boards or pull-tabs on an invoice. Operators must use this record to account for each series between the time they purchase it and the time they remove it from play. Invoices must include space for the operator to attach:

(a) The I.D. stamp numbers for each board or series; and

(b) The date they placed the punch board or pull-tab series out for play.

(3) When operators receive punch boards or pull-tab series, they must ensure that the manufacturer or distributor recorded all required data by comparing the Washington state identification stamp number attached to each punch board and pull-tab series to the number recorded on the purchase invoice.

(4) Operators may use a separate computerized inventory record as long as they:

(a) Use an I.D. stamp or print a computer generated facsimile of the stamp number on the inventory record; and

(b) Record all other required information.

WSR 07-24-016

PROPOSED RULES

GAMBLING COMMISSION

[Filed November 27, 2007, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-004.

Title of Rule and Other Identifying Information: WAC 230-15-025 Hours of operation.

Hearing Location(s): DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220, on January 11, 2008, at 9:30 a.m.

Date of Intended Adoption: January 11, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by January 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by January 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner, a poker player, is requesting to allow card rooms to use their premises for card playing twenty-four hours a day, five days a week and twenty hours a day, two days a week.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Andrew Kimmerlee, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

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 because the rule change would not impose additional costs on card rooms. If a card room chooses to operate additional hours, they would have higher staffing costs.

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.

November 27, 2007

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-025 Hours of play. (1) Licensees must not allow the use of their premises for card playing between the hours of 2:00 a.m. and 6:00 a.m. unless we approve different hours.

(2) Licensees may request, in writing, different hours of operation. Once the request is received, we will consult with the local law enforcement agency having jurisdiction over the licensee's business and with other state agencies involved in regulation of the business. We may allow licensees to adjust closing hours, but licensees must:

(a) Open the food and/or drink business being stimulated to the public for business any time licensees are conducting card games; and

(b) Have a licensed card room employee on duty and in the licensed card game area at all times during the hours of operation of a Class E, Class F, or house-banked card games; and

(c) Observe a four-hour period of closure at the end of ~~(each business day)~~ at least two business days a week before beginning the next period of operation; and

(d) Comply with any other terms and conditions we require.

(3) We may deny the request for extended hours or revoke hours already approved if:

(a) The local law enforcement agency or a state agency objects; or

(b) We determine that the licensee has violated any provisions of chapter 9.46 RCW, any other commission rule, or any of the terms set forth in subsection (1) of this section.

(4) Licensees must submit all objections to revocations of operating hours in writing.

(5) If requested, we allow the licensee an opportunity for a brief adjudicative proceeding (BAP) before denying or revoking the licensee's authorization for extended card game hours. An administrative law judge hears the BAP, under the provisions of Title 230 WAC and chapter 34.05 RCW.

WSR 07-24-017
PROPOSED RULES
GAMBLING COMMISSION
[Filed November 27, 2007, 11:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-035.

Title of Rule and Other Identifying Information: WAC 230-14-047 Standards for electronic video pull-tab dispensers.

Hearing Location(s): DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220, on January 11, 2008, at 9:30 a.m.

Date of Intended Adoption: January 11, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by January 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by January 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Two proposed rule changes that would no longer allow electronic video pull-tab dispensers, WAC 230-14-045 and 230-05-030, were up for filing at the September 2007 commission meeting. At that meeting, the commission requested that the proposal be held over until the October commission meeting. At the October meeting, the commission voted to file the rules (filed under WSR 07-21-092) and asked staff to work with the industry on an alternative. Shown below is alternative #2 which is proposed by the industry and not staff. Alternative #2 would explicitly authorize the use of the Gold Crown and ZDI type electronic video pull-tab dispensers. In addition, this rule would allow pull-tab dispensers to add prizes of twenty dollars or less to a cash card upon insertion of the winning pull-tab.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Industry representatives for Electronic Video Pull-Tab Dispensers, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Alternative #2 does not require a small business economic impact statement (SBEIS) because it provides clarification without changing current requirements. If the commission were to move forward with the original rule proposal, we would need to determine whether an exemption not requiring an SBEIS applies. If an exemption does not apply, an SBEIS would need to be completed.

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.

November 27, 2007

Susan Arland

Rules Coordinator

ALTERNATIVE #2

NEW SECTION

WAC 230-14-047 Standards for electronic video pull-tab dispensers. Electronic video pull-tab dispensers must be approved by us prior to use, meet the requirements below, and may incorporate only the features below and not perform additional functions.

(1) Electronic video pull-tab dispensers must dispense a paper pull-tab as defined in WAC 230-14-010 and follow the rules for:

- (a) Pull-tabs; and
- (b) Flares; and
- (c) Authorized pull-tab dispensers.

(2) Electronic video pull-tab dispensers that use a reading and displaying function must:

(a) Use a video monitor for entertainment purposes only; and

(b) Open all, or a portion of, the pull-tab in order to read encoded data that indicates the win or loss of the pull-tab if the dispenser is equipped to automatically open pull-tabs; and

(c) Dispense the pull-tab to the player and not retain any portion of the pull-tab; and

(d) Read the correct cash award from the pull-tab either when it is dispensed or when the pull-tab is reinserted into the dispenser; and

(e) Display the cash award from the pull-tab, one pull-tab at a time; and

(f) Provide:

(i) An electronic accounting of the number of pull-tabs dispensed; and

(ii) A way to identify the software version and name; and

(iii) A way to access and verify approved components;

and

(iv) Security on the dispenser to prevent unauthorized access to graphic and prize amount displays.

(3) Gift certificates or gift cards used in electronic video pull-tab dispensers must:

(a) Be purchased with cash, check or electronic point-of-sale bank transfer before use in the dispenser; and

(b) Be convertible to cash at any time during business hours; and

(c) Subtract the cash value for the purchase of the pull-tab one pull-tab at a time; and

(d) Pull-tab dispensers that accept cash cards may not add prizes over twenty dollars to a cash card. Pull-tab dispensers may add prizes twenty dollars or less to a cash card upon insertion of the winning pull-tab.

WSR 07-24-018

PROPOSED RULES

GAMBLING COMMISSION

[Filed November 27, 2007, 11:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-035.

Title of Rule and Other Identifying Information: WAC 230-14-047 Standards for electronic video pull-tab dispensers.

Hearing Location(s): DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220, on January 11, 2008, at 9:30 a.m.

Date of Intended Adoption: January 11, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by January 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by January 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Two proposed rule changes that would no longer allow electronic video pull-tab dispensers, WAC 230-14-045 and 230-05-030, were up for filing at the September 2007 commission meeting. At that meeting, the commission requested that the proposal be held over until the October commission meeting. At the October meeting, the commission voted to file the rules (filed under WSR 07-21-092) and asked staff to work with the industry on an alternative. Shown below is alternative #1 which would explicitly authorize the use of the Gold Crown and ZDI type electronic video pull-tab dispensers by incorporating prior commission decisions and more recent rule changes into a new rule. In effect, this maintains the status quo, but authorization would be explicit. The alternative also defines "cash."

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Alternative #1 does not require a small business economic impact statement (SBEIS) because it provides clarification without changing current requirements. If the commission were to move forward with the original rule proposal, we would need to determine whether an exemption not requiring an SBEIS applies. If an exemption does not apply, an SBEIS would need to be completed.

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.

November 27, 2007

Susan Arland

Rules Coordinator

ALTERNATIVE #1

NEW SECTION

WAC 230-14-047 Standards for electronic video pull-tab dispensers. Electronic video pull-tab dispensers must be approved by us prior to use, meet the requirements below, and may incorporate only the features below and not perform additional functions.

(1) Electronic video pull-tab dispensers must dispense a paper pull-tab as defined in WAC 230-14-010 and follow the rules for:

(a) Pull-tabs; and

(b) Flares; and

(c) Authorized pull-tab dispensers.

(2) Electronic video pull-tab dispensers that use a reading and displaying function must:

(a) Use a video monitor for entertainment purposes only; and

(b) Open all, or a portion of, the pull-tab in order to read encoded data that indicates the win or loss of the pull-tab if the dispenser is equipped to automatically open pull-tabs; and

(c) Dispense the pull-tab to the player and not retain any portion of the pull-tab; and

(d) Read the correct cash award from the pull-tab either when it is dispensed or when the pull-tab is reinserted into the dispenser; and

(e) Display the cash award from the pull-tab, one pull-tab at a time; and

(f) Provide:

(i) An electronic accounting of the number of pull-tabs dispensed; and

(ii) A way to identify the software version and name; and

(iii) A way to access and verify approved components; and

(iv) Security on the dispenser to prevent unauthorized access to graphic and prize amount displays.

(3) Gift certificates or gift cards used in electronic video pull-tab dispensers must:

(a) Be purchased with cash, check or electronic point-of-sale bank transfer before use in the dispenser; and

(b) Be convertible to cash at any time during business hours; and

(c) Subtract the cash value for the purchase of the pull-tab one pull-tab at a time.

NEW SECTION

WAC 230-06-003 Defining "cash." "Cash," when used as a noun in this title, means currency in the form of coins or bills issued by the government of the United States or Canada only and does not include electronic, digital or other representations of money or other methods of payment.

**WSR 07-24-034
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed November 30, 2007, 7:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-055.

Title of Rule and Other Identifying Information: The department is amending WAC 388-310-0400 WorkFirst—Entering the WorkFirst program as a mandatory participant, 388-310-0500 WorkFirst—Individual responsibility plan, 388-310-0600 WorkFirst—Job search, 388-310-0900 WorkFirst—Basic education, 388-310-1000 WorkFirst—Vocational education, 388-310-1050 WorkFirst—Job skills enhancement, 388-310-1100 WorkFirst—Work experience, 388-310-1400 WorkFirst—Community service, 388-310-1500 WorkFirst—Employment conditions, and 388-310-1700 WorkFirst—Self-employment.

Hearing Location(s): Office Building 2 - Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on January 22, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 23, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRULESCOORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 22, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 15, 2007 [2008], TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to comply with federal law changes under the Deficit Reduction Act of 2005 (DRA), Public Law 109-171.

Reasons Supporting Proposal: The changes are necessary to comply with the state of Washington's TANF verification plan approved by Health and Human Services on September 14, 2007.

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

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, and 74.08.0900 [74.08.090].

Rule is necessary because of federal law, Deficit Reduction Act of 2005 (DRA), Public Law 109-171.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Aurea Figueroa, 1009 College S.E., Lacey, WA 98504, (360) 725-4623.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by defining what are WorkFirst activities and how they are verified.

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

November 21, 2007

Stephanie E. Schiller

Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-01 issue of the Register.

**WSR 07-24-056
PROPOSED RULES
HORSE RACING COMMISSION**

[Filed December 3, 2007, 4:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-032.

Title of Rule and Other Identifying Information: WAC 260-12-010 Definitions.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on January 10, 2008, at 9:30 a.m.

Date of Intended Adoption: January 10, 2008.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by January 7, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 7, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to add the following new definitions to this section: (1) Denial; (2) protest; (3) revocation; (4) suspen-

sion; and (5) walk over. In addition, the following definitions are being amended: (1) Pick 6 amended to Pick n; and (2) Pick 3 or Pick 4 amended to Pick 3.

Reasons Supporting Proposal: Defines terms used in other sections in Title 260 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

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

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

December 3, 2007

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-11-114, filed 5/18/07, effective 6/18/07)

WAC 260-12-010 Definitions. The definitions in this section apply throughout these rules unless the context requires otherwise.

(1) "Added money." Money added to the purse of a race by the association, or other fund, in the amount paid by owners for nominations, entry, and starting fees.

(2) "Allowance race." An overnight race for which there is no claiming price established.

(3) "Also eligible."

(a) A number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or

(b) In a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

(4) "Apprentice jockey." A jockey who has not won a certain number of races within a specific period of time who is granted an extra weight allowance as provided in WAC 260-32-370(9).

(5) "Apprentice allowance." A weight allowance given to an apprentice jockey ranging from five to ten pounds.

(6) "Authorized agent." A person appointed by a written document signed by the owner with authority to act for the owner.

(7) "Association." Any person or persons, associations, or corporations licensed by the commission to conduct parimutuel wagering on a race meet.

(8) "Association grounds." All real property utilized by the association in the conduct of its race meeting, including the race track, grandstand, concession stands, offices, barns, stable area, and parking lots and any other areas under the jurisdiction of the commission.

(9) "Bar shoe." A special shoe with a solid bar that runs across the rear of the shoe for extra protection.

(10) "Bit." The metal mouthpiece on a bridle used to guide and control a horse.

(11) "Bleeder." A horse that demonstrates exercise induced pulmonary hemorrhaging.

(12) "Blinkers." A hood with different size cups to limit the peripheral vision of a horse.

(13) "Breakage." The remaining cents after parimutuel payoffs are rounded down to a dime or nickel.

(14) "Breeder." For thoroughbreds, the breeder is the owner of the horse's dam at the time of foaling. For quarter horses, appaloosas, arabians and paint horses, the breeder is the owner of the dam at the time of service.

(15) "Claiming." The act of buying a horse out of a race for a specific price.

(16) "Claim box." A box in a specified location where a claim must be deposited to be valid.

(17) "Claiming race." Races in which horses are entered subject to being claimed for a specified price.

(18) "Clerk of scales." An official who weighs the jockeys prior to and after each race.

(19) "Clocker." An official that times horses when horses are performing an official workout.

(20) "Colors." Racing silks with owners' distinct designs and color worn by jockeys while racing.

(21) "Colt." Male horse under the age of five.

(22) "Commission."

(a) The five-member commission established by RCW 67.16.012; or

(b) The state agency known as the Washington horse racing commission.

(23) "Condition book." A book issued by the racing secretary with specific eligibility conditions for scheduled races.

(24) "Coupled entry." Two or more horses running as a single betting interest for parimutuel wagering purposes.

(25) "Daily double." Type of wager calling for the selection of the winner of two consecutive races.

(26) "Dead heat." Two or more horses in an exact tie at the finish line.

(27) "Denial." The refusal to grant an applicant a license after the applicant has made application for a license, but prior to the individual performing the duties associated with the license.

(28) "Eligible." A horse that is qualified to start in a race as established by the racing secretary's conditions.

~~((28))~~ (29) "Engagement." A commitment given by a jockey or his/her agent to accept a mount in a specified race.

~~((29))~~ (30) "Entry."

(a) A horse eligible for and entered in a race.

(b) Two or more horses which are entered or run in a race with common ownership.

~~((30))~~ (31) "Equipment." Tack carried or used on a racehorse including whips, blinkers, tongue ties, muzzle, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.

~~((31))~~ (32) "Exacta." A wager involving selecting the first two finishers in a race in exact order.

~~((32))~~ (33) "Exercise rider." A person licensed by the commission to ride horses for the purpose of exercising.

~~((33))~~ (34) "Field." The total horses scheduled to run in a race.

~~((34))~~ (35) "Filly." A female horse four years and younger.

~~((35))~~ (36) "Front leg wraps." Bandages that extend at least four inches up the horse's front legs for support.

~~((36))~~ (37) "Furlong." One-eighth of a mile, two hundred twenty yards, or six hundred sixty feet.

~~((37))~~ (38) "Furosemide." Generic term for a medication used for the treatment of bleeders.

~~((38))~~ (39) "Furosemide list." A list of horses maintained by the official veterinarian eligible to race in this jurisdiction on furosemide.

~~((39))~~ (40) "Gelding." A male horse that has been castrated.

~~((40))~~ (41) "Groom." A person licensed by the commission who is employed by a licensed trainer to care for the trainer's horses.

~~((41))~~ (42) "Handicap."

(a) A race in which the racing secretary designates the weight to be carried for each horse.

(b) Making wagering selections on the basis of a horse's past performances.

~~((42))~~ (43) "Handle." Total amount of money wagered in the parimutuel pool for a race, race card, or a race meet.

~~((43))~~ (44) "Horse."

(a) A registered filly, mare, colt, horse, gelding or ridgling of a breed that is eligible to race in the state of Washington.

(b) Any male horse five years old or older.

~~((44))~~ (45) "Inquiry." A review of a race conducted by the board of stewards to determine if a racing violation was committed.

~~((45))~~ (46) "Jockey." A person licensed by the commission to ride a horse in a race meet, whether a jockey or an apprentice jockey.

~~((46))~~ (47) "Jockey fee." The money paid to a jockey for riding in a race.

~~((47))~~ (48) "Maiden." A horse, which at the time of starting in a race, has never won a race on the flat in any country, at a track which is covered by a recognized racing publication showing the complete results of the race. A maiden who has been disqualified after finishing first is still considered a maiden.

~~((48))~~ (49) "Mare." A female horse five years old or older.

~~((49))~~ (50) "Minus pool." A mutuel pool caused when one horse is heavily bet and after all mandatory deductions there is not enough money in the pool to pay the legally prescribed minimum on each winning wager.

~~((50))~~ (51) "Morning line." A handicapper's approximate odds quoted in the program.

~~((51))~~ (52) "Mutuel field." A group of horses, with no common ties, coupled by the association for wagering purposes in a single race.

~~((52))~~ (53) "Net pool price calculations." The method of calculating the parimutuel pools when international pools are conducted (WAC 260-48-800).

~~((53))~~ (54) "Nerved" or "heel nerved." A horse upon which a digital neurectomy has been performed.

~~((54))~~ (55) "Nomination." The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

~~((55))~~ (56) "Objection." When a claim of foul is lodged by a jockey, owner, or trainer following the running of the race.

~~((56))~~ (57) "Official."

(a) When the board of stewards has determined that the order of finish of a race is correct for the mutuel payouts.

(b) An individual designated to perform functions to regulate a race meet.

~~((57))~~ (58) "Off-track betting." Parimutuel wagering on horse races conducted at a location other than the racing association's grounds, often referred to as a satellite location.

~~((58))~~ (59) "Optional claiming race." A race offered in which horses may be entered either for a claiming price or under specific allowance conditions.

~~((59))~~ (60) "Overnight race." A contest for which entries close at a time set by the racing secretary.

~~((60))~~ (61) "Overweight." Extra weight carried by the jockey that is greater than the listed weight in the official program.

~~((61))~~ (62) "Owner." Any person licensed by the commission with an ownership interest in a horse, including a lessee. An interest only in the winnings of a horse does not constitute part ownership.

~~((62))~~ (63) "Owners' bonus." A percentage of the gross mutuel pool the association is required by RCW 67.16.102 to withhold to be paid to owners of Washington bred horses at the conclusion of the meet based on the owner's horse finishing first, second, third or fourth.

~~((63))~~ (64) "Paddock." Enclosure or area where horses are saddled prior to the post parade.

~~((64))~~ (65) "Paddock judge." An official who monitors the saddling of the horses before a race to ensure consistent equipment on each horse and supervises the paddock.

~~((65))~~ (66) "Penalty weight." Additional weight to be carried by the horse as stated in the condition book.

~~((66))~~ (67) "Pick ~~((six))~~ n." A type of wager requiring the patron to select the winners of ~~((six))~~ a specified number of consecutive races.

~~((67))~~ (68) "Pick three ~~((or pick four))~~." A type of wager requiring the patron to select the winners of three ~~((or four))~~ consecutive races.

~~((68))~~ (69) "Place." To finish second in a race.

~~((69))~~ (70) "Poles." Markers positioned around the track indicating the distance to the finish line.

~~((70))~~ (71) "Post." The starting position on the track.

~~((71))~~ (72) "Post parade." Horses passing in front of the stewards stand and public prior to warming up for the race.

~~((72))~~ (73) "Post position." Position assigned to the horse to break from the starting gate determined by lot at the time of the draw of the race.

~~((73))~~ (74) "Post time." The scheduled time for the horses to arrive at the starting gate for a race.

~~((74))~~ (75) "Purse." The amount of prize money offered by the racing association for each race.

~~((75))~~ (76) "Protest." A complaint filed regarding a horse running in a race that is filed in writing to the board of stewards.

~~(77)~~ (77) "Quinella." A wager in which the patron selects the first two finishers regardless of order.

~~((76))~~ (78) "Race meet." The dates of live horse racing that have been approved by the commission. (Also refer to RCW 67.16.010.)

~~((77))~~ (79) "Racing plates." Shoes designed for race-horses, usually made of aluminum.

~~((78))~~ (80) "Racing secretary." An official who drafts conditions of each race and accepts entries and conducts the post position draw of the races.

~~((79))~~ (81) "Receiving barn." Structure where horses may be identified prior to proceeding to the paddock.

~~((80))~~ (82) "Recognized race meet." Any race meet involving parimutuel wagering held under the sanction of a racing authority.

~~((81))~~ (83) "Revocation." The cancellation of an existing license for a minimum of twelve months and up to an indefinite period of time (e.g., life-time). Individuals revoked are ineligible to reapply for a license during the period of revocation. Individuals revoked are banned from all facilities under the jurisdiction of the commission.

(84) "Scale of weights." Fixed weight assignments to be carried by horses according to age, sex, distance, and time of year.

~~((82))~~ (85) "Scratch." Withdrawing an entered horse from the race after the closing of entries.

~~((83))~~ (86) "Scratch time." The established deadline for the withdrawal of entries from a scheduled performance.

~~((84))~~ (87) "Sex allowance." Weight allowance given to fillies and mares when competing against males.

~~((85))~~ (88) "Show." To finish third in a race.

~~((86))~~ (89) "Simulcast." Broadcasting a live race from another racing association for purposes of parimutuel wagering on that race, or sending a broadcast of a live race to another racing association for purposes of parimutuel wagering on that race.

~~((87))~~ (90) "Stake race." A race for which nominations close more than seventy-two hours in advance of its running and for which owners or nominators contribute money toward its purse, or a race for which horses are invited by an association to run for a guaranteed purse of thirty thousand dollars or more without payment of nomination, entry, or starting fees.

~~((88))~~ (91) "Stallion." A male horse which can be used for breeding purposes.

~~((89))~~ (92) "Standard price calculations." A method of calculating the parimutuel payoffs used mostly when calculating pools nationally.

~~((90))~~ (93) "Starter."

(a) A horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses; or

(b) An official responsible for dispatching the horses from the starting gate.

~~((91))~~ (94) "Starter's list." A list, maintained by the official starter, of horses that have been unruly when loading in the starting gate. Horses on the starter's list are ineligible to enter.

~~((92))~~ (95) "Starter race." An allowance or handicap race restricted to horses who have started for a specific claiming price or less.

~~((93))~~ (96) "Stewards." The officials designated by the commission responsible for enforcing the rules of racing.

~~((94))~~ (97) "Stewards' list." A list, maintained by the stewards, of horses which are ineligible to enter for various reasons, e.g., poor performance, ownership disputes, etc.

~~((95))~~ (98) "Suspension." The cancellation of license privileges for a set amount of time (not to exceed three hundred sixty-five days), or until specific conditions are met. Individuals suspended may reapply for a license at the end of their suspensions. Individuals applying for a license in the same race year are not required to pay license fees. Individuals suspended may be banned from all facilities under the jurisdiction of the commission.

(99) "Test barn." The enclosure to which selected horses are taken for post race testing.

~~((96))~~ (100) "Tongue tie." Bandage or other apparatus used to tie down a horse's tongue to prevent the tongue from getting over the bit, which can affect the horse's breathing and the jockey's ability to control the horse.

~~((97))~~ (101) "Trifecta." A wager picking the first three finishers in exact order in a specific race.

~~((98))~~ (102) "Turf course." A racing surface comprised of grass.

~~((99))~~ (103) "Veterinarian's list." A list of horses ineligible to enter due to sickness, lameness, or other conditions as determined by an official veterinarian.

~~((100))~~ (104) "Walk over." A race that has only one participant.

(105) "Washington bred." A horse that was foaled in the state of Washington.

~~((101))~~ (106) "Weigh-in." The clerk of scales weighing of a jockey immediately follows the race.

~~((102))~~ (107) "Weigh-out." The clerk of scales weighing of a jockey prior to a race.

~~((103))~~ (108) "Weight allowance." A reduction in weight to be carried by a horse as established by the conditions for each race.

~~((104))~~ (109) "Workout" or "official workout." An exercise at moderate to extreme speed for a predetermined distance of a horse as required in WAC 260-40-105 to make a horse eligible to be entered or run in a race.

WSR 07-24-058

PROPOSED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed December 4, 2007, 6:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-089.

Title of Rule and Other Identifying Information: Accident reporting and investigating, chapter 296-27 WAC, Recordkeeping; chapter 296-37 WAC, Diving; chapter 296-78 WAC, Sawmills; chapter 296-305 WAC, Fire fighting;

chapter 296-307 WAC, Agriculture; and chapter 296-800 WAC, Core rules.

Hearing Location(s): Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA, on January 10, 2008, at 9:30 a.m.

Date of Intended Adoption: February 4, 2008.

Submit Written Comments to: Kimberly Johnson, P.O. Box 44620, Olympia, WA 98507-4620, e-mail rhok235@lni.wa.gov, fax (360) 902-5619, by January 18, 2008.

Assistance for Persons with Disabilities: Contact Bev Clark by December 31, 2007, (360) 902-5516 or clah235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are being amended to rectify inconsistencies in reporting requirements for different industries, and to provide equal protection to all employees.

Reasons Supporting Proposal: All employees will be protected equally, and DOSH rules will be consistent throughout industries.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 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: Tracy Spencer, Tumwater, Washington, (360) 902-5530; and Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires a small business economic impact statement only when a rule will "impose more than a minor cost on businesses in an industry." The proposed rule will not translate into more than minor costs for businesses in any industry. The proposed rule simply requires employers to report the inpatient hospitalization of one or more employees, whereas the existing WAC requires this when two or more employees are hospitalized (with the exception of the agriculture industry, where the requirement is currently one or more). The potential costs of this new requirement are purely administrative and fall below the minor cost threshold in the Regulatory Fairness Act (chapter 19.85 RCW).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kimberly Johnson, P.O. Box 44620, Olympia, WA 98507-4620, phone (360) 902-5008, fax (360) 902-5619, e-mail rhok235@lni.wa.gov.

December 4, 2007

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-27-00103 Partial exemption for employers with ten or fewer employees. (1) Basic requirement.

(a) If your company had ten or fewer employees at all times during the last calendar year, you do not need to keep injury and illness records unless WISHA, OSHA, or the BLS informs you in writing that you must keep records under this section. However, as required by WAC 296-27-031, all employers covered by the WISH Act must report any workplace incident that results in a fatality or the hospitalization of ~~((two or more))~~ any employee~~((s))~~.

(b) If your company had more than ten employees at any time during the last calendar year, you must keep injury and illness records unless your establishment is classified as a partially exempt industry under WAC 296-27-00105.

(2) Implementation.

(a) **Is the partial exemption for size based on the size of my entire company or on the size of an individual business establishment?** The partial exemption for size is based on the number of employees in the entire company.

(b) **How do I determine the size of my company to find out if I qualify for the partial exemption for size?** To determine if you are exempt because of size, you need to determine your company's peak employment during the last calendar year. If you had no more than ten employees at any time in the last calendar year, your company qualifies for the partial exemption for size.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-00105 Partial exemption for private employers in certain industries. (1) Basic requirement.

(a) If your private business establishment is classified in a specific low hazard retail, service, finance, insurance or real estate industry listed in Table 1 you do not need to keep injury and illness records unless WISHA, OSHA, or the BLS asks you to keep the records under WAC 296-27-03105 or 296-27-03107. (Public employers are not included in this exemption, except as indicated in (b) of this subsection.) However, all employers must report to WISHA any workplace incident that results in a fatality or the hospitalization of ~~((two or more))~~ any employee~~((s))~~ (see WAC 296-800-32005).

(b) If you are a public employer in SIC 821 (elementary and secondary schools) and 823 (libraries), you do not need to keep injury and illness records unless WISHA, OSHA or the BLS asks you to keep the records under WAC 296-27-03105 or 296-27-03107. However, all employers must report to WISHA any workplace incident that results in a fatality or the hospitalization of two or more employees (see WAC 296-800-32005).

(c) If one or more of your company's establishments are classified in a nonexempt industry, you must keep injury and illness records for all of such establishments unless your company is partially exempted because of size under WAC 296-27-00103.

(2) Implementation.

(a) **Does the partial industry classification exemption apply only to business establishments in the retail, services, finance, insurance or real estate industries (SICs 52-89)?** Yes, business establishments classified in agriculture; mining; construction; manufacturing; transportation;

communication, electric, gas and sanitary services; or wholesale trade are not eligible for the partial industry classification exemption.

(b) **Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company?** The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.

(c) **How do I determine the Standard Industrial Classification code for my company or for individual establishments?** You determine your Standard Industrial Classification (SIC) code by using the Standard Industrial Classification manual, *Executive Office of the President, Office of Management and Budget*. You may contact your local L&I office for help in determining your SIC or visit Department of Revenue's web site, http://dor.wa.gov/reports/Qbrsearch/sic_list.htm.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-37-575 Recordkeeping requirements. (1) Recording and reporting.

(a) The employer shall comply with the requirements of chapters 296-27, 296-800, and 296-900 WAC.

(b) The employer shall record the occurrence of any diving-related injury or illness (which requires any dive team member to be hospitalized ~~((for 24 hours or more))~~), specifying the circumstances of the incident and the extent of any injuries or illnesses.

(2) Availability of records.

(a) Upon the request of the director of the department of labor and industries or his duly authorized designees, the employer shall make available for inspection and copying any record or document required by this standard.

(b) Records and documents required by this standard shall be provided upon request to employees, designated representatives, and the assistant director in accordance with chapter 296-802 WAC. Safe practices manuals (WAC 296-37-530), depth-time profiles (WAC 296-37-540), recording of dives (WAC 296-37-545), decompression procedure assessment evaluations (WAC 296-37-545), and records of hospitalizations (WAC 296-37-575) shall be provided in the same manner as employee exposure records or analyses using exposure or medical records. Equipment inspections and testing records which pertain to employees (WAC 296-37-570) shall also be provided upon request to employees and their designated representatives.

(c) Records and documents required by this standard shall be retained by the employer for the following period:

(i) Dive team member medical records (physician's reports) (WAC 296-37-525) - five years;

(ii) Safe practices manual (WAC 296-37-530) - current document only;

(iii) Depth-time profile (WAC 296-37-540) - until completion of the recording of dive, or until completion of

decompression procedure assessment where there has been an incident of decompression sickness;

(iv) Recording dive (WAC 296-37-545) one year, except five years where there has been an incident of decompression sickness;

(v) Decompression procedure assessment evaluations (WAC 296-37-545) - five years;

(vi) Equipment inspections and testing records (WAC 296-37-570) - current entry or tag, or until equipment is withdrawn from service;

(vii) Records of hospitalizations (WAC 296-37-575) - five years.

(d) After the expiration of the retention period of any record required to be kept for five years, the employer shall forward such records to the National Institute for Occupational Safety and Health, Department of Health and Human Services. The employer shall also comply with any additional requirements set forth in chapter 296-802 WAC.

(e) In the event the employer ceases to do business:

(i) The successor employer shall receive and retain all dive and employee medical records required by this standard; or

(ii) If there is no successor employer, dive and employee medical records shall be forwarded to the National Institute for Occupational Safety and Health, Department of Health and Human Services.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-78-515 Management's responsibility. (1) It shall be the responsibility of management to establish, supervise, and enforce, in a manner which is effective in practice:

(a) A safe and healthful working environment.

(b) An accident prevention program as required by these standards.

(c) Training programs to improve the skill and competency of all employees in the field of occupational safety and health. Such training shall include the on-the-job instructions on the safe use of powered materials handling equipment, machine tool operations, use of toxic materials and operation of utility systems prior to assignments to jobs involving such exposures.

(2) The employer shall develop and maintain a chemical hazard communication program as required by WAC 296-800-170, which will provide information to all employees relative to hazardous chemicals or substances to which they are exposed, or may become exposed, in the course of their employment.

(3) Management shall not assign mechanics, millwrights, or other persons to work on equipment by themselves when there is a probability that the person could fall from elevated work locations or equipment or that a person could be pinned down by heavy parts or equipment so that they could not call for or obtain assistance if the need arises.

Note: This subsection does not apply to operators of motor vehicles, watchperson or certain other jobs which, by their nature, are singular employee assignments. However, a definite procedure for checking the welfare of all employees during their working hours shall be instituted and all employees so advised.

(4) After the emergency actions following accidents that cause serious injuries that have immediate symptoms, a preliminary investigation of the cause of the accident shall be conducted. The investigation shall be conducted by a person designated by the employer, the immediate supervisor of the injured employee, witnesses, employee representative if available and any other person with the special expertise required to evaluate the facts relating to the cause of the accident. The findings of the investigation shall be documented by the employer for reference at any following formal investigation.

(5) Reporting of fatality or (~~multiple~~) hospitalization incidents.

(a) Within eight hours after the fatality or probable fatality of any employee from a work-related incident or the inpatient hospitalization of (~~two or more~~) any employee(~~s~~) as a result of a work-related incident, the employer of any employees so affected shall report the fatality/~~multiple~~ hospitalization by telephone or in person, to the nearest office of the department or by using the OSHA toll-free central telephone number, 1-800-321-6742.

(i) This requirement applies to each such fatality or hospitalization (~~of two or more employees~~) which occurs within thirty days of the incident.

(ii) Exception: If any employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this subsection, the employer shall make a report within eight hours of the time the incident is reported to any agent or employee of the employer.

(iii) Each report required by this subsection shall relate the following information: Establishment name, location of the incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

(b) Equipment involved in an incident resulting in an immediate or probable fatality or in the in-patient hospitalization of (~~two or more~~) any employee(~~s~~), shall not be moved, until a representative of the department investigates the incident and releases such equipment, except where removal is essential to prevent further incident. Where necessary to remove the victim, such equipment may be moved only to the extent of making possible such removal.

(c) Upon arrival of a department investigator, employer shall assign to assist the investigator, the immediate supervisor and all employees who were witnesses to the incident, or whoever the investigator deems necessary to complete the investigation.

(6) A system for maintaining records of occupational injuries and illnesses as prescribed by chapter 296-27 WAC.

- Note: Recordable cases include:
- (a) Every occupational death.
 - (b) Every industrial illness.
 - (c) Every occupational injury that involves one of the following:
 - (i) Unconsciousness.
 - (ii) Inability to perform all phases of regular job.
 - (iii) Inability to work full time on regular job.
 - (iv) Temporary assignment to another job.
 - (v) Medical treatment beyond first aid.

All employers with eleven or more employees shall record occupational injury and illness information on forms OSHA 101 - supplementary record occupational injuries and illnesses and OSHA 200 - log and summary. Forms other than OSHA 101 may be substituted for the supplementary record of occupational injuries and illnesses if they contain the same items.

AMENDATORY SECTION (Amending WSR 96-11-067, filed 5/10/96, effective 1/1/97)

WAC 296-305-01501 Injury and illness reports for fire fighters. (1) Notice of injury or illness.

(a) Whenever an occupational accident causes injury or illness to a fire fighter or other employee, or whenever a fire fighter or other employee becomes aware of an illness apparently caused by occupational exposure, it shall be the duty of such a fire fighter or other employee, or someone on his/her behalf, to report the injury or illness to the employer before the end of his/her duty period but not later than twenty-four hours after the incident.

(b) Exception: In the event that symptoms of an occupational injury or illness are not apparent at the time of the incident, the employee shall report the symptoms to his/her employer within forty-eight hours after becoming aware of the injury or illness.

(c) Within eight hours after the fatality or probable fatality of any fire fighter or employee from a work-related incident or the inpatient hospitalization of (~~two or more~~) any employee(~~s~~) as a result of a work-related incident, the employer of any employees so affected, shall orally report the fatality/~~multiple~~ hospitalization by telephone or in person, to the nearest office of the department or by using the OSHA toll-free central telephone number, 1-800-321-6742.

(i) This requirement applies to each such fatality or hospitalization (~~of two or more employees~~) which occurs within thirty days of the incident.

(ii) Exception: If any employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this subsection, the employer shall make a report within eight hours of the time the incident is reported to any agent or employee of the employer.

(iii) Each report required by this subsection shall relate the following information: Establishment name, location of the incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.

(2) Recordkeeping - written reports; all fire service employers shall maintain records of occupational injuries and illnesses. Reportable cases include every occupational death, every occupational illness, or each injury that involves one of the following: Unconsciousness, inability to perform all phases of regular duty-related assignment, inability to work full time on duty, temporary assignment, or medical treatment beyond first aid.

(3) All fire departments shall record occupational injury and illnesses on forms OSHA 101-Supplementary Record Occupational Injuries and Illnesses and OSHA 200-Log summary. Forms other than OSHA 101 may be substituted for the

Supplementary Record of Occupational Injuries and Illnesses if they contain the same items.

(4) Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the Form OSHA No. 200 and the following information from that form: Calendar year covered, company name, establishment name, establishment address, certification signature, title, and date. A Form OSHA No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered on the totals line, and the form must be posted. The summary shall be completed by February 1 each calendar year. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

WAC 296-800-320 Summary. Your responsibility:

To report and conduct an investigation of certain types of accidents.

You must:

Report the death, or probable death, of any employee, or the in-patient hospitalization of ~~((2 or more))~~ any employee(s) within 8 hours

WAC 296-800-32005

Make sure that any equipment involved in an accident is not moved.

WAC 296-800-32010

Assign people to assist the department of labor and industries

WAC 296-800-32015

Conduct a preliminary investigation for all serious injuries

WAC 296-800-32020

Document the investigation findings

WAC 296-800-32025

Note: Call the nearest office of the department of labor and industries at 1-800-4BE SAFE or call Occupational Safety and Health Administration (OSHA) at 1-800-321-6742, to report the death, probable death of any employee or the in-patient hospitalization of 2 or more employees within 8 hours, after handling medical emergencies.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

WAC 296-800-32005 Report the death, probable death of any employee, or the in-patient hospitalization of ~~((2 or more))~~ any employee(s) within 8 hours. ~~((You must:~~

~~• Contact the nearest office of the department of labor and industries in person or by phone at 1-800-4BE SAFE to report within 8 hours of the work-related incident or accident;~~

~~—A death~~

~~—A probable death~~

~~—2 or more employees are admitted to the hospital, or~~

~~—Contact the Occupational Safety and Health Administration (OSHA) by calling its central number at 1-800-321-6742.~~

~~• Provide the following information within 30 days concerning any accident involving a fatality or hospitalization of 2 or more employees:~~

~~—Name of the work place~~

~~—Location of the incident~~

~~—Time and date of the incident~~

~~—Number of fatalities or hospitalized employees~~

~~—Contact person~~

~~—Phone number~~

~~—Brief description of the incident~~

Note: If you do not learn about the incident at the time it occurs, you must report the incident within 8 hours of the time it was reported to you, your agent, or employee.)

(1) You must report to us within eight hours of an incident that:

• Causes a fatal or possibly fatal injury

• Causes injury requiring in-patient hospitalization of any employee

To report, contact your nearest labor and industries office by phone or in person, or call the OSHA toll-free hotline, 1-800-321-6742.

EXCEPTION: If you do not learn of a reportable incident when it happens, you must report it within eight hours of learning about the incident.

(2) Your report must include:

• Establishment name

• Location of the incident

• Time of the incident

• Number of fatalities, hospitalized employees, or pesticide exposures

• Contact person

• Phone number

• Brief description of the incident

(3) Fatalities or hospitalizations that occur within thirty days of an incident must also be reported.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-800-32010 Make sure that any equipment involved in an accident is not moved. You must:

• Not move equipment involved in a work or work related accident or incident if any of the following results:

– A death

– A probable death

– ~~((2 or more employees are sent to the hospital))~~ An employee's hospitalization

• Not move the equipment until a representative of the department of labor and industries investigates the incident and releases the equipment unless:

– Moving the equipment is necessary to:

◆ Remove any victims

◆ Prevent further incidents and injuries

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-800-32015 Assign people to assist the department of labor and industries. You must:

- Assign witnesses and other employees to assist department of labor and industries personnel who arrive at the scene to investigate the incident involving:

- A death
- Probable death
- ~~((2 or more employees are sent to the hospital.))~~ An employee's hospitalization

Include:

- The immediate supervisor
- Employees who were witnesses to the incident
- Other employees the investigator feels are necessary to complete the investigation

WSR 07-24-059

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed December 4, 2007, 8:10 a.m.]

WAC 388-845-1605, proposed by the department of social and health services in WSR 07-11-130 appearing in issue 07-11 of the State Register, which was distributed on June 6, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 07-24-060

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed December 4, 2007, 8:11 a.m.]

WAC 388-530-4200, proposed by the department of social and health services in WSR 07-11-143 appearing in issue 07-11 of the State Register, which was distributed on June 6, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 07-24-064

PROPOSED RULES WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD

[Filed December 4, 2007, 9:48 a.m.]

Continuance of WSR 07-19-037.

Preproposal statement of inquiry was filed as WSR 07-15-079.

Title of Rule and Other Identifying Information: Chapter 490-105 WAC, Private vocational schools.

Hearing Location(s): Workforce Training and Education Coordinating Board (WTECB), 128 10th Avenue S.W., 6th Floor, Olympia, WA 98502, on January 8, 2008, at 3:30 p.m. to 6:00 p.m.

Date of Intended Adoption: January 31, 2008.

Submit Written Comments to: Peggy Rudolph, WTECB, P.O. Box 43105, Olympia, WA 98504-3105, e-mail prudolph@wtb.wa.gov, fax (360) 586-5862, by January 9, 2008.

Assistance for Persons with Disabilities: Contact Peggy Rudolph by January 5, 2008, at (360) 586-8682 or prudolph@wtb.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adopt new rules and/or revise existing rules that set standards for private vocational schools. The subjects under consideration are: (1) Financial responsibility, (2) tuition refund deadlines, (3) applicants' ability to benefit, (4) "at risk" schools, and (5) faculty qualifications.

Reasons Supporting Proposal: This rule making is in response to the legislature's adoption of SB 5402 which increased the agency's oversight of private vocational schools. These rules will enhance the agency's oversight of schools and give it additional tools to deal with schools that are in distress.

Statutory Authority for Adoption: RCW 28C.10.040.

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

Name of Proponent: WTECB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Peggy Rudolph, 128th 10th Avenue S.W., Olympia, WA 98501, (360) 586-8682.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule changes will impose no more than minor costs to private vocational schools.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule changes will impose no more than minor costs to the WTECB.

December 4, 2007

Peggy Rudolph
Program Manager

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-030 How are words and phrases used in these rules? (1) The following clarifies the statutory exemptions under RCW 28C.10.030:

(a) "Avocational" or "recreational" means instruction that is primarily intended for leisure; it is not offered to provide a student with employable skills or competencies. Instruction offered as a prerequisite for a vocational program does not qualify for this exemption.

(b) "Entities not otherwise exempt offering only workshops or seminars lasting no longer than three calendar days" means instruction that can be completed within three eight-hour days. A vocational education program divided into a

series of supplementary seminars does not qualify for this exemption.

(c) "Programs of continuing professional education" include:

(i) Review programs offered solely as preparation for tests leading to certification in specific disciplines but not offered to provide occupational competencies. For example, this exemption applies to test preparation programs that lead to: Certification by a state board of accountancy (CPA); certification by the institute of certified management accounting (CMA); admission to practice before a state bar; certification in health occupations initiated by the American Medical Association, American Dental Association, and their respective professional auxiliaries; and, acquisition of other public certificates of convenience and necessity; ~~(and)~~

(ii) Programs offered to conform with rules adopted by state agencies that require practitioners to undergo continuing professional education as a condition to renewing certification or licensure.

(2) The term "revoke" as used in RCW 28C.10.050(3) means an agency action that terminates a school's license. The agency's executive director or designee may revoke a school's license for just cause.

(3) The term "suspend" as used in RCW 28C.10.050(3) means an action by which the agency interrupts the school's authority to make offers of training. The agency's executive director or designee may suspend a school's license for just cause. An order of suspension prohibits the school from beginning instruction of new students for a maximum of thirty days. The school may remain in operation to continue training students in regular attendance on the date the suspension takes effect.

(4) The term "private vocational school" is further defined to include instruction at the postsecondary level that is intended for use by individuals who have either completed high school or are beyond the age of compulsory school attendance. Instruction or training offered to pre-kindergarten, kindergarten, elementary, or secondary school students is not encompassed by the act.

(5) "At-risk" means the school demonstrates a pattern or history of one or more of the following conditions that the agency determines raise doubts for the continued successful and profitable operation of the organization:

(a) Failure to meet the standards of financial responsibility;

(b) Misrepresentation;

(c) A decrease in enrollment from the previous reporting period of fifty percent or more or twenty-five students, whichever is greater;

(d) Frequent substantiated complaints filed with the agency;

(e) Staff turnover from the previous year of fifty percent or more or three staff, whichever is greater; and

(f) Conditions listed in (c) and (e) of this subsection, caused by unusual circumstances, shall be evaluated by the agency and exceptions may be granted.

(6) "Distance education" means education provided by written correspondence or any electronic medium for students who are enrolled in a private vocational school in pursuit of an identified occupational objective, but are not

attending classes at an approved site or training establishment.

AMENDATORY SECTION (Amending WSR 00-21-037, filed 10/12/00, effective 11/12/00)

WAC 490-105-040 What does it take to obtain a private vocational school license? (See RCW 28C.10.050 and 28C.10.060.) An entity that wishes to operate a private vocational school must apply for a license on forms provided by the agency. If the agency determines an application is deficient, the applicant will be so notified. The applicant must correct the deficiencies within thirty days of notification. If that fails to occur, the application will be returned to the applicant. The license application fee will not be refunded. The agency's executive director or designee may deny a license application for just cause.

The application must include the following information attested to by the school's chief administrative officer:

(1) An identification of owners, shareholders, and directors.

(a) The complete legal name, current telephone number, and current mailing address of the owner;

(b) The form of ownership; e.g., sole proprietorship, partnership, limited partnership, or corporation;

(c) Names, addresses, phone numbers, birth dates, and prior school affiliations if any, of all individuals with ten percent or more ownership interest;

(d) A school that is a corporation or a subsidiary of another corporation must submit:

(i) Current evidence that the corporation is registered with the Washington secretary of state's office; and

(ii) The name, address and telephone number of the corporation's registered agent;

(e) "Ownership" of a school means:

(i) In the case of a school owned by an individual, that individual;

(ii) In the case of a school owned by a partnership, all full, silent and limited partners having a ten percent or more ownership interest;

(iii) In the case of a school owned by a corporation, the corporation, each corporate director, officer, and each shareholder owning shares of issued and outstanding stock aggregating at least ten percent of the total of the issued and outstanding shares;

(f) Schools under common ownership may designate a single location as the principal facility for recordkeeping via written notice to the agency.

(2) Financial statement.

(a) The school must submit information reflecting its financial condition at the close of its most recent fiscal year to demonstrate that it has sufficient financial resources to fulfill its commitments to students.

~~((The))~~ (i) Each nonaccredited school must submit a financial statement ~~((must be completed))~~ in a format supplied by the agency.

(ii) Each accredited school must submit a reviewed or audited financial statement, whichever is required by its accrediting body.

(b) If inadequate time exists to produce a financial statement in the interval between the ending date of the school's fiscal year and the due date of an application, the agency will adjust the school's license period to provide a reasonable interval.

(c) New schools must submit a proposed operating budget for the initial twelve months of operation rather than the financial statement described in (a) of this subsection. The proposed operating budget must be completed in a format supplied by the agency.

(d) New schools that have operated another business for at least one year, must submit, in addition to the proposed operating budget described in (c) of this subsection, a financial statement for that business. The financial statement must cover the existing business' most recently completed fiscal year and be prepared by a certified public accountant or be certified by the business' chief administrative officer.

(e) Owners of multiple schools may file financial information that consists of a single, consolidated financial statement and balance sheet for the corporation. The consolidated financial statement must be accompanied by data that documents total tuition earnings for each separate school under the corporation's ownership at the close of its most recent fiscal year. If historical data is not available, the data must project total tuition earnings for the school in its first or next completed twelve months of operation.

(3) Financial references.

(a) The school must furnish the names of at least one bank or other financial institution and two other entities that the agency may consult as financial references.

(b) A statement must be included authorizing the agency to obtain financial information from the references.

(4) A school must demonstrate to the agency that it is financially viable under the requirements established by this section.

(a) The agency considers a school to be financially viable only if it:

(i) Is able to provide the services described in its official publications and statements;

(ii) Is able to provide the administrative resources necessary to comply with the requirements of this subsection;

(iii) Is able to meet all of its financial obligations, including, but not limited to refunds that it is required to make;

(iv) Demonstrates at the end of its latest fiscal year, a ratio of current assets to current liabilities of at least 1:1;

(v) Had, for its latest fiscal year, a positive net worth. For the purposes of this subsection, a positive net worth occurs when the school's assets exceed its liabilities;

(vi) Has not had operating losses over both of its two latest fiscal years. In applying this standard, the agency may consider the effect of unusual events;

(vii) Has not had, for its latest fiscal year, an operating deficit exceeding ten percent of the institution's net worth. For purposes of this subsection, an operating deficit occurs when operating expenses exceed revenues from current business activities.

(b) A school that is not financially viable may be considered "at-risk" and be required to follow the procedures cited in WAC 490-105-175.

(5) A copy of the school's catalog. (See RCW 28C.10-050 (1)(c).) The school must publish a catalog or brochure that explains its operations and requirements. The catalog must be current, comprehensive, and accurate. The school must disclose the following in some combination of a catalog, brochure or other written material and furnish a copy of each to every prospective student prior to completing an enrollment agreement:

(a) Date of publication;

(b) Names of owners having a ten percent or more equity ownership and officers, including any governing boards, and the name and address of its parent corporation, if a subsidiary;

(c) Names, addresses, and telephone numbers of the school's administrative offices and all auxiliary facilities;

(d) Names and qualifications of faculty. The list must be accurate as of the date of catalog publication. Any changes of faculty must be noted on a catalog errata sheet;

(e) The school calendar, including hours of operation, holidays, enrollment periods, and the beginning and ending dates of terms, courses, or programs as may be appropriate;

(f) Admission procedures including policies describing all prerequisites needed by entering students to:

(i) Successfully complete the programs of study in which they are interested; and

(ii) Qualify for the fields of employment for which their education is designed;

(g) A description of the job placement assistance offered, if any. If no assistance is offered, the school must make that fact known;

(h) The school's policy regarding student conduct, including causes for dismissal and conditions for readmission;

(i) The school's policy regarding leave, absences, class cuts, makeup work, tardiness, and interruptions for unsatisfactory attendance;

(j) The school's policy regarding standards of progress required of the student. This policy must define the grading system, the minimum grades considered satisfactory, conditions for interruption for unsatisfactory progress, a description of the probationary period, if any, allowed by the school, conditions for reentrance for those students dismissed for unsatisfactory progress; and information that a statement will be furnished to the student regarding satisfactory or unsatisfactory progress;

(k) An accurate description of the school's facilities and equipment available for student use, the maximum or usual class size and the average student/teacher ratio;

(l) The total cost of training including registration fee, if any, tuition, books, supplies, equipment, laboratory usage, special clothing, student activities, insurance and all other charges and expenses necessary for completion of the program;

(m) A description of each program of instruction, including:

(i) Specific program objectives including the job titles for which the program purports to train;

(ii) The number of clock or credit hours of instruction, the method of instruction (e.g., correspondence, classroom,

lab, computer assisted), and the average length of time required for successful completion;

(iii) If instruction is calculated in credit hours, the catalog must contain at least one prominent statement describing the contact hour conversion formula applied by the school; i.e., the number of contact hours applicable to each quarter or semester credit hour of lecture, laboratory/practicum, and/or internship/externship;

(iv) For ~~((the purpose of home study))~~ distance education schools, instructional sequences must be described in numbers of lessons ~~((-"Home study school" means the instructional format of the school involves the sequential distribution of lessons to the student, who studies the material, completes an examination, and returns the examination to the school. The school then grades the examination (and, in some instances, provides additional comments and instruction); and returns the graded examination to the student along with the next set of instructional materials))~~);

(n) The scope and sequence of courses or programs required to achieve the educational objective;

(o) A statement indicating the type of educational credential that is awarded upon successful completion;

(p) The school's cancellation and refund policy;

(q) The following statement must appear prominently on either the first or last printed page or inside the front or back cover: THIS SCHOOL IS LICENSED UNDER CHAPTER 28C.10 RCW; INQUIRIES OR COMPLAINTS REGARDING THIS OR ANY OTHER PRIVATE VOCATIONAL SCHOOL MAY BE MADE TO THE: WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD, 128 TENTH AVENUE S.W., P.O. BOX 43105, OLYMPIA, WASHINGTON 98504-3105 (360/753-5673);

(r) The availability of financial aid, if any;

(s) Supplements or errata sheets for the catalog and other written materials related to enrollment must be filed with the agency prior to being used (see RCW 28C.10.110(2));

(i) Supplements or errata sheets must be made an integral part of that publication;

(ii) The supplement or errata sheet must include its publication date;

(iii) In the event information on a supplement or errata sheet supplants information contained in the catalog, the insert must identify the information it replaces, including at the least an appropriate page reference.

~~((5))~~ **(6)** A copy of the school's enrollment agreement/contract. (See RCW 28C.10.050 (1)(d).) An enrollment agreement is any agreement that creates a binding obligation to purchase a course of instruction from a school. Each school must use an enrollment contract or agreement that includes:

(a) The school's cancellation and refund policy, in accordance with these rules, displayed in a type size no smaller than that used to meet any other requirements of this section;

(b) The following statement: THIS SCHOOL IS LICENSED UNDER CHAPTER 28C.10 RCW; INQUIRIES OR COMPLAINTS REGARDING THIS OR ANY OTHER PRIVATE VOCATIONAL SCHOOL MAY BE MADE TO THE: WORKFORCE TRAINING AND EDUCATION COORDINATING BOARD, 128 TENTH AVENUE S.W., P.O. BOX 43105, OLYMPIA, WASHINGTON 98504-3105 (360/753-5673);

(c) Information that will clearly and completely define the terms of the agreement between the student and the school, including at least the following:

(i) The name and address of the school and the student;

(ii) The program or course title as it appears in the school's catalog, date training is to begin, and the number of hours or units of instruction or lessons for which the student is enrolled;

(iii) An itemization of all charges, fees, and required purchases being incurred by the student or his/her sponsor in order to complete the training. The student enrollment agreement must also contain the methods of payment and/or payment schedule being established;

(iv) Language explaining that the agreement will be binding only when it has been fully completed, signed and dated by the student and an authorized representative of the school prior to the time instruction begins;

(d) A statement that any changes in the agreement will not be binding on either the student or the school unless such changes have been acknowledged in writing by an authorized representative of the school and by the student or the student's parent or guardian if he/she is a minor;

(e) A "NOTICE TO THE BUYER" section which includes the following statements in a position above the space reserved for the student's signature:

(i) "DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. THIS IS A LEGAL INSTRUMENT.

(ii) ALL PAGES OF THE CONTRACT ARE BINDING.

(iii) READ BOTH SIDES OF ALL PAGES BEFORE SIGNING.

(iv) YOU ARE ENTITLED TO AN EXACT COPY OF THE AGREEMENT, SCHOOL CATALOG AND ANY OTHER PAPERS YOU SIGN AND ARE REQUIRED TO SIGN A STATEMENT ACKNOWLEDGING RECEIPT OF THOSE.

(v) IF YOU HAVE NOT STARTED TRAINING, YOU MAY CANCEL THIS CONTRACT BY PROVIDING WRITTEN NOTICE OF CANCELLATION TO THE SCHOOL AT ITS ADDRESS SHOWN ON THE CONTRACT. THE NOTICE MUST BE POSTMARKED NOT LATER THAN MIDNIGHT OF THE FIFTH BUSINESS DAY (EXCLUDING SUNDAYS AND HOLIDAYS) FOLLOWING YOUR SIGNING THIS CONTRACT OR THE WRITTEN NOTICE MAY BE PERSONALLY OR OTHERWISE DELIVERED TO THE SCHOOL WITHIN THAT TIME. IN EVENT OF DISPUTE OVER TIMELY NOTICE, THE BURDEN TO PROVE SERVICE RESTS ON THE APPLICANT.

(vi) IT IS AN UNFAIR BUSINESS PRACTICE FOR THE SCHOOL TO SELL, DISCOUNT OR OTHERWISE TRANSFER THIS CONTRACT OR PROMISSORY NOTE WITHOUT THE SIGNED WRITTEN CONSENT OF THE STUDENT OR HIS/HER FINANCIAL SPONSORS AND A WRITTEN STATEMENT NOTIFYING ALL PARTIES THAT THE CANCELLATION AND REFUND POLICY CONTINUES TO APPLY."

(f) Attached to each contract must be a form provided by the agency that contains statements relating to the student's rights, responsibilities, and loan repayment obligations; and the school's responsibility to counsel the student against incurring excessive debt;

(g) The school must provide the student a copy of the signed enrollment agreement.

~~((6))~~ **(7)** Information regarding the qualifications of administrative and instructional personnel. (See RCW 28C.10.050 and 28C.10.060.) The education and experience of administrators, faculty, and other staff must be adequate to

insure students will receive educational services consistent with the stated program objectives.

(a) The school must file the qualifications of all affected individuals with the agency within thirty calendar days of their employment. The information must be submitted on forms provided by the agency.

(b) The school must establish and enforce written policies for the qualification, supervision, continuing education, and periodic evaluation of administrators, faculty, and staff.

(c) School directors must have at least two years of experience in either school or business administration, teaching, or other experience related to their duties within the organization.

(d) Faculty must be qualified to provide instruction in their areas of specialization as demonstrated by possession of the following:

(i) Sufficient broad and comprehensive training;

(ii) Industry recognized certification when available; and

(iii) Two years of relevant education, work experience and/or relevant, current teaching experience that particularly qualifies them to provide instruction in their areas of specialization; or

(iv) Current evidence of being qualified to teach that has been issued by a regulatory agency of this or another state.

(e) In addition to the requirements in (d) of this subsection, faculty who teach a course related to an occupation for which the student must subsequently be licensed or certified must

(i) hold or be qualified to hold such a license or certificate (and possess at least two years of work experience, postsecondary training or a combination of both in the subject they instruct; or

(ii) Possess current evidence of being qualified to teach that has been issued by a regulatory agency of this or another state).

(f) If the school uses teacher assistants, aides, or trainees, it must maintain policies governing their duties and functions. Such personnel may provide services to students only under the direct supervision of a qualified instructor. They may not act as substitutes for the instructor.

(g) Owners, administrators, faculty, agents and other staff must be of good moral character and reputation. The agency may find that a person is not of good moral character and reputation if the person (has been convicted of):

(i) Has been convicted of any felony within the prior seven years

(ii) a misdemeanor which involved the illegal use, possession, or sale of a controlled substance

(iii) or a misdemeanor that involved any sexual offense; or

(iv) Is found to have made any false statements in the application for a private vocational school license.

(h) If the person has been convicted of a felony, or is found to have made false statements in the private vocational school application, the agency will consider the relationship of the facts supporting the charge or conviction to the performance of his or her occupational responsibilities with the licensed school and to that school's students.

(i) In making such determinations the agency will request a letter of recommendation from the employing

school and may consider any other related materials submitted by the school and/or affected individual prior to making a finding under this section.

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-060 Do off-campus activities require licensing? (1) The agency may grant exemptions from licensing for off-campus activities that either:

(a) Absorb a temporary overload that the licensed facility cannot accommodate; or

(b) Provide a single, specialized kind of training activity, generally on a short-term basis, under circumstances that cannot readily be accommodated at the licensed facility

~~(c) Provide training under contract with a public agency, private company, or other sponsor as long as no contractual responsibility is created between students and the school and the training is not open to the general public).~~

(2) The school must obtain approval from the agency before conducting operations at an auxiliary facility. To obtain approval, the school must document that:

(a) The facility meets one of the above definitions;

(b) The instructional program, site administration, and training are significantly integrated with the school's primary facility;

(c) The facility will not be represented as a school location and its address will not be advertised; and

(d) No enrollment will be solicited or executed at the auxiliary facility.

(3) Activities occurring at an auxiliary facility must be incorporated into operational and financial data the school reports to the agency. ~~(However, income derived from activities conducted under contract should not be reported for purposes of calculating license fees or contributions to the tuition recovery trust fund (see subsection (1)(c) of this section).)~~

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-100 Who is exempt from licensing? To qualify for an exemption as test preparation or continuing education under WAC 490-105-030 (1)(c)(i) and (ii), a school must apply to the agency on a form created for that purpose and obtain approval. Exemptions must be renewed annually.

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-130 What are minimum requirements for student refunds? (See RCW 28C.10.050 (1)(b).) At a minimum, schools must use the following cancellation and refund policies; however, the agency may approve refund policies whose terms are more favorable to students than the following established minimums. Refunds must be paid within thirty calendar days of the student's official date of termination.

(1) For resident programs:

(a) The school must refund all money paid if the applicant is not accepted. This includes instances where a starting class is canceled by the school;

(b) The school must refund all money paid if the applicant cancels within five business days (excluding Sundays and holidays) after the day the contract is signed or an initial payment is made, as long as the applicant has not begun training;

(c) The school may retain an established registration fee equal to ten percent of the total tuition cost, or one hundred dollars, whichever is less, if the applicant cancels after the fifth business day after signing the contract or making an initial payment. A "registration fee" is any fee charged by a school to process student applications and establish a student records system;

(d) If training is terminated after the student enters classes, the school may retain the registration fee established under (c) of this subsection, plus a percentage of the total tuition as described in the following table:

If the student completes this amount of training:	The school may keep this percentage of the tuition cost:
One week or up to 10%, whichever is less	10%
More than one week or 10% whichever is less but less than 25%	25%
25% through 50%	50%
More than 50%	100%

(e) When calculating refunds, the official date of a student's termination is the last date of recorded attendance:

(i) When the school receives notice of the student's intention to discontinue the training program;

(ii) When the student is terminated for a violation of a published school policy which provides for termination;

(iii) When a student, without notice, fails to attend classes for thirty calendar days.

(2) Discontinued programs:

(a) If instruction in any program is discontinued after training has begun or if the school moves from one location to another, it must either:

(i) Provide students pro rata refunds of all tuition and fees paid; or

(ii) Arrange for comparable training at another public or private vocational school. Students must accept comparable training in writing.

(b) If the school plans to discontinue a program it must notify the agency and affected students in advance. The notification must be in writing and must include at least data required under WAC 490-105-210(3).

(c) Students affected by a discontinuation must request a refund within ninety days.

(3) For ~~((home study))~~ distance education programs:

(a) A student may request cancellation in any manner.

(b) The following is a minimum refund policy for ~~((home study))~~ distance education courses without mandatory resident training:

(i) An applicant may cancel up to five business days after signing the enrollment agreement. In the event of a dispute over timely notice, the burden to prove service rests on the applicant.

(ii) If a student cancels after the fifth calendar day but before the school receives the first completed lesson, the school may keep only a registration fee of either fifty dollars or an amount equal to fifteen percent of the tuition (in no case is the school entitled to keep a registration fee greater than one hundred fifty dollars).

(iii) After the school receives the student's first completed lesson and until the student completes half the total number of lessons in the program, the school is entitled to keep the registration fee and a percentage of the total tuition as described in the following table:

If the student completes this percentage of lessons:	The school may keep this percentage of the tuition cost:
0% through 10%	10%
11% through 25%	25%
26% through 50%	50%
More than 50%	100%

(iv) Calculate the amount of the course completed by dividing the number of lesson assignments contained in the program by the number of completed lessons received from the student.

(4) Combination ~~((home study))~~ distance education/resident training programs:

(a) The following is a minimum refund policy for a home study program that includes mandatory resident training courses.

(i) Tuition for the ~~((home study))~~ distance education and resident portions of the program must be stated separately on the enrollment agreement. The total of the two is the price of the program.

(ii) For settlement of the ~~((home study))~~ distance education portion of the combination program, the provisions of the table in subsection (2)(b)(iii) of this section apply.

(iii) For the resident portion of the program, beginning with the first resident class session if the student requests a cancellation, the provisions of the table in subsection (1)(d) of this section apply.

(iv) Calculate the amount of resident training completed by dividing the total number of training days provided in the resident training program by the number of instructional days the student attends resident training.

(b) A ~~((home study))~~ distance education student who cancels after paying full tuition is entitled to receive all course materials, including kits and equipment.

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-140 What are student admission standards? (See RCW 28C.10.050 (1)(g).) Prior to enrolling students the school must assess their basic skills and relevant aptitudes to determine that they have the ability to complete and benefit from the training they are considering.

(1) When a school applies for initial licensing under chapter 28C.10 RCW, it must submit a description of the method it will use to comply with the requirements under this section. Any subsequent change in that method must be reported to the agency no more than fifteen calendar days after the change is adopted.

(2) The school must measure all applicants' ability to benefit against current prerequisites for employment in the job objective established for the program, e.g., prior work and health history, English language proficiency, driving and arrest records, and evaluations of any applicable physiological factors such as vision acuity, color perception, lifting and weight bearing capabilities, and manual dexterity.

(3) Schools may consider that applicants (who) have adequate academic abilities to meet learning needs if they have earned a high school diploma from a United States high school or General Educational Development (GED) certificate (may be considered to have adequate academic abilities to meet learning needs) in English.

(4) Schools may enroll applicants who have not (earned a high school diploma or GED must be tested) met the conditions in subsection (3) of this section if the applicant can document acceptable scores on an academic or English language proficiency assessment instrument such as the SAT, ACT, Test of English as a Foreign Language, or the International English Language Testing System. The school must (adopt or devise a) test all other applicants to assess (the applicants') their academic abilities or English proficiency. In the case of an applicant for whom English is a second language, the school may accept a satisfactory evaluation of the applicant's foreign course work that has been produced by a reputable organization specializing in such evaluations. (The) Any academic or English language proficiency test must have the capability of:

(a) Validating that applicants possess skills, competencies, and knowledge that correlate with grades, course or program completion or other measures of success in the program of study; or

(b) Validating that applicants' academic skills, competencies, and knowledge are at a level equivalent to that of persons completing a high school education;

(c) Comparing success ratios of accepted students with test cut-off scores and incorporating appropriate cut-off adjustments.

(5) Any ability to benefit (ATB) test that has been published by the American College Testing Service (ACT) or reviewed and approved by the American Council on Education (ACE) is acceptable evidence of meeting the criteria in subsection (4) of this section.

(6) The following must be part of the methodology developed for assessment:

(a) In the event tests are administered by school officials, evidence the tests are being administered as intended by the publisher;

(b) Information about the test security procedures employed, evidencing that students have no advance information about the exact questions or tasks and that answers cannot be supplied by a third party while completing the test(s);

(c) Information about test scoring procedures employed, evidencing that if tests are scored by school officials the tests are being evaluated as intended by the publisher;

(d) Information that the tests are free from information that is offensive with regard to gender, age, native language, ethnic origin, or handicapping conditions.

(7) Records resulting from the ability to benefit assessment must be included as a regular part of all students' records.

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-150 What ((are)) program, facility, and equipment standards must schools meet? (See RCW 28C.10.050 and 28C.10.060.)

(1) ~~((The school must design and implement programs that will adequately achieve the stated objectives for which they are offered. In evaluating programs, the agency will use as a guideline their comparability to similar programs that have been established by other comparable schools.))~~ Schools must design and implement programs of quality, content, and duration, and with appropriate entrance criteria, instructional materials, staff, equipment and facilities to prepare students for the program's occupational objectives.

(2) The school must have an exact physical location which:

(a) Is adequate to meet the needs of its students and the objectives of the program;

(b) Provides a modern and effective learning environment with enough classroom, laboratory, and shop space for the number of students to be trained; and

(c) Is maintained in compliance with state laws and local ordinances related to safety and health.

(3) The school must have equipment, furniture, instructional devices and aids, machinery and other physical features that are:

(a) Adequate in number and condition to achieve the stated educational objectives of the course;

(b) Comparable in number and quality with those used by comparable schools with similar programs;

(c) Comparable to those in current use by the appropriate trade, business or profession; and

(d) Of sufficient quantity for the number of enrolled students.

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-160 What reports are required? (See RCW 28C.10.050 and 28C.10.060.) In addition to the minimum licensing standards described in RCW 28C.10.050, each school must((-

~~(1) Complete and submit to the agency an annual Impact Data Survey; and~~

~~(2) No later than July 1, 2000,)) submit the following information annually for each student who participated in training ~~(. The information will be used to compile consumer reports that will be published in the future))~~ during the reporting period:~~

~~((a)) (1) Student name, address, telephone number and Social Security number if provided by the student;~~

~~((b)) (2) Start date of training and date of completion or dropout;~~

~~((c) Whether or not the student graduated;~~

~~((d)) (3) Enrollment status as of the end of the reporting period;~~

~~(4) Previous education before starting the current training program;~~

~~((e) Ethnicity;~~

~~((f)) (5) Race;~~

~~(6) Date of birth;~~

~~((g)) (7) Gender;~~

~~((h) Program or major (for larger schools with multiple programs)) (8) Disability status;~~

~~(9) Hispanic/non-Hispanic;~~

~~(10) Program title and duration (in months).~~

NEW SECTION

WAC 490-105-175 Under what conditions will a school be determined to be "at-risk"? What steps will the agency take if a school is determined to be "at-risk"?

(1) The agency may determine a school is "at-risk" if it demonstrates a pattern or history of one or more of the conditions described in the definition of "at-risk."

(2) A school determined to be at-risk may petition the agency to reconsider that designation if the school believes it is unreasonable, unfair, or not in keeping with the intent and purpose of the act. The agency will consider the school's petition and may rescind the "at-risk" designation.

(3) The school's owner and/or director will be required to meet with agency staff to discuss the conditions that lead to the designation.

(4) A school determined to be "at-risk" will be placed on probation and will be required to provide:

(a) A school improvement plan acceptable to the agency within thirty days after meeting with agency staff;

(b) A line of credit if appropriate; and

(c) Monthly progress reports for up to twelve months that include at a minimum:

(i) Steps taken to correct identified deficiencies; and

(ii) Current student directory information.

(5) During the probation period the school must demonstrate improvement or the agency will take action to suspend or revoke its license.

(6) The agency may publish on its web site, a list of schools whose licenses have been either suspended or revoked.

AMENDATORY SECTION (Amending WSR 98-22-033, filed 10/29/98, effective 11/29/98)

WAC 490-105-180 How are student complaints handled? (See RCW 28C.10.084(10) and 28C.10.120.)

(1) A complaint must be filed no more than:

(a) One calendar year following:

(i) A resident student's last recorded date of attendance;

or

(ii) The date ~~((the))~~ a distance education school received a ~~((home study))~~ student's last completed lesson; or

(b) Sixty calendar days from the date a school ceases to provide educational services.

(2) The agency may extend the time a student has to file a complaint if the student can establish that good faith efforts to obtain satisfaction from the school were being made during the time elapsed.

(3) The term "a person" used to reference a complainant under RCW 28C.10.120(1) is further defined to mean only individuals who established a contractual relationship through their enrollment in a school or, in the case of a minor, the minor's parent or guardian.

(a) Private or public agencies, employers, or others who contract with a private vocational school to provide training services to a particular individual or individuals do not have access to the complaint process.

(b) When a person establishes a financial obligation for only a portion of the contracted costs and is subsidized for the remainder as described under (a) of this subsection, that student's claim will be prorated to recognize only the unsubsidized amount.

(4) The agency may consider the following costs when determining losses suffered by a complainant:

(a) Tuition and fees;

(b) Transportation costs;

(c) Books, supplies, equipment, uniforms and protective clothing, rental charges; and

(d) Insurance required by the school.

(5) In estimating a student's attendance related expenses other than tuition, the agency may use standards developed under Title IV of the Higher Education Act or those of the Washington state departments of employment security and social and health services.

(6) When the agency receives a complaint, it will:

(a) Evaluate the complaint for completeness and to determine eligibility within ten working days after receipt;

(b) Accept or reject the complaint and so notify the complainant within an additional five working days;

(c) Forward a copy of a bona fide complaint and related attachments to the school by certified mail.

(7) The school has fifteen working days after receipt to respond to the student's complaint. If a school fails to submit a timely response the agency will conclude the school has no defense to offer.

(8) Based on all information then available, the agency will:

(a) Investigate the facts;

(b) Secure additional information if so indicated;

(c) Attempt to bring about a negotiated solution;

(d) Adjudicate the complaint by making findings, conclusions, and determinations; and

(e) Notify all parties of the determinations and remedies.

(9) If a student can document that the procedures used by the agency to resolve a complaint were either unreasonable, unfair, or not in keeping with the intent of the law, the student may request a review of the decision.

(a) The student must request the review in writing within twenty days following receipt of the complaint determination. A timely request stays the agency's determination during the review process.

(b) When the agency receives a request for review it will:

(i) Notify the school that the student has requested a review and that the complaint determination will not take effect until the review has been completed;

(ii) Schedule an informal hearing to be conducted by agency staff; and

(iii) Make a final determination regarding the complaint within fifteen working days following the hearing.

WSR 07-24-065

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 4, 2007, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-013.

Title of Rule and Other Identifying Information: The department is amending chapter 388-845 WAC, Division of developmental disabilities home and community based services waivers, WAC 388-845-1605 Who is eligible to receive respite care?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), January 8, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 9, 2007 [2008].

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRULES.COORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 8, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 28, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule defines who is eligible to receive respite care services under the DDD home and community based services waiver.

Reasons Supporting Proposal: This rule is necessary to ensure consistent application of the rules across the programs administered by DDD. Without this rule, clients may incorrectly be found eligible or ineligible for respite services.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail brinksc@dshs.wa.gov, (360) 725-3416, fax (360) 404-0955; Implementation: Christy Seligman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail seligcl@dshs.wa.gov, (360) 725-3445, fax (360) 404-0955; and Enforcement: Don Clintzman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 404-0955.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant rule and therefore is exempt from a cost benefit analysis pursuant to RCW 34.05.328 (5)(c)(3) [(iii)].

November 21, 2007

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1605 Who is eligible to receive respite care? (~~((The person providing your care is))~~) You are eligible to receive respite care if you are in the Basic, Basic Plus or CORE waiver and:

(1) You live in a private home (~~((with an unpaid caregiver))~~) and no one living with you is paid to be your caregiver; (~~((☒))~~)

(2) You live with a paid caregiver who is(~~((~~

~~((a) A natural, step or adoptive parent;~~

~~((b)) your natural, step or adoptive parent; or~~

(3) You live with a caregiver who is paid by DDD to provide care to you and is:

(a) A contracted companion home provider; or

~~((☒)) (b) A licensed children's foster home provider.~~

WSR 07-24-066

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed December 4, 2007, 9:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-033.

Title of Rule and Other Identifying Information: The department is amending WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on January 8, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 9, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 8, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 28, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On May 3, 2007, the supreme court issued its decision invalidating the department's shared living rule. The majority concluded that the rule violated federal Medicaid comparability. WAC 388-106-0130 is being amended to comply with the supreme court decision pertaining to shared living.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

Rule is necessary because of state court decision, No. 78652-6; No. 78931-2.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Engels, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2353.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

November 29, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will deduct from the base hours to account for your informal supports, as defined in WAC 388-106-0010, as follows:

(a) The CARE tool determines the adjustment for informal supports by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	Self Performance	Status	Assistance Available	Value Percentage
Self administration of medications	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
	1/2 to 3/4 time	.5		
	>3/4 time	.3		
Unscheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
	1/2 to 3/4 time	.5		
	>3/4 time	.3		

Scheduled ADLs	Self Performance	Status	Assistance Available	Value Percentage
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
	1/2 to 3/4 time	.35		
	>3/4 time	.15		
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Meal preparation, Ordinary housework, Essential shopping*	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.3
			1/4 to 1/2 time	.2
1/2 to 3/4 time	.1			
>3/4 time	.05			
IADLs	Self Performance	Status	Assistance Available	Value Percentage
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
1/2 to 3/4 time	.5			
>3/4 time	.3			
Key: > means greater than < means less than *Results in 5% deduction for each IADL from the base hours. Remaining hours may be used for completion of household and personal care tasks.				

(b) To determine the amount of reduction for informal support, the value percentages are totaled and ((is)) divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is ((base)) the number of in-home ((care)) hours reduced for informal supports.

(3) Also, the department will adjust in-home base hours ((for the following shared living circumstances)) when:

(a) ((#)) There is more than one client receiving ADSA-paid personal care services living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:

- (i) Meal preparation((:));
- (ii) Housekeeping((:));
- (iii) Shopping((:)); and
- (iv) Wood supply.

(b) ((#)) You ((and your paid provider live in the same household, the status under subsection (2)(a) of this section must be met for the following IADLs:

- ~~(i) Meal preparation,~~
- ~~(ii) Housekeeping,~~
- ~~(iii) Shopping, and~~
- ~~(iv) Wood supply.~~

(e) When there is more than one client living in the same household and your paid provider lives in your household, the status under subsection (2)(a) of this section must be met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply)) are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.

(4) In addition to any determination of unmet need in (2)(a) when you are not affected by (3) above, the department will score the status for meal preparation as unmet when you adhere to at least one of the following special diets:

- (a) ADA (diabetes);
- (b) Autism diet;
- (c) Calorie reduction;
- (d) Low sodium;
- (e) Mechanically altered;
- (f) Planned weight change program;
- (g) Renal diet; or
- (h) Needs to receive nutrition through tube feeding or receives greater than twenty-five percent of calories through tube or parenteral feeding.

(5) In addition to any determination of unmet need in (2)(a) when you are not affected by (3) above, the department will score the status for housework as unmet when you are incontinent of bladder or bowel, documented as:

- (a) Incontinent all or most of the time;
- (b) Frequently incontinent; or
- (c) Occasionally incontinent.

(6) After deductions are made to your base hours, as described in subsections (2) and (3), the department may add on hours based on your living environment:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	Unmet	N/A	8
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
>3/4 time		2	
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Partially met	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
		>3/4 time	2

~~((5))~~ (7) In the case of New Freedom consumer directed services (NFCDS), the department determines hours as described in WAC ~~((388-106-1450))~~ 388-106-1445.

~~((6))~~ (8) The result of actions under subsections (2), (3), ~~((and))~~ (4), (5) and (6) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

~~((7))~~ (9) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

- (a) Personal care services from a home care agency provider and/or an individual provider.
- (b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).
- (c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).
- (d) A home health aide if you are eligible per WAC 388-106-0300 or 388-106-0500.
- (e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and 388-71-0915 or WAC 388-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

WSR 07-24-069
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed December 4, 2007, 2:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-158.

Title of Rule and Other Identifying Information: Chapter 296-20 WAC, this rule-making proposal will amend several rules to make changes relating to the authority for physician's assistants to sign documents associated with workers' compensation coverage under Title 51 RCW.

Hearing Location(s): L&I Tumwater Building, 7273 Linderson Way, Room S117, Tumwater, WA, on January 10, 2008, at 10:00 a.m.

Date of Intended Adoption: January 22, 2008.

Submit Written Comments to: Jami Lifka, Department of Labor and Industries, P.O. Box 44321, Olympia, WA 98504-4321, e-mail lifk235@lni.wa.gov, fax (360) 902-6315, by January 10, 2008.

Assistance for Persons with Disabilities: Contact office of information and assistance, by December 31, 2007, TTY (360) 902-5797 or (360) 902-4941.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 1722 (chapter 263, Laws of 2007) directs the department to accept the signature of a physician assistant on any certificate, card, form or other documentation required by the department. A physician assistant may not rate a worker's permanent partial disability under RCW 51.32.055. The department must amend the physician assistant rules to allow PAs' signature on previously unaccepted forms.

The department currently has emergency rules in response to the legislation.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: HB 1722 (chapter 263, Laws of 2007), RCW 51.04.020, 51.04.030.

Statute Being Implemented: HB 1722 (chapter 263, Laws of 2007).

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

Name of Proponent: Department of labor and industries, 2007 legislature, Washington Academy of Physician Assistants, public and governmental.

Name of Agency Personnel Responsible for Drafting: Jami Lifka, 7273 Linderson Way S.W., Tumwater, (360) 902-4941; Implementation: Gary Franklin, MD, MPH, Medical Director, (360) 902-5020; and Enforcement: Robert Malooly, Assistant Director of Insurance Services, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making is exempt under RCW 19.85.025(3), referring to RCW 34.05.-310(4), namely RCW 34.05310 [34.05.310] (4)(b), (c), (d) and (e), because it adopts and implements HB 1722 (chapter 263, Laws of 2007). It also relates only to internal governmental operations that are not subject to violation by a nongovernment party, and per RCW 34.05.328 (5)(b)(ii) is exempt from the small business economic impact statement requirement.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt under RCW 34.05.328 (5)(b)(iii), (iv) and (v) because it adopts and implements HB 1722 (chapter 263, Laws of 2007). It also relates only to internal governmental operations that are not subject to violation by a nongovernment party, and per RCW 34.05.328 (5)(b)(ii) is exempt from the cost benefit analysis requirement.

December 4, 2007

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-17-167, filed 8/22/07, effective 9/22/07)

WAC 296-20-01002 Definitions. Acceptance, accepted condition: Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a claimant's medical condition is the responsibility of the

department or self-insurer. The condition being accepted must be specified by one or more diagnosis codes from the current edition of the International Classification of Diseases, Clinically Modified (ICD-CM).

Appointing authority: For the evidence-based prescription drug program of the participating agencies in the state purchased health care programs, appointing authority shall mean the following persons acting jointly: The administrator of the health care authority, the secretary of the department of social and health services, and the director of the department of labor and industries.

Attendant care: Those proper and necessary personal care services provided to maintain the worker in his or her residence. Refer to WAC 296-20-303 for more information.

Attending doctor report: This type of report may also be referred to as a "60 day" or "special" report. The following information must be included in this type of report. Also, additional information may be requested by the department as needed.

(1) The condition(s) diagnosed including ICD-9-CM codes and the objective and subjective findings.

(2) Their relationship, if any, to the industrial injury or exposure.

(3) Outline of proposed treatment program, its length, components, and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date should be included. The probability, if any, of permanent partial disability resulting from industrial conditions should be noted.

(4) If the worker has not returned to work, the attending doctor should indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.

(5) If the worker has not returned to work, a doctor's estimate of physical capacities should be included with the report. If further information regarding physical capacities is needed or required, a performance-based physical capacities evaluation can be requested. Performance-based physical capacities evaluations should be conducted by a licensed occupational therapist or a licensed physical therapist. Performance-based physical capacities evaluations may also be conducted by other qualified professionals who provided performance-based physical capacities evaluations to the department prior to May 20, 1987, and who have received written approval to continue supplying this service based on formal department review of their qualifications.

Attending provider: For these rules, means a person licensed to independently practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry; and advanced registered nurse practitioner. An attending provider actively treats an injured or ill worker.

Authorization: Notification by a qualified representative of the department or self-insurer that specific proper and necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer.

Average wholesale price (AWP): A pharmacy reimbursement formula by which the pharmacist is reimbursed for the cost of the product plus a mark-up. The AWP is an industry benchmark which is developed independently by companies that specifically monitor drug pricing.

Baseline price (BLP): Is derived by calculating the mean average for all NDC's (National Drug Code) in a specific product group, determining the standard deviation, and calculating a new mean average using all prices within one standard deviation of the original mean average. "Baseline price" is a drug pricing mechanism developed and updated by First Data Bank.

Bundled codes: When a bundled code is covered, payment for them is subsumed by the payment for the codes or services to which they are incident. (An example is a telephone call from a hospital nurse regarding care of a patient. This service is not separately payable because it is included in the payment for other services such as hospital visits.) Bundled codes and services are identified in the fee schedules.

By report: BR (by report) in the value column of the fee schedules indicates that the value of this service is to be determined by report (BR) because the service is too unusual, variable or new to be assigned a unit value. The report shall provide an adequate definition or description of the services or procedures that explain why the services or procedures (e.g., operative, medical, radiological, laboratory, pathology, or other similar service report) are too unusual, variable, or complex to be assigned a relative value unit, using any of the following as indicated:

- (1) Diagnosis;
- (2) Size, location and number of lesion(s) or procedure(s) where appropriate;
- (3) Surgical procedure(s) and supplementary procedure(s);
- (4) Whenever possible, list the nearest similar procedure by number according to the fee schedules;
- (5) Estimated follow-up;
- (6) Operative time;
- (7) Describe in detail any service rendered and billed using an "unlisted" procedure code.

The department or self-insurer may adjust BR procedures when such action is indicated.

Chart notes: This type of documentation may also be referred to as "office" or "progress" notes. Providers must maintain charts and records in order to support and justify the services provided. "Chart" means a compendium of medical records on an individual patient. "Record" means dated reports supporting bills submitted to the department or self-insurer for medical services provided in an office, nursing facility, hospital, outpatient, emergency room, or other place of service. Records of service shall be entered in a chronological order by the practitioner who rendered the service. For reimbursement purposes, such records shall be legible, and shall include, but are not limited to:

- (1) Date(s) of service;
- (2) Patient's name and date of birth;
- (3) Claim number;
- (4) Name and title of the person performing the service;
- (5) Chief complaint or reason for each visit;
- (6) Pertinent medical history;

- (7) Pertinent findings on examination;
- (8) Medications and/or equipment/supplies prescribed or provided;
- (9) Description of treatment (when applicable);
- (10) Recommendations for additional treatments, procedures, or consultations;
- (11) X rays, tests, and results; and
- (12) Plan of treatment/care/outcome.

Consultation examination report: The following information must be included in this type of report. Additional information may be requested by the department as needed.

- (1) A detailed history to establish:
 - (a) The type and severity of the industrial injury or occupational disease.
 - (b) The patient's previous physical and mental health.
 - (c) Any social and emotional factors which may effect recovery.
- (2) A comparison history between history provided by attending doctor and injured worker, must be provided with exam.
- (3) A detailed physical examination concerning all systems affected by the industrial accident.
- (4) A general physical examination sufficient to demonstrate any preexisting impairments of function or concurrent condition.
- (5) A complete diagnosis of all pathological conditions including ICD-9-CM codes found to be listed:
 - (a) Due solely to injury.
 - (b) Preexisting condition aggravated by the injury and the extent of aggravation.
 - (c) Other medical conditions neither related to nor aggravated by the injury but which may retard recovery.
 - (d) Coexisting disease (arthritis, congenital deformities, heart disease, etc.).
- (6) Conclusions must include:
 - (a) Type of treatment recommended for each pathological condition and the probable duration of treatment.
 - (b) Expected degree of recovery from the industrial condition.
 - (c) Probability, if any, of permanent disability resulting from the industrial condition.
 - (d) Probability of returning to work.
- (7) Reports of necessary, reasonable X-ray and laboratory studies to establish or confirm the diagnosis when indicated.

Doctor or attending doctor: For these rules, means a person licensed to independently practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry. An attending doctor is a treating doctor.

Only those persons so licensed may sign report of accident forms, the physician's initial report, and certify time loss compensation ((~~except as provided in WAC 296-20-01502; When can a physician assistant have sole signature on the report of accident or physician's initial report? and WAC 296-23-241, Can advanced registered nurse practitioners independently perform the functions of an attending physician?~~); however, physician assistants (PAs) also may sign

these forms pursuant to WAC 296-20-01501 (PAs may be "treating providers" pursuant to the definition contained in WAC 296-20-01002); and ARNPs may also sign these forms pursuant to WAC 296-23-241 (ARNPs may be "attending providers" consistent with the definition contained in WAC 296-20-01002).

Emergent hospital admission: Placement of the worker in an acute care hospital for treatment of a work related medical condition of an unforeseen or rapidly progressing nature which if not treated in an inpatient setting, is likely to jeopardize the workers health or treatment outcome.

Endorsing practitioner: A practitioner who has reviewed the preferred drug list and has notified the health care authority that he or she has agreed to allow therapeutic interchange of a preferred drug for any nonpreferred drug in a given therapeutic class.

Fatal: When the attending doctor has reason to believe a worker has died as a result of an industrial injury or exposure, the doctor should notify the nearest department service location or the self-insurer immediately. Often an autopsy is required by the department or self-insurer. If so, it will be authorized by the service location manager or the self-insurer. Benefits payable include burial stipend and monthly payments to the surviving spouse and/or dependents.

Fee schedules or maximum fee schedule(s): The fee schedules consist of, but are not limited to, the following:

(a) Health Care Common Procedure Coding System Level I and II Codes, descriptions and modifiers that describe medical and other services, supplies and materials.

(b) Codes, descriptions and modifiers developed by the department.

(c) Relative value units (RVUs), calculated or assigned dollar values, percent-of-allowed-charges (POAC), or diagnostic related groups (DRGs), that set the maximum allowable fee for services rendered.

(d) Billing instructions or policies relating to the submission of bills by providers and the payment of bills by the department or self-insurer.

(e) Average wholesale price (AWP), baseline price (BLP), and policies related to the purchase of medications.

Health services provider or provider: For these rules means any person, firm, corporation, partnership, association, agency, institution, or other legal entity providing any kind of services related to the treatment of an industrially injured worker. It includes, but is not limited to, hospitals, medical doctors, dentists, chiropractors, vocational rehabilitation counselors, osteopathic physicians, pharmacists, podiatrists, physical therapists, occupational therapists, massage therapists, psychologists, naturopathic physicians, and durable medical equipment dealers.

Home nursing: Those nursing services that are proper and necessary to maintain the worker in his or her residence. These services must be provided through an agency licensed, certified or registered to provide home care, home health or hospice services. Refer to WAC 296-20-091 for more information.

Independent or separate procedure: Certain of the fee schedule's listed procedures are commonly carried out as an integral part of a total service, and as such do not warrant a separate charge. When such a procedure is carried out as a

separate entity, not immediately related to other services, the indicated value for "independent procedure" is applicable.

Medical aid rules: The Washington Administrative Codes (WACs) that contain the administrative rules for medical and other services rendered to workers.

Modified work status: The worker is not able to return to their previous work, but is physically capable of carrying out work of a lighter nature. Workers should be urged to return to modified work as soon as reasonable as such work is frequently beneficial for body conditioning and regaining self confidence.

Under RCW 51.32.090, when the employer has modified work available for the worker, the employer must furnish the doctor and the worker with a statement describing the available work in terms that will enable the doctor to relate the physical activities of the job to the worker's physical limitations and capabilities. The doctor shall then determine whether the worker is physically able to perform the work described. The employer may not increase the physical requirements of the job without requesting the opinion of the doctor as to the worker's ability to perform such additional work. If after a trial period of reemployment the worker is unable to continue with such work, the worker's time loss compensation will be resumed upon certification by the attending doctor.

If the employer has no modified work available, the department should be notified immediately, so vocational assessment can be conducted to determine whether the worker will require assistance in returning to work.

Nonemergent (elective) hospital admission: Placement of the worker in an acute care hospital for medical treatment of an accepted condition which may be safely scheduled in advance without jeopardizing the worker's health or treatment outcome.

Physician or attending physician (AP): For these rules, means any person licensed to perform one or more of the following professions: Medicine and surgery; or osteopathic medicine and surgery. An AP is a treating physician.

Practitioner or licensed health care provider: For these rules, means any person defined as a "doctor" under these rules, or licensed to practice one or more of the following professions: Audiology; physical therapy; occupational therapy; pharmacy; prosthetics; orthotics; psychology; nursing; ~~((physician or osteopathic assistant;))~~ advanced registered nurse practitioners (ARNPs); certified medical physician assistants or osteopathic physician assistants; and massage therapy.

Preferred drug list: The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for the purchase of drugs in state purchased health care programs.

Proper and necessary:

(1) The department or self-insurer pays for proper and necessary health care services that are related to the diagnosis and treatment of an accepted condition.

(2) Under the Industrial Insurance Act, "proper and necessary" refers to those health care services which are:

(a) Reflective of accepted standards of good practice, within the scope of practice of the provider's license or certification;

(b) Curative or rehabilitative. Care must be of a type to cure the effects of a work-related injury or illness, or it must be rehabilitative. Curative treatment produces permanent changes, which eliminate or lessen the clinical effects of an accepted condition. Rehabilitative treatment allows an injured or ill worker to regain functional activity in the presence of an interfering accepted condition. Curative and rehabilitative care produce long-term changes;

(c) Not delivered primarily for the convenience of the claimant, the claimant's attending doctor, or any other provider; and

(d) Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition.

(3) The department or self-insurer stops payment for health care services once a worker reaches a state of maximum medical improvement. Maximum medical improvement occurs when no fundamental or marked change in an accepted condition can be expected, with or without treatment. Maximum medical improvement may be present though there may be fluctuations in levels of pain and function. A worker's condition may have reached maximum medical improvement though it might be expected to improve or deteriorate with the passage of time. Once a worker's condition has reached maximum medical improvement, treatment that results only in temporary or transient changes is not proper and necessary. "Maximum medical improvement" is equivalent to "fixed and stable."

(4) In no case shall services which are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered proper and necessary. Services that are controversial, obsolete, investigational or experimental are presumed not to be proper and necessary, and shall be authorized only as provided in WAC 296-20-03002(6) and 296-20-02850.

Refill: The continuation of therapy with the same drug (including the renewal of a previous prescription or adjustments in dosage) when a prescription is for an antipsychotic, antidepressant, chemotherapy, antiretroviral or immunosuppressive drug, or for the refill of an immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

Regular work status: The injured worker is physically capable of returning to his/her regular work. It is the duty of the attending doctor to notify the worker and the department or self-insurer, as the case may be, of the specific date of release to return to regular work. Compensation will be terminated on the release date. Further treatment can be allowed as requested by the attending doctor if the condition is not stationary and such treatment is needed and otherwise in order.

Temporary partial disability: Partial time loss compensation may be paid when the worker can return to work on a limited basis or return to a lesser paying job is necessitated by the accepted injury or condition. The worker must have a reduction in wages of more than five percent before consideration of partial time loss can be made. No partial time loss compensation can be paid after the worker's condition is sta-

tionary. **All time loss compensation must be certified by the attending doctor based on objective findings.**

Termination of treatment: When treatment is no longer required and/or the industrial condition is stabilized, a report indicating the date of stabilization should be submitted to the department or self-insurer. This is necessary to initiate closure of the industrial claim. The patient may require continued treatment for conditions not related to the industrial condition; however, financial responsibility for such care must be the patient's.

Therapeutic alternative: Drug products of different chemical structure within the same pharmacologic or therapeutic class and that are expected to have similar therapeutic effects and safety profiles when administered in therapeutically equivalent doses.

Therapeutic interchange: To dispense with the endorsing practitioner's authorization, a therapeutic alternative to the prescribed drug.

Total permanent disability: Loss of both legs or arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the worker from performing any work at any gainful employment. When the attending doctor feels a worker may be totally and permanently disabled, the attending doctor should communicate this information immediately to the department or self-insurer. A vocational evaluation and an independent rating of disability may be arranged by the department prior to a determination as to total permanent disability. Coverage for treatment does not usually continue after the date an injured worker is placed on pension.

Total temporary disability: Full-time loss compensation will be paid when the worker is unable to return to any type of reasonably continuous gainful employment as a direct result of an accepted industrial injury or exposure.

Treating provider: For these rules, means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry; advanced registered nurse practitioner (ARNP); and certified medical physician assistants or osteopathic physician assistants. A treating provider actively treats an injured or ill worker.

Unusual or unlisted procedure: Value of unlisted services or procedures should be substantiated "by report" (BR).

Utilization review: The assessment of a claimant's medical care to assure that it is proper and necessary and of good quality. This assessment typically considers the appropriateness of the place of care, level of care, and the duration, frequency or quantity of services provided in relation to the accepted condition being treated.

AMENDATORY SECTION (Amending WSR 04-22-085, filed 11/2/04, effective 12/15/04)

WAC 296-20-01501 Physician assistant rules. (1) Physician assistants (~~(may perform only)~~) (PA) may be "treating providers" pursuant to WAC 296-20-01002, under the workers' compensation system, and they may be approved for payment for those medical services ((in industrial injury cases,)) for which the physician assistant is trained

and licensed, under the control and supervision of a licensed physician. Such control and supervision shall not be construed to require the personal presence of the supervising physician.

(2) Physician assistants may perform those medical services which are within the scope of their physician's assistant license ~~((for industrial injury cases))~~ within the limitations of subsection (3) of this section.

(3) ~~((Advance approval must be obtained from the department to treat industrial injury cases.))~~ To be eligible to treat ~~((industrial injuries))~~ and be paid for workers' compensation related services, the physician assistant must obtain a provider number by:

(a) ~~((Provide))~~ Providing the department with a copy of his/her license~~(-);~~

(b) ~~((Provide))~~ Providing the name ~~((and))~~, address ~~((and))~~, specialty, and provider number issued by the department of the supervising physician~~(-);~~

~~(c) Provide the department with the evidence of a reliable and rapid system of communication with the supervising physician))~~ (s) on the provider application (a PA may have to obtain more than one provider number if billing under multiple supervising physicians); and

~~(c) Notifying the department of any change of the parameters listed in (a) or (b) of this subsection.~~

(4) Physician assistants may ~~((prepare report of accident, time loss compensation certification, and progress reports for the supervising physician signature. Physician assistants cannot submit such information under his/her signature. Under certain circumstances, physician assistants can submit the report of accident or physician initial report under his or her signature. See WAC 296-20-01502))~~ sign and attest to any certificates, cards, forms or other required documentation

required by the department that the physician assistant's supervising physician may sign provided that it is within the physician assistant's scope of practice and is consistent with the terms of the physician assistant's practice arrangement plan as required by chapters 18.57A and 18.71A RCW. This includes but is not limited to:

- Completing and signing the report of accident or physician's initial report, where applicable;
 - Certifying time-loss compensation;
 - Completing and submitting all required or requested reports;
 - Referring workers for consultations;
 - Facilitating early return to work offered by and performed for the employer(s) of record; and
 - Doing all that is possible to expedite the vocational process, including making an estimate of the worker's physical or mental capacities that affect the worker's employability.
- (5) Physician assistants cannot:
- Rate permanent disability or impairment; and
 - Perform independent medical examinations or consultations.

AMENDATORY SECTION (Amending WSR 04-22-085, filed 11/2/04, effective 12/15/04)

WAC 296-20-06101 What reports are health care providers required to submit to the insurer? The department or self-insurer requires different kinds of information at various stages of a claim in order to approve treatment, time loss compensation, and treatment bills. The department or self-insurer may request the following reports at specified points in the claim. The information provided in these reports is needed to adequately manage industrial insurance claims.

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
Report of Industrial Injury or Occupational Disease (form)	Immediately - within five days of first visit.	See form	Only MD, DO, DC, ND, DPM, DDS, ARNP, <u>PA</u> , and OD may sign and be paid for completion of this form. ((PAs may sign and be paid for completion of this form under the circumstances outlined in WAC 296-20-01502.))
Self-Insurance: Physician's Initial Report (form)		If additional space is needed, please attach the information to the application. The claim number should be at the top of the page.	
Sixty Day (narrative) Purpose: Support and document the need for continued care when conservative (non-surgical) treatment is to continue beyond sixty days	Every sixty days when only conservative (nonsurgical) care has been provided.	(1) The conditions diagnosed , including ICD-9-CM codes and the subjective complaints and objective findings.	Providers may submit legible comprehensive chart notes in lieu of sixty day reports PROVIDED the chart notes include all the information required as noted in the "What Information Should Be Included?" column.

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
		(2) The relationship of diagnoses , if any, to the industrial injury or exposure.	However , office notes are not acceptable in lieu of requested narrative reports and providers may not bill for the report if chart notes are submitted in place of the report.
		<p>(3) Outline of proposed treatment program, its length, components and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date and the probability, if any, of permanent partial disability resulting from the industrial condition.</p> <p>(4) Current medications, including dosage and amount prescribed. With repeated prescriptions, include the plan and need for continuing medication.</p> <p>(5) If the worker has not returned to work, indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.</p> <p>(6) If the worker has not returned to work, a doctor's estimate of physical capacities should be included.</p> <p>(7) Response to any specific questions asked by the insurer or vocational counselor.</p>	<p>Please see WAC 296-20-03021 and 296-20-03022 for documentation requirements for those workers receiving opioids to treat chronic non-cancer pain.</p> <p>Providers must include their name, address and date on all chart notes submitted.</p>
Special Reports/Follow-up Reports (narrative)	As soon as possible following request by the department/insurer.	Response to any specific questions asked by the insurer or vocational counselor.	"Special reports" are payable only when requested by the insurer.
Consultation Examination Reports (narrative)	At one hundred twenty days if only conservative (nonsurgical) care has been provided.	(1) Detailed history.	If the injured/ill worker had been seen by the consulting doctor within the past three years for the same condition, the consultation will be considered a follow-up office visit, not consultation.

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
<p>Purpose: Obtain an objective evaluation of the need for ongoing conservative medical management of the worker.</p> <p>The attending ((doctor)) or <u>treating provider</u> may choose the consultant.</p>		<p>(2) Comparative history between the history provided by the attending ((doctor)) or <u>treating provider</u> and injured worker.</p> <p>(3) Detailed physical examination.</p> <p>(4) Condition(s) diagnosed including ICD-9-CM codes, subjective complaints and objective findings.</p> <p>(5) Outline of proposed treatment program: Its length, components, expected prognosis including when treatment should be concluded and condition(s) stable.</p> <p>(6) Expected degree of recovery from the industrial condition.</p> <p>(7) Probability of returning to regular work or modified work and an estimated return to work date.</p> <p>(8) Probability, if any, of permanent partial disability resulting from the industrial condition.</p> <p>(9) A doctor's estimate of physical capacities should be included if the worker has not returned to work.</p> <p>(10) Reports of necessary, reasonable X ray and laboratory studies to establish or confirm diagnosis when indicated.</p>	<p>A copy of the consultation report must be submitted to both the attending ((doctor)) or <u>treating provider</u> and the department/insurer.</p>
<p>((Supplemental Medical Report (form))</p>	<p>As soon as possible following request by the department/insurer.</p>	<p>See form</p>	<p>Payable only to the attending doctor upon request of the department/insurer.))</p>
<p>Attending ((Doctor)) <u>Provider</u> Review of IME Report (form)</p>	<p>As soon as possible following request by the department/insurer.</p>	<p>Agreement or disagreement with IME findings. If you disagree, provide objective/subjective findings to support your opinion.</p>	<p>Payable only to the attending ((doctor)) <u>provider</u> upon request of the department/insurer. <u>PAs can concur with treatment recommendations but not PPD ratings.</u></p>

<i>Report</i>	<i>Due/Needed by Insurer</i>	<i>What Information Should Be Included In the Report?</i>	<i>Special Notes</i>
Purpose: Obtain the attending (doctor's) <u>provider's</u> opinion about the accuracy of the diagnoses and information provided based on the IME.			
Loss of Earning Power (form) Purpose: Certify the loss of earning power is due to the industrial injury/occupational disease.	As soon as possible after receipt of the form.	See form	Payable only to the ((AP)) <u>attending or treating provider.</u>
Application to Reopen Claim Due to Worsening of Condition (form) Purpose: Document worsening of the accepted condition and need to reopen claim for additional treatment.	Immediately following identification of worsening after a claim has been closed for sixty days. Crime Victims: Following identification of worsening after a claim has been closed for ninety days.	See form	Only MD, DO, DC, ND, DPM, DDS, ARNP, <u>PA</u> , and OD may sign and be paid for completion of this form.

What documentation is required for initial and follow up visits?

Legible copies of office or progress notes are required for the initial and all follow-up visits.

What documentation are ancillary providers required to submit to the insurer?

Ancillary providers are required to submit the following documentation to the department or self-insurer:

Provider	Chart Notes	Reports
Physical Therapist	X	X
Prosthetist/Orthotist	X	X
Radiology		X
Skilled Nursing Facility	X	X
Speech Therapist	X	X

Provider	Chart Notes	Reports
Audiology	X	X
Biofeedback	X	X
Dietician		X
Drug & Alcohol Treatment	X	X
Free Standing Surgery	X	X
Free Standing Emergency Room	X	X
Head Injury Program	X	X
Home Health Care		X
Infusion Treatment, Professional Services		X
Hospitals	X	X
Laboratories		X
Licensed Massage Therapy	X	X
Medical Transportation		X
Nurse Case Managers		X
Nursing Home	X	X
Occupational Therapist	X	X
Optometrist	X	X
Pain Clinics	X	X
Panel Examinations		X

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-20-01502 When can a physician assistant have sole signature on the report of accident or physician's initial report?

WSR 07-24-070
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed December 4, 2007, 3:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-156.

Title of Rule and Other Identifying Information: WAC 296-23-241 Can advanced registered nurse practitioners independently perform the functions of an attending provider?

Pursuant to HB 1666 (chapter 275, Laws of 2007) this rule repeals the sunset of the expansion of duties of advanced registered nurse practitioners (ARNP) under Title 51 RCW.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way, Tumwater Building, Room S117, on January 10, 2008, at 10:00 a.m.

Date of Intended Adoption: January 22, 2008.

Submit Written Comments to: Jami Lifka, Department of Labor and Industries, P.O. Box 44321, Olympia, WA 98504-4321, e-mail lifk235@lni.wa.gov, fax (360) 902-6315, by January 10, 2008.

Assistance for Persons with Disabilities: Contact office of information and assistance, by December 31, 2007, TTY (360) 902-5797 or (360) 902-4941.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 1666 (chapter 275, Laws of 2007) from the 2007 legislature repealed the sunset of SHB 1691 (Laws of 2004) allowing advanced registered nurse practitioners (ARNPs) to permanently be attending providers. This is currently in effect via an emergency rule filed by the department. This rule making will be to permanently adopt this change in WAC 296-23-241 to establish that ARNPs may be the attending provider but may not rate permanent partial disabilities for workers' compensation purposes.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: HB 1666 (chapter 275, Laws of 2007), RCW 51.04.020, 51.040.030 [51.04.-030].

Statute Being Implemented: HB 1666 (chapter 275, Laws of 2007).

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

Name of Agency Personnel Responsible for Drafting: Jami Lifka, 7273 Linderson, Tumwater, WA, (360) 902-4941; Implementation: Gary Franklin, MD, MPH, Medical Director, (360) 902-5020; and Enforcement: Robert Malooly, Assistant Director of Insurance Services, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making is exempt under RCW 19.85.025(3), referring to RCW 34.05.-310(4), namely RCW 34.05310 [34.05.310] (4)(b), (c), (d) and (e), because it adopts and implements HB 1666 (chapter 275, Laws of 2007) and otherwise clarifies language in the amended rules without changing its effect as a result of the change in law.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt under RCW 34.05.-328 (5)(b)(iii), (iv) and (v) because it adopts and implements HB 1666 (chapter 275, Laws of 2007) without changing its effect as a result of the change in law.

December 4, 2007

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 04-22-085, filed 11/2/04, effective 12/15/04)

WAC 296-23-241 Can advanced registered nurse practitioners independently perform the functions of an attending ~~((physician))~~ provider? (1) Advanced registered nurse practitioners (ARNPs) may ~~((for the period of July 1,~~

~~2004, through June 30, 2007;))~~ independently perform the functions of an attending ~~((physician))~~ provider under the Industrial Insurance Act, with the exception of rating permanent impairment. These functions are referenced in the medical aid rules as those of ~~((a physician, attending physician, or attending doctor))~~ an attending or treating provider, and include, but are not limited to:

- Completing and signing the report of accident or physician's initial report, where applicable;
- Certifying time-loss compensation;
- Completing and submitting all required or requested reports;
- Referring workers for consultations;
- Performing consultations;
- Facilitating early return to work offered by and performed for the employer(s) of record;
- Doing all that is possible to expedite the vocational process, including making an estimate of the worker's physical or mental capacities that affect the worker's employability.

ARNPs can state whether a worker has permanent impairment, such as on the department's ~~((physician's final report (PFR)))~~ activity prescription form (APF).

~~((ARNPs))~~ (2) Advanced registered nurse practitioners cannot:

- Rate permanent impairment; or
- Perform independent medical examinations (IMEs). ~~((WAC 296-23-241 expires on June 30, 2007;))~~

WSR 07-24-074

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed December 4, 2007, 5:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-111.

Title of Rule and Other Identifying Information: WAC 181-78A-700 First peoples' language/culture certification program—Findings, purposes and intent—Definitions—Program established—Tribal eligibility to participate—Program requirements—Assignment of teachers—Reports.

Hearing Location(s): Comfort Inn, 1620 74th Avenue S.W., Tumwater, WA, US 98501, phone (360) 352-0691, on January 16, 2008, at 8:30 a.m.

Date of Intended Adoption: January 16, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by January 11, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by January 11, 2008, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these changes is to comply with passed legislation in SB 5269.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Statute Being Implemented: Amending/adding to chapters 28A.415 and 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 42736, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

December 4, 2007

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-12-005, filed 5/24/07, effective 6/24/07)

WAC 181-78A-700 First peoples' language(†), culture, and oral tribal traditions certification program—Findings, purposes and intent—Definitions—Program established—Tribal eligibility to participate—Program requirements—Assignment of teachers—Reports. (1) **FINDINGS.** The professional educator standards board endorses the following:

(a) Teaching first peoples' languages can be a critical factor in successful educational experiences and promoting cultural sensitivity for all students. The effect is particularly strong for native American students;

(b) First peoples' languages are falling silent. Despite tribal efforts, first peoples' languages are not fully incorporated into the school systems. This is a loss to the cultural heritage of the affected tribes and to the cultural resources of Washington state;

(c) Recognition of native American languages under RCW 28A.230.090(3) and 28B.80.350(2), as satisfying state or local graduation requirements and minimum college admission requirements, while concentrating on promoting a positive impact on student learning through state policies, is insufficient to meet the educational needs of native American students;

(d) The potential to have a positive impact on student learning is in part dependent on the willingness of the local education agency to collaborate with the sovereign tribal government's language/culture program;

(e) It is within the statutory authority of the professional educator standards board to enhance the learning opportunities for all students by helping prevent the loss of first peoples' languages through assisting the state's sovereign neighbors to sustain, maintain or recover their linguistic heritage, history and culture;

(f) From the Multi-Ethnic Think Tank position statement, June 2001:

(i) "...A culturally inclusive pedagogy will ensure the success of all students, who will develop greater appreciation of other cultures and worldviews;"

(ii) "All students have prior experiences that frame their worldview; learn from childbirth and are lifelong learners; can academically achieve at high levels when they are appropriately taught; and are entitled to learn in a multicultural context;"

(g) Research has shown that students who study another language may benefit in the following ways: Greater academic success in other areas of study, including reading, social studies, and mathematics; a clearer understanding of the English language including function, vocabulary and syntax; and an increase on standardized test scores, especially in verbal areas;

(h) From the Native American Languages Act, Public Law 101-477, Section 102, 1990:

(i) "The traditional languages of Native Americans are an integral part of their cultures and identities and form the basic medium for the transmission, and thus survival, of Native American cultures, literatures, histories, religions, political institutions, and values;"

(ii) "Languages are the means of communication for the full range of human experiences and are critical to the survival of cultural and political integrity of any people"; and

(i) There are many sovereign tribal nations in the state of Washington and they serve the needs of many groups of first peoples, each possessing unique languages, cultures and worldviews.

(2) **PURPOSES.** The purpose of this section of the established first peoples' language(†), culture, and oral tribal traditions program is to accomplish the following goals:

(a) To honor the sovereign status of tribal governments in their sole expertise in the transmission of their indigenous languages, heritage, cultural knowledge, customs, traditions and best practices for the training of first peoples' language(†), culture, and oral tribal traditions teachers;

(b) Contribute to a positive impact on student learning by promoting continuous improvement of student achievement of the sovereign tribal government's language/culture learning goals, as established by each sovereign tribal government's language/culture program, and by supporting the goals for multicultural education included in the 2001 position statement developed by the Washington state Multi-Ethnic Think Tank;

(c) Contribute to the preservation, recovery, revitalization, and promotion of first peoples' languages and cultures;

(d) Meaningfully acknowledge that language is inherently integral to native American culture and ways of life;

(e) Implement in a tangible way the spirit of the 1989 Centennial Accord and the 2000 Millennium Accord between Washington state and the sovereign tribal governments in the state of Washington;

(f) Provide a mechanism for the professional educator standards board to recognize tribally qualified language/culture teachers as eligible to receive a Washington state first peoples' language/culture teaching certificate; and

(g) Provide the opportunity for native American students to learn first peoples' languages and cultures while at school and provide another avenue for students to learn core curricula through first peoples' worldviews.

(3) **INTENT.** It is the intent of the professional educator standards board to work in collaboration with the sovereign tribal governments of Washington state to establish a Washington state first peoples' language(†), culture, and oral tribal traditions teacher certification program in order to:

(a) Act in a manner consistent with the policy as specified in the Native American Languages Act, P.L. 101-477 Sec. 104(1) "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages";

(b) Act in a manner consistent with Washington state's government-to-government relationship with Washington state sovereign tribal governments and use the Washington state first peoples' language(†), culture, and oral tribal traditions certification programs to model effective government-to-government relationships;

(c) Act in a manner consistent with the goal of the state Basic Education Act under RCW 28A.150.210;

(d) Act in a manner consistent with the following purposes of Public Law 107-110, "No Child Left Behind Act":

(i) "Holding schools, local education agencies, and States accountable for improving the academic achievement of all students, and identifying and turning around low-performing schools that have failed to provide a high-quality education to their students, while providing alternatives to students in such schools to enable the students to receive a high-quality education," [Sec. 1002(4)];

(ii) "Providing children an enriched and accelerated educational program, including the use of schoolwide programs or additional services that increase the amount and quality of instructional time," [Sec. 1002(8)];

(iii) "Promoting schoolwide reform and ensuring the access of children to effective, scientifically based instructional strategies and challenging academic content," [Sec. 1002(9)];

(iv) "...Supporting local education agencies, Indian tribes, organizations, postsecondary institutions and other entities to meet the unique education, culturally related academic needs of American Indian and Alaskan Native Students" [Sec. 7102(a)];

(e) Act on its involvement with and adoption of the 1991 joint policy statement on Indian education:

"K-12 American Indian dropout prevention is a priority of schools. Effective education needs to be implemented throughout the K-12 school system if the American Indian student is to achieve academic and personal success";

(f) Acknowledge that there is a public responsibility to make available to all students in the state of Washington an accurate and balanced study of the American Indian experiences with and contributions to life on this continent;

(g) Act on the following professional educator standards board beliefs:

(i) In order to meet the needs of all students, highly qualified teachers are required;

(ii) All professional educator standards board policies and activities should meet the needs of the state's diverse student population;

(iii) In order for all students to achieve at high levels, multiple learning styles and needs must be supported; and

(h) Act on the following goals from the professional educator standards board's 2002-05 work plan:

(i) Professional education and certification requirements are aligned with education reform and support a positive impact on student learning;

(ii) All students shall be provided equitable educational opportunities.

(4) DEFINITIONS.

(a) "Positive impact on student learning" shall mean:

(i) The same as under WAC 181-78A-010(8) and 180-16-220 (2)(b); and

(ii)(A) Supporting the goal of basic education under RCW 28A.150.210, "...to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives...";

(B) Promoting continuous improvement of student achievement of the state learning goals and the sovereign tribal government's language/culture learning goals as established by each sovereign tribal government's language/culture program;

(C) Recognizing nonacademic student learning and growth related, but not limited, to: Oral traditions, community involvement, leadership, interpersonal relationship skills, teamwork, self-confidence, resiliency, and strengthened unique cultural identities;

(iii) Developing greater appreciation of other cultures and worldviews;

(b) A "culturally sensitive environment" honors the unique history, culture, values, learning styles, and community of the student. For example, to demonstrate the value of the language and culture, the homeroom teacher participates in the language/culture classroom. A "culturally sensitive environment" also includes those provisions as outlined in the Washington state joint policy on equity in education, revised in May 2000.

(c) For the purpose of this section, "highly qualified teachers" shall mean those teachers who meet the standards of the sovereign tribal government's language/culture program.

(5) PROGRAM ESTABLISHED. A Washington state first peoples' language(†), culture, and oral tribal traditions teacher certification program is established in January 2007. First peoples' language(†), culture, and oral tribal traditions teacher certificates issued prior and subsequent to June 30, 2006, shall be kept valid per subsection (7)(d)(iv) of this section.

(6) TRIBAL ELIGIBILITY TO PARTICIPATE. Any sovereign tribal government in the state of Washington shall be eligible to participate individually on a government-to-government basis in the pilot program.

(7) PROGRAM REQUIREMENTS.

(a) Each sovereign tribal government will certify individuals who meet the tribe's criteria for certification as

instructors in the Washington state first peoples' language((~~+~~)), culture, and oral tribal traditions program.

(b) Each sovereign tribal government's language/culture program shall submit to the superintendent of public instruction the following information for each eligible language/culture teacher desiring to participate in the program:

(i) Written documentation that each designated teacher has completed the sovereign tribal government's language/culture teacher certification program;

(ii) Written documentation that each designated teacher has completed the background check required under RCW 28A.410.010 and WAC 181-79A-150 (1) and (2);

(iii) Written documentation that each designated teacher has completed a course on issues of abuse as required by RCW 28A.410.035 and WAC 181-79A-030(6);

(iv) Designation of which language(s), or dialects thereof, shall be listed on the Washington state first peoples' language((~~+~~)), culture, and oral tribal traditions certificate;

(c) After meeting the requirements of (b) of this subsection, the office of the superintendent of public instruction shall issue each teacher a Washington state first peoples' language((~~+~~)), culture, and oral tribal traditions teaching certificate;

(d) Tribes will individually determine the continuing education and first peoples' language((~~+~~)), culture, and oral tribal traditions certificate renewal requirements for their tribal language endorsement. As such, each tribe will do the following. Notify the certification division of the office of superintendent of public instruction when:

(i) A teacher has met the requirements for renewal/continuing education; or

(ii) A teacher has not met the requirements for renewal/continuing to hold a first peoples' language((~~+~~)), culture, and oral tribal traditions certificate; or

(iii) A tribe, at any time, withdraws a teacher certification for any reason.

(iv) Every five years, the tribes will provide documentation that the certificate holder continues to meet the requirements of (a) of this subsection;

(e) To support a positive impact on student learning, the local education agency in consultation with the sovereign tribal government's language/culture program is strongly encouraged to provide:

(i) A minimum of one contact hour per day, five days a week;

(ii) Access to the same students from year to year, to the extent possible, so that students who receive instruction during the first year of the program can continue to receive instruction throughout the first year of the program;

(iii) A culturally sensitive environment as defined in subsection (4)(b) of this section; or

(iv) Some combination of (e)(i), (ii), and (iii) of this subsection which will allow a positive impact on student learning;

(f) To document a positive impact on student learning, the sovereign tribal government's language/culture program is encouraged to provide written documentation of how teaching the first peoples' language/culture has supported the promotion of continuous improvement of student achieve-

ment of the program learning goals as established by each sovereign tribal government's language/culture program;

(g) To support a greater understanding of the government-to-government relationship, the professional educator standards board is strongly encouraged to make site visits and attend meetings with the local education agency and the sovereign tribal government's language/culture program;

(h) Nothing in this section shall be interpreted as precluding any eligible tribe in consultation with the state or in consultation with any local education agency from entering into an inter-governmental agreement or compact related to the teaching of first peoples' languages and cultures in order to address unique issues related to individual sovereign tribal governments.

(8) ASSIGNMENT OF TEACHERS.

(a) The holder of a Washington state first peoples' language((~~+~~)), culture, and oral tribal traditions teacher certificate shall be deemed qualified to be a teacher of first peoples' language((~~+~~)), culture, and oral tribal traditions with the ability to meet individual tribal competency criteria for language/culture, history, and English.

(b) A Washington state first peoples' language((~~+~~)), culture, and oral tribal traditions teacher certificate qualifies the holder to accept a teaching position in a public school district.

(c) The holder of a Washington state first peoples' language((~~+~~)), culture, and oral tribal traditions teacher certificate who does not also hold an initial, residency, continuing or professional certificate shall be assigned to teach only the language(s)/culture(s) designated on the certificate, and no other subject.

(d) The Washington state first peoples' language((~~+~~)), culture, and oral tribal traditions teacher certificate is recognized by the state of Washington for as long as the teacher holds a valid language/culture certificate from a participating sovereign tribal government.

(e) A Washington state first peoples' language((~~+~~)), culture, and oral tribal traditions teacher certificate will serve as the sole endorsement in first peoples' language((~~+~~)), culture, and oral tribal traditions for anyone holding an initial, residency, continuing or professional certificate.

(9) TRIBAL PREPARATION PROGRAM REVIEW.

(a) Every five years, the joint committee of the professional educator standards board and the first peoples' language/culture committee shall prepare a report that includes:

(i) Reports from each participating tribe related to progress in meeting program objectives, with particular emphasis on positive impact on students;

(ii) Appraisal of the government-to-government relationship; and

(iii) Any relevant recommendations for continued program success.

(b) In order to promote understanding and collaboration, beginning with the second year of the program, the professional educator standards board may accept invitations from participating tribes to visit at least two tribal programs per year as identified and invited by the individual tribal programs.

(c) Annually, the professional educator standards board will commit to ensuring a professional educator standards board member(s) and staff attends the first peoples' language/

culture committee meeting. The professional educator standards board will proactively identify opportunities to share information about the first peoples' language/culture program in order to support its growth and development.

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

WSR 07-24-075
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed December 4, 2007, 5:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-009.

Title of Rule and Other Identifying Information: WAC 181-79A-130 Fee for certification, 181-79A-145 Levels and validity of certificates, 181-79A-150 General requirements—Teachers, administrators, educational staff associates and first peoples' language/culture teachers, and 181-79A-252 First peoples' language/certificates—Renewal and continuing education requirements.

Hearing Location(s): Comfort Inn, 1620 74th Avenue S.W., Tumwater, WA, US 98501, phone (360) 352-0691, on January 16, 2008, at 8:30 a.m.

Date of Intended Adoption: January 16, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by January 11, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by January 11, 2008, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these changes is to comply with passed legislation in SB 5269.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Statute Being Implemented: Amending/adding to chapters 28A.415 and 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236,

phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

December 4, 2007

Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-12-006, filed 5/24/07, effective 6/24/07)

WAC 181-79A-130 Fee for certification. (1) In accordance with provisions of RCW 28A.410.060 and 28A.415.-010, the fee for certificates which are valid for more than one year, issued by authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be as follows:

(a) The first issue of the residency certificate, five dollars for each year of validity;

(b) The continuing certificate, seventy dollars;

(c) The reinstatement, additional endorsement on the teaching certificate, duplicate certificates, substitute certificates, and certificates issued for the purpose of showing a name change, fifteen dollars;

(d) The first peoples' language(~~/~~), culture, and oral tribal traditions teacher certificate, twenty-five dollars; and

(e) Any other certificate or credential or any renewal thereof, five dollars for each year of validity;

(f) Provided, That the fee for all career and technical education certificates shall be one dollar:

(g) Provided, That a one-time late fee for a renewed initial or continuing certificate issued under the provisions of WAC 181-79A-123 (7), (8), or (9) for those whose initial certificate had already expired shall be one hundred dollars.

(2) The fee for any other certificate/credential, or for any renewal thereof, issued by the authority of the state of Washington and authorizing the holder to serve in the common schools of the state, shall be five dollars.

(3) Officials authorized to collect certification fees are educational service district superintendents, local school district superintendents, deans and directors of education at colleges and universities, or their designees. Sovereign tribal governments may collect certification fees for first peoples' language(~~/~~), culture, and oral tribal traditions certificates. The fee must accompany the application for a certificate and shall be transmitted by the receiving district, college or university, sovereign tribal government or program unit designee at least quarterly to the educational service district within which the application is filed for disposition in accordance with provisions of RCW 28A.410.060. The fee shall not be refunded unless the application is withdrawn before it is finally considered (i.e., the issuance of a certificate or a written communication denying such issuance) by the superintendent of public instruction or his or her designee. Fees not refunded shall apply as credit toward certificate fees if such applicant reapplies within twenty-four months of the date of denial. Moneys accrued from certification fees within the boundaries of an educational service district shall be divided in the following manner:

(a) Local school districts employing more than one hundred teachers and other professional staff and collecting certification fees may retain one dollar of each fee in order to

hold a professional training institute. If such district does not hold an institute, all such moneys shall be placed to the credit of the educational service district.

(b) No less than fifty percent of the funds accruing within the boundaries of an educational service district shall be used to support program activities related to statewide pre-certification professional preparation and evaluation.

(c) The remaining funds shall be used to support professional in-service training programs and evaluations thereof.

(d) Use of certification fees described in this section shall be reported annually to the professional educator standards board pursuant to WAC 181-79A-131(5).

AMENDATORY SECTION (Amending WSR 07-20-047, filed 9/26/07, effective 10/27/07)

WAC 181-79A-145 Levels and validity of certificates.

Two levels of certification may be issued.

(1) Initial and continuing certificates: Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates: Provided, That initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing educational staff associate certificates after August 31, 2005, will be issued only to previous Washington certificate holders, pursuant to WAC 181-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 181-79A-250(1) and 181-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal. Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial administrator and educational staff associate certificate holders shall be issued a residency certificate if their initial certificate has lapsed or they do not meet the requirements for a continuing certificate.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(3).

(2) Residency and professional certificates: Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) Residency certificate. The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004, and to educational staff associate school counselors, school psychologists, and school social workers no later than September 1, 2005.

(b) The first issue of a residency certificate for teachers, principals, program administrators, and educational staff associates shall be valid until the holder has completed two consecutive years of successful service in the role in Wash-

ington with a school district, state approved private school, or state agency that provides educational services for students. When the teacher, principal, program administrator, or educational staff associate completes two consecutive years of successful service in the role in the state with the same employer, their residency certificate will be reissued with a five-year expiration date; provided, that the second consecutive year of successful service in the role will be considered to be complete for purposes of reissuance if a contract for the third such year has been signed and returned to the employer. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 (2)(b) and (c).

(c) Professional certificate. The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors, school psychologists, and school social workers beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 (3)(b) or 181-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Provided further that a professional educational staff associate certificate for school counselors based on the possession of a valid school counselor's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) First peoples' language((+)), culture, and oral tribal traditions certificates: The first peoples' language((+)), culture, and oral tribal traditions certificate will be issued beginning in January 2007. The first peoples' language((+)), culture, and oral tribal traditions certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-252.

AMENDATORY SECTION (Amending WSR 07-12-006, filed 5/24/07, effective 6/24/07)

WAC 181-79A-150 General requirements—Teachers, administrators, educational staff associates and first peoples' language((+)), culture, and oral tribal traditions teachers. The following requirements are to be met by candidates for certification as teachers including career and technical education teachers, administrators, educational staff associates, or first peoples' language((+)), culture, and oral tribal traditions teachers:

(1) Age. No person who is less than eighteen years of age shall receive a certificate to serve in the public or nonpublic schools of Washington state.

(2) Character. Applicants for certificates in Washington state who are not holders of a valid Washington state teacher's, administrator's, educational staff associate's, career and technical education, or first peoples' language((+)), cul-

ture, and oral tribal traditions teacher's certificate must give evidence of good moral character and personal fitness as specified in WAC 181-79A-155 and must complete a record check through the Washington state patrol criminal identification system and through the Federal Bureau of Investigation at the applicant's expense as required by RCW 28A.410.-010; such record check shall include a fingerprint check using a Washington state patrol approved fingerprint card: Provided, That the superintendent of public instruction may waive the record check for an applicant who has had a record check within the two years prior to application.

(3) Degrees and course work. A candidate for certification shall hold appropriate degrees, licenses, and additional course work as prescribed in chapters 181-79A and 181-77 WAC or have qualified under WAC 181-79A-257 or 181-78A-700.

(4) Approved preparation program. Applicants for certification as teachers, administrators, school counselors, school psychologists and school social workers, except as otherwise provided in WAC 181-79A-257, and 181-79A-231, and in chapter 181-77 WAC, in order to be certified within the state of Washington shall have completed a state approved college/university preparation program in the professional field for which certification is to be issued. Applicants for certification as first peoples' language((+))₂ culture, and oral tribal traditions teachers shall have completed a sovereign tribal government's first peoples' language((+))₂ culture, and oral tribal traditions teaching certification program.

(5) Certificates.

(a) Candidates for principal's certificates must hold or have held:

(i) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates; or

(ii) A valid educational staff associate certificate and have demonstrated successful school-based experience in an instructional role with students. Persons whose teacher or educational staff associate certificates were revoked, suspended, or surrendered are not eligible for principal's certificates.

(b) Candidates for superintendent's certificates must hold a valid teacher, educational staff associate, program administrator, or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(6) Assessments. See RCW 28A.410.220.

AMENDATORY SECTION (Amending WSR 07-12-006, filed 5/24/07, effective 6/24/07)

WAC 181-79A-252 First peoples' language((+))₂ culture, and oral tribal traditions certificates—Renewal and continuing education requirements. The following shall apply to first peoples' language((+))₂ culture, and oral tribal traditions certificates issued pursuant to this chapter:

A first peoples' language((+))₂ culture, and oral tribal traditions certificate may be renewed for an additional five-year period on application and verification that the individual has met tribal renewal/continuing education requirements.

WSR 07-24-076

PROPOSED RULES

**PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed December 4, 2007, 5:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-101.

Title of Rule and Other Identifying Information: WAC 181-85-033 Continuing education credit hour—Definition—Professional growth team consultation and collaboration—School accreditation site visit team participation—National Board for Professional Teaching Standards assessment—Supervisors—First peoples' language/culture.

Hearing Location(s): Comfort Inn, 1620 74th Avenue S.W., Tumwater, WA, US 98501, phone (360) 352-0691, on January 16, 2008, at 8:30 a.m.

Date of Intended Adoption: January 16, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by January 11, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by January 11, 2008, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these changes is to comply with passed legislation in SB 5269.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

Statute Being Implemented: Amending/adding to chapters 28A.415 and 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

December 4, 2007

Nasue Nishida
Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-85-033 Continuing education credit hour—Definition—Professional growth team consultation and collaboration—School accreditation site visit team participation—National Board for Professional

Teaching Standards assessment—Supervisors—First peoples' language, culture and oral tribal traditions. (1)

Notwithstanding any provisions of this chapter to the contrary, for consultation and collaboration as a member of an approved professional growth team, as defined by WAC 181-78A-010 and 181-78A-505, members of a professional growth team, excluding the candidate, shall receive the equivalent of ten continuing education credit hours. The team member may not receive more than the equivalent of twenty continuing education credit hours, as defined by this section, during a calendar year period.

(2) A person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of ten continuing education credit hours for serving on a school accreditation site visit team. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(3)(a) Notwithstanding any provisions of this chapter to the contrary, individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students or the superintendent of public instruction, a person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of ten continuing education credit hours for service as a supervisor. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(b) The term "supervisor" shall mean individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students, or the office of superintendent of public instruction for supervising the training of teacher interns, administrative interns, educational staff associate interns, and paraprofessionals.

(4) A person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of forty-five continuing education credit hours for completion of an assessment process as part of the National Board for Professional Teaching Standards certificate application. Upon achieving National Board certification, the individual shall receive the equivalent of an additional forty-five continuing education credit hours for a total of ninety continuing education credit hours per National Board certificate.

(5) Notwithstanding any provisions of this chapter to the contrary, for designing and completing a professional growth plan under the provisions of WAC 181-85-034, participants shall receive the equivalent of no more than sixty continuing education credit hours over a period of two school years, as defined by this chapter.

(6) Notwithstanding any provision of this chapter to the contrary, individuals who receive in-service training or continuing education according to RCW 28A.415.020(6) in first peoples' language, culture and oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section.

WSR 07-24-077
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed December 4, 2007, 5:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-097.

Title of Rule and Other Identifying Information: WAC 181-82-110 Exceptions to classroom teacher assignment policy.

Hearing Location(s): Comfort Inn, 1620 74th Avenue S.W., Tumwater, WA, US 98501, phone (360) 352-0691, on January 16, 2008, at 8:30 a.m.

Date of Intended Adoption: January 16, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by January 11, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by January 11, 2008, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these changes is to establish a waiver proviso process for districts to use when placing a teacher in an out-of-endorsement assignment.

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

December 4, 2007

Nasue Nishida
 Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-82-110 Exceptions to classroom teacher assignment policy. Exceptions to the classroom teacher assignment policy specified in WAC 181-82-105 shall be limited to the following:

(1) Upon determination by school districts that teachers have the competencies to be effective teachers in areas other than their endorsed areas, individuals with initial, residency, endorsed continuing, or professional teacher certificates who

have completed provisional status with a school district under RCW 28A.405.220 may be assigned to classes other than in their areas of endorsement. If teachers are so assigned, the following shall apply:

(a) A designated representative of the district and any such teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(b) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

(c) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned; and

(d) The assignment of such teachers for the previous school year shall be reported annually to the professional educator standards board by the employing school district as required by WAC 180-16-195. Included in the report shall be the number of teachers in out-of-endorsement assignments and the specific assistance being given to the teachers.

(2) Teachers with initial, residency, endorsed continuing, or professional teacher certificates who have not completed provisional status with a school district under RCW 28A.405.220 may be assigned to one out-of-endorsement assignment for a maximum of two periods (not more than forty percent full-time equivalent) a day. Conditions described in subsection (1)(a) through (d) of this section shall apply to teachers so assigned.

(3) After August 31, 2000, a teacher who has completed twenty-four quarter credit hours (sixteen semester credit hours) of course work applicable to a special education endorsement shall be eligible for a waiver from the special education office which will allow that person to be employed as a special education teacher. All remaining requirements shall be completed within five years of service as a special education teacher. Teachers who hold certificates endorsed in special education or who have received waivers from the special education office prior to September 1, 2000, shall not be affected by the requirements of this subsection.

(4) After August 31, 2008, a teacher who has completed twenty-four quarter credit hours (sixteen semester credit hours) of course work applicable to an endorsement, or demonstrates they meet at least thirty percent of the endorsement competencies, for an endorsement they do not currently hold, shall be eligible for a proviso of assignment from the professional educator standards board which will allow that person to be assigned in the endorsement area for which they do not hold for one year. The proviso of assignment will be valid for one year and may be renewed up to five years if the teacher provides to the employer satisfactory evidence of continued progress toward meeting the required course work or endorsement competencies for the endorsement. All requests for a proviso of assignment shall be submitted by the local school district. A proviso of assignment renewal must be accompanied with proof of having complied with the conditions established in the previous proviso of assignment.

WSR 07-24-080

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed December 5, 2007, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-089.

Title of Rule and Other Identifying Information: Brassica seed production districts, this proposal creates a new chapter in WAC that:

- (1) Establishes two *Brassica* seed production districts;
- (2) Specifies general requirements for growing, transporting or processing *Brassica* seed crops within any *Brassica* seed production district;
- (3) In response to local conditions, specifies requirements for producing different categories of *Brassica* seed crops in each of the *Brassica* seed production districts or sub-districts; and
- (4) Establishes a continuing *Brassica* work group.

Hearing Location(s): Washington State Potato Commission, 108 Interlake Road, Moses Lake, WA 98837, on January 11, 2008, at 10:00 a.m.; and at the WSU Northwestern Washington Research & Extension Center, 16650 State Route 536, Mount Vernon, WA 98273, on January 17, 2008, at 10:00 a.m.

Date of Intended Adoption: January 24, 2008.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by January 17, 2008.

Assistance for Persons with Disabilities: Contact Henri Gonzales by January 4, 2008, TTY (360) 902-1996.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As a result of the 2007 legislative session, chapter 181, Laws of 2007, was enacted and later codified as chapter 15.51 RCW. Its purpose is to provide for the orderly production of potentially incompatible varieties of *Brassica* seed crops. This new law authorizes the department of agriculture to establish *Brassica* seed production districts in response to grower petitions. The legislation also authorizes the department to adopt implementation rules for the statute. These rules are necessary to decrease the potential of genetic crosses that could result in significant loss of quality, purity, and value in the seed produced.

Reasons Supporting Proposal: Species, hybrids, varieties, and variations of plants of the genus *Brassica* have the potential to form genetic crosses, particularly when they are grown in geographic proximity. If not properly regulated, this can result in significant loss of quality, purity, and value in the seed produced and potential losses in export and domestic market access.

Statutory Authority for Adoption: Chapters 15.51 and 34.05 RCW.

Statute Being Implemented: Chapter 15.51 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Toohey, 1111

Washington Street, Olympia, WA 98504-2560, (360) 902-1907.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not have more than minor economic impacts on small businesses, as at this time the department knows of no production of *Brassica* seed crops that would violate the rule provisions. If adopted, the rule would not change current practices. The proposed rule is intended to reduce the potential for harm to the established *Brassica* vegetable seed production industry, in the event that ongoing experimentation demonstrates it is economically viable to introduce commercial amounts of other, potentially incompatible *Brassica* species/varieties suitable for fuel or oil production. The department convened a work group of representatives of the vegetable seed, biofuels, and canola/rapeseed industries to reach general consensus on rule provisions that would allow all of the industries to coexist. If fuel or oil production in affected areas becomes economically feasible, the rules' impact would be mitigated by the process established by RCW 15.51.040.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

December 5, 2007

Mary A. Martin Toohey
Assistant Director

Chapter 16-326 WAC

BRASSICA SEED PRODUCTION DISTRICT

NEW SECTION

WAC 16-326-010 What are the boundaries of the regulated areas, also called the *Brassica* seed production districts? (1) For purposes of descriptions of boundaries, any highway designation is measured from the center line of the highway, as determined by Washington department of transportation maps.

(2) *Brassica* seed production district 1 includes areas of five counties as follows:

(a) In Whatcom County, the area bounded as follows: From two miles west of the Interstate 5 intersection with the Canadian border, a southward line extends parallel to, and two miles west of, Interstate 5 to its intersection with State Highway 542. The line then extends generally northeastward along State Highway 542 to the city limits of Kendall. At Kendall, the line continues due north to the Canadian border. The line then extends westward along the Canadian border to its point of origin.

(b) All of mainland Skagit County is included. On Fidalgo Island, the area on its eastern side bounded by a line three miles west of and parallel to the Swinomish Channel, extending from Padilla Bay to Smilk Bay, is included. All of Samish Island is included. The remaining portion of Fidalgo Island and all other islands in Skagit County are excluded from *Brassica* seed production district 1.

(c) In Snohomish County, the area bounded as follows: From Puget Sound east along State Highway 531 (also known as Lakewood Rd.), the line extends through Interstate

Highway 5 Exit #206 (the Smokey Point exit) to the intersection of State Highway 531 and State Highway 9 in Arlington. From there the line extends generally northward along State Highway 9 to the county line, and then west along the county line to Puget Sound.

(d) In Island County, all of Camano Island and the portion of Whidbey Island north of an east-west line extending through Greenbank.

(e) In Clallam County, the area bounded as follows: From the westernmost city limit of Port Angeles, a line extends due south to a location five miles south of State Highway 101. From there, the boundary continues east along a line parallel to, and five miles south of, State Highway 101 to the Clallam/Jefferson County line. The boundary turns north along the Clallam/Jefferson County line until it reaches the Straits of Juan de Fuca and then continues along the Straits to its point of origin.

(3) *Brassica* seed production district 2 is divided into two subdistricts, designated district 2A and district 2B. For purposes of descriptions of boundaries relating to *Brassica* seed production district 2, all references to canals pertain to Columbia Basin Irrigation Project structures. *Brassica* seed production district 2 includes portions of Grant and Adams counties bounded as follows:

(a) Beginning at the Grant-Douglas County boundary, the line proceeds continuously due east along existing portions of Road 13NW to its intersection with the West Canal. The line follows the West Canal in a northeasterly direction through portions of the city of Ephrata, then around the northern end of Soap Lake and easterly to the intersection of the West Canal and the East Low Canal. The line follows the East Low Canal in a southerly, then easterly direction to its intersection with State Highway 26. Then it turns west and follows State Highway 26 to the Columbia River. The line continues due west until it intersects the county boundary in the Columbia River. The line then turns north and follows the county boundary to the point of origin.

(b) *Brassica* seed production district 2A is the northwestern portion of *Brassica* seed production district 2. It is bounded on the north and west by the boundaries of *Brassica* seed production district 2. Its eastern boundary line commences at the intersection of Rd. 13 NW and K NW. The line extends south along K NW to its intersection with I-90 North Frontage Rd. The line extends west along Frontage Rd. to State Highway 281N, and along State Highway 281N to Q SW. It extends north along Q SW to 5 NW and west along 5 NW to the western boundary of *Brassica* seed production district 2.

(c) *Brassica* seed production district 2B consists of the portion of *Brassica* seed production district 2 that is not encompassed in *Brassica* seed production district 2A.

NEW SECTION

WAC 16-326-020 What are the general requirements for growing, transporting or processing *Brassica* seed within any *Brassica* seed production district? (1) Growing, transportation or processing of *Brassica* seed is regulated under provisions of this section only within the borders of a

Brassica seed production district, as described in WAC 16-326-010.

(2) No *Brassica* seed crop grown for any purpose is regulated as part of a *Brassica* seed production district, if it is harvested or mowed before flowering or otherwise handled so that pollen production is prevented. Note that other regulatory requirements, such as the provisions of the crucifer seed quarantine rule found in WAC 16-301-490 through 16-301-580, are applicable.

(3) *Brassica* seed crops, including seed grown for planting and seed grown for crushing or extraction for fuel or oil, may only be grown in locations that have been identified in a timely manner through the pinning process.

(a) Pinning for *Brassica* seed production in *Brassica* seed production district 1 will be held at least once a year at the WSU Northwestern Washington Research and Extension Center, 16650 State Route 536, Mt. Vernon, Washington 98237. Contact the WSU Skagit County Extension office at 360-428-4270 for information about pinning events for district 1.

(b) Pinning for *Brassica* seed production district 2 will be held at least once a year at the WSU Grant County Extension office, 35 C St. N.W., Ephrata, Washington 98823. Contact the WSU Grant County Extension office at 509-754-2011, ext. 413 for information about pinning events for district 2.

(c) Dates, times, locations and other information about pinning events will vary.

(d) Pinning for *Brassica* seed crops produced for planting must be performed by an authorized representative of the contractor for the crop. If the seed produced for planting is not being produced for a contractor, or if the contractor waives the pinning privilege, then the grower is responsible for pinning the location of the crop.

(e) Pinning for *Brassica* seed crops produced for fuel or oil must be performed by an authorized representative of the grower.

(4) Transportation and handling of *Brassica* seed within any *Brassica* seed production district must be performed in a way to prevent inadvertent spread of seed or production of volunteer plants. All shipments of viable seed must be in covered containers from which the seed cannot leak.

(5) Volunteer *Brassica* plants must be controlled as soon as feasible, but always prior to pollen production or blossoming.

NEW SECTION

WAC 16-326-030 What are the requirements to grow *Brassica* seed in *Brassica* seed production district 1? (1) *Brassica* seed crops intended for oil or fuel production and/or associated by-products, forage, or cover crops may only be planted or grown in compliance with a *Brassica* production agreement, as described in RCW 15.51.040.

(2) *Brassica* seed crops of species generally known as rapeseed or canola, that are intended for producing seed for planting, may only be planted or grown under conditions of a *Brassica* production agreement, as described in RCW 15.51.-040.

NEW SECTION

WAC 16-326-040 What are the requirements for growing *Brassica* seed in all of *Brassica* seed production district 2, which is composed of two subdistricts designated districts 2A and 2B? (1) A minimum isolation distance of two miles must be preserved from the nearest edge of any *Brassica* seed crop to any other *Brassica* seed crop. The location pinned first has priority and establishes a basis for the isolation distance for other *Brassica* seed crops. Any person subsequently pinning any other location for a *Brassica* seed crop is responsible for maintaining the two-mile minimum isolation distance. Exceptions to this two-mile minimum distance can occur only in the following three situations:

(a) An exception that allows an isolation distance of less than two miles will occur when a written agreement between two or more contractors and/or growers complies with the conditions specified in subsection (2) of this section. All locations to be planted under such a written agreement between the parties must be pinned.

(b) An exception to the minimum isolation distance may be allowed under conditions of a *Brassica* production agreement, as described in RCW 15.51.040. All locations to be planted under such a *Brassica* production agreement must be pinned.

(c) *Brassica* seed crops grown for forage or cover crops may be planted or grown within the two-mile minimum isolation distance, if the forage or cover crop is not allowed to bloom or to produce pollen from April 1 through August 15 of any year. Forage or cover crops that comply with requirements of this subsection are not required to be pinned.

(2) Written agreements between parties to voluntarily allow planting of locations, any portion of which are within the minimum isolation distance of two miles (as referenced in subsection (1)(a) of this section), must comply with all of the following conditions:

(a) The agreement must be signed by authorized representatives of the contractors for the *Brassica* seed crops grown for planting, and by the growers of *Brassica* seed crops grown for fuel or oil. If one or more of the affected *Brassica* seed crops for planting is not being produced under contract, or if the contractor waives signature authority for this agreement, the grower of the crop must enter into the agreement instead.

(b) The agreement must, at a minimum, specify:

- The date of the agreement;
- The approximate dates during which the affected crops will be in the field;
- The name, business name (if applicable), telephone number and address of each affected grower;
- The location and acreage of each planting affected by the agreement;
- The contractor (if applicable) for each location; and
- *Brassica* seed crop species and variety for each location.

(c) These written agreements cannot extend beyond one harvest per agreement.

(d) Copies of the written agreement must be retained by each person who signs it for a minimum of three years.

(3) Pinning for *Brassica* seed crops intended to produce seed for planting starts each year on the first business day after January 31 for summer annual species or varieties (such as mizuna and Chinese cabbage) and on the first business day after May 31 for overwintered species or varieties (such as cabbage, broccoli, and turnip). Pinning for *Brassica* seed crops to produce seed intended for oil or fuel starts the first business day after June 30.

NEW SECTION

WAC 16-326-050 What are the differences between restrictions on *Brassica* seed production in *Brassica* seed production districts 2A and 2B? WAC 16-326-040 establishes restrictions that apply throughout all of *Brassica* seed production district 2 (including the two subdistricts designated districts 2A and 2B in WAC 16-326-010(3)), regarding the production of *Brassica* seed crops. Additional specific restrictions apply to district 2A. The differences between the subdistricts are:

(1) *Brassica* seed production in *Brassica* seed production district 2A is limited primarily to production of any species of *Brassica* seed for planting. Within *Brassica* seed production district 2A, *Brassica* seed crops intended for oil or fuel production may only be planted or grown under conditions of a *Brassica* production agreement, as described in RCW 15.51.040.

(2) *Brassica* seed production in *Brassica* seed production district 2B includes production of any species of *Brassica* seed for planting, oil or fuel production.

NEW SECTION

WAC 16-326-060 What is the *Brassica* work group and how often does it meet? The *Brassica* work group is an advisory group composed of representatives of the vegetable seed, canola, and biofuels production industries, as well as other interested persons. The Washington state department of agriculture will continue to convene the work group as needed, but at least once a year, for the purpose of advising the department regarding the provisions of chapter 16-326 WAC, any necessary revisions, and the needs of affected growers and industries.

WSR 07-24-088

PROPOSED RULES

HORSE RACING COMMISSION

[Filed December 5, 2007, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-18-011.

Title of Rule and Other Identifying Information: WAC 260-70-680 Uniform classification guidelines.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on January 10, 2008, at 9:30 a.m.

Date of Intended Adoption: January 10, 2008.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by January 7, 2008.

Assistance for Persons with Disabilities: Contact Patty Sorby by January 7, 2008, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend this section by adopting the new uniform classification of class 1, 2, 3, 4, and 5 drugs, medications, and foreign substances as approved by the Racing Medication and Testing Consortium (TMTTC), and then in model rule by the Association of Racing Commissioners International (ARCI).

Reasons Supporting Proposal: Each year, drugs, medication and other substances are added and removed from the list published by the RMTC and ARCI. This proposal attempts to keep pace with these changes.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

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

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

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

December 5, 2007

R. J. Lopez

Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-07-012, filed 3/8/07, effective 4/8/07)

WAC 260-70-680 Uniform classification guidelines.

This section classifies each drug/medication/foreign substance, and where appropriate and/or available, its trade name. The penalties for violation of this section are in WAC 260-84-110.

(1) Class 1

Class 1 drugs are stimulant and depressant drugs that have the highest potential to affect the performance of a horse, and have no generally accepted medical use. Many of these agents are Drug Enforcement Agency (DEA) Schedule II substances. These include the following drugs and their metabolites: Opiates, opium derivatives, synthetic opioids and psychoactive drugs, amphetamines and amphetamine-like drugs as well as related drugs, including but not limited to apomorphine, nikethamide, mazindol, pemoline, and pentylenetetrazol.

Drug	Trade Name
Alfentanil	Alfenta
Amphetamine	
Anileridine	Leritine

Drug	Trade Name
Apomorphine	
Benzylpiperazine (BZP)	
Carfentanil	
<u>Cathinone</u>	
Cocaine	
<u>Codeine</u>	
<u>DEA Schedule 1 (all)</u>	
Dextromoramide	Palfium, Narcolo
Diamorphine	
<u>Donepezil</u>	<u>Aricept</u>
Endorphins	
Enkephalins	
Ethylmorphine	Dionin
Etorphine HCl	M99
Fentanyl	Sublimaze
<u>Heroin</u>	
<u>Hydrocodone (dihydrocodeinone)</u>	<u>Hycodan</u>
Hydromorphone	Dilaudid
Hydroxyamphetamine	Paradrine
Levorphanol	Levo-Dremoran
Lofentanil	
Mazindol	Sanorex
Meperidine	Demerol
Mephentermine	<u>Wyamine</u>
Metaraminol	Aramine
Methadone	Dolophine
Methamphetamine	Desoxyn
Methaqualone	Quaalude
<u>Methcathinone</u>	
Methylphenidate	Ritalin
Metopon (methyldihydromorphinone)	
Morphine	
Nikethamide	Coramine
Oxycodone	Percodan
Oxymorphone	Numorphan
Pemoline	Cylert
Pentylentetrazol	Metrazol, Nioric
Phenazocine	Narphen
Phencyclidine (PCP)	Sernylan
Phendimetrazine	Bontril, etc.
Phenmetrazine	Preludin
Picrotoxin	
Piritramide	
Remifentanil	Ultiva

Drug	Trade Name
Strychnine	
Sufentanil	Sufenta

(2) Class 2

Class 2 drugs are drugs/medication/foreign substances that have a high potential to affect the performance of a horse, but less of a potential than class 1 drugs. Class 2 drugs are either not generally accepted as therapeutic agents in racing horses, or are therapeutic agents that have a high potential for abuse.

Drug	Trade Name
Acecarbromal	
Acetophenazine	Tindal
Adinazolam	
<u>Alclofenac</u>	
Alcuronium	Alloferin
Alphaprodine	Nisentil
Alpidem	Anaxyl
Alprazolam	Xanax
Althesin	Saffan
Amisulpride	Solian
Amitriptyline	Elavil, Amitril, Endep
Amobarbital	Amytal
Amoxapine	Asendin
Amperozide	
Anilopam	Anisine
Aprobarbital	Alurate
<u>Articaine</u>	<u>Septocaine; Ultracaine, etc.</u>
<u>Atomoxetine</u>	<u>Strattera</u>
<u>Atracurium</u>	<u>Tracrium</u>
Azacylonol	Frenque
Azaperone	Stresnil, Suicalm, Fentaz (with Fentanyl)
Barbital	Veronal
Barbiturates	
Bemegride	Megimide, Mikedimide
<u>Benoxaprofen</u>	
Benperidol	<u>Anquil</u>
Bentazepam	Tiadipona
Benzactizine	Deprol, Bronchodil-etten
Benzocetamine	
Benzodiazepines	
Benzphetamine	Didrex
Benztropine	Cogentin
Biriperone	
Bromazepam	Lexotan, Lectopam

Drug	Trade Name
Bromisovalum	Diffucord, etc.
Bromocriptine	Parlodel
Bromperidol	Bromidol
Brotizolam	Brotocol
Bupivacaine	Marcaine
Buprenorphine	Temgesic
Buspiron	Buspar
Buspropion	Wellbutrin
Butabarbital (Secbutobarbitone)	Butacaps, Butasol, etc.
Butalbital (Talbutal)	Fiorinal
Butanilcaine	Hostacain
Butaperazine	Repoise
Butoctamide	Listomin
Caffeine	
Camazepam	Paxor
Captodiame	Covatine
Carbidopa + levodopa	Sinemet
Carbromol	Mifudorm
<u>Carisoprodol</u>	<u>Soma, Rela</u>
Carphenazine	Proketazine
Carpipramine	Prazinil
<u>Carticaine (see Articaine)</u>	<u>Septocaine; Ultra-caine, etc.</u>
Chloralose (Alpha-Chloralose)	
Chloral betaine	Beta-Chlor
Chloral hydrate	Nactec, Oridrate, etc.
Chloraldehyde (chloral)	
Chlordiazepoxide	Librium
Chlormezanone	Trancopal
Chloroform	
Chlorhexidol	
Chlorprocaine	Nesacaine
Chlorproethazine	Newiplege
Chlorpromazine	Thorazine, Largactil
Chlorprothixene	Taractan
Citalopram	Celex
Clobazam	Urbanyl
Clocapramine	
Clomethiazole	
Clomipramine	Anafranil
Clonazepam	Klonopin
Clorazepate	Tranxene
Clothiapine	Entermin
Clotiazepam	Trecalmo, Rize
Cloxazolam	Enadel, Sepazon, Tolestan
Clozapine	Clozaril, Leponex

Drug	Trade Name
((Codeine))	
Conorphone	
Corticaine	Ultracain
Crotetamide	
Cyamemazine	Tercian
Cyclobarbital	Phanodorm
<u>Darbepoetin</u>	<u>Aranesp</u>
Decamethonium	Syncurine
Demoxepam	
Desipramine	Norpromine, Pertof-rane
Dezocine	Dalgan®
Diazepam	Valium
Dichloralphenazone	Febenol, Isocom
Diethylpropion	Tepanil, etc.
Diethylthiambutene	Themalon
Dihydrocodeine	Parcodin
Dilorazepam	Briantum
Diprenorphine	M50/50
Dixyrazine	Esucos
Dopamine	Intropin
<u>Doxacurium</u>	<u>Nuromax</u>
Doxapram	Dopram
Doxefazepam	Doxans
Doxepin	Adapin, Sinequan
Droperidol	Inapsine, Droleptan, Innovar-Vet (with Fentanyl)
Enciprazine	
Ephedrine	
<u>Epibatidine</u>	
Epinephrine	
Erythropoietin (EPO)	Epogen, Procrit, etc.
Estazolam	Domnamid, Eurodin, Nuctalon
Ethamivan	
<u>Ethanol</u>	
Ethchlorvynol	Placidyl
Ethinamate	Valmid
Ethopropazine	Parsidol
Ethylisobutrazine	Diquel
Etidocaine	Duranest
Etifoxin	Stresam
Etizolam	Depas, Pasaden
Etodroxizine	Indunox
Etomidate	
Fenarbamate	Tymium

Drug	Trade Name
<u>Fenclozic Acid</u>	<u>Cincopal</u>
Fenfluramine	Pondimin
Fluanisone	Sedalande
Fludiazepam	Erispam
Flunitrazepam	Rohypnol, Narcozep, Darkene, Hypnodorm
Fluopromazine	Psyquil, Siquil
Fluoresone	Caducid
Fluoxetine	Prozac
Flupenthixol	Depixol, Fluaxol
Fluphenazine	Prolixin, Permitil, Anatsol
Flurazepam	Dalmane
Fluspirilene	Imap, Redeptin
Flutoprazepam	Restas
Fluvoxamine	Dumirox, Faverin, etc.
<u>Galantamine</u>	<u>Reminyl</u>
Gallamine	Flaxedil
Gepirone	
Glutethimide	Doriden
Halazepam	Paxipam
Haloperidol	Haldol
Haloxazolam	Somelin
Hemoglobin glutamers	Oxyglobin, Hemopure
Hexafluorenum	Myalexen
Hexobarbital	Evipal
Homophenazine	Pelvichthol
((Hydrocodone (dihydrocodeinone))	Hycodan)
Hydroxyzine	Atarax
Ibomal	Noctal
Imipramine	Imavate, Presamine, Tofranil
Isapirone	
Isocarboxazid	Marplan
Isomethadone	
Isoproterenol	Isoprel
<u>Isoxicam</u>	<u>Maxicam</u>
Ketamine	Ketalar, Ketaset, Vetal
Ketazolam	Anxon, Laftram, Solatran, Loftran
Lenperone	Elanone-V
Levomethorphan	
Lidocaine	Xylocaine
Lithium	Lithizine, Duralith, etc.
Lobeline	

Drug	Trade Name
Loflazepate, Ethyl	Victan
<u>Loperamide</u>	<u>Imodium</u>
Loprazolam	Dormonort, Havlane
Lorazepam	Ativan
Lormetazepam	Noctamid
Loxapine	Laxitane
Maprotiline	Ludiomil
Mebutamate	Axiten, Dormate, Capla
Meclofenoxate	Lucidril, etc.
Medazepam	Nobrium, etc.
Melperone	Eunerpan
<u>Memantine</u>	<u>Namenda</u>
Meparfynol	Oblivon
Mepazine	Pacatal
Mephenoalone	Control, etc.
Mephentyoin	Mesantoin
Mephobarbital (Methylphenobarbital)	Mebaral
Mepivacaine	Carbocaine
Meprobamate	Equanil, Miltown
Mesoridazine	Serentil
Metaclazepam	Talis
Metazocine	
Metharbital	Gemonil
Methohexital	Brevital
Methotrimeprazine	Levoprome, Neurocil, etc.
Methypylon	Noludar
Metocurine	Metubine
Metomidate	Hypnodil
Mexazolam	Melex
Midazolam	Versed
Mirtazepine	Remeron
<u>Mivacurium</u>	<u>Mivacron</u>
Modafinil	Provigil
Molindone	Moban
Moperone	Luvatren
Mosaprimine	
Nalbuphine	Nubain
Nalorphine	Nalline, Lethidrone
Nefazodone	Serzone
Nimetazepam	Erimin
Nitrazepam	Mogadon
Nordiazepam	Calmday, Nordaz, etc.
Norepinephrine	
Nortriptyline	Aventyl, Pamelor

Drug	Trade Name
Olanzapine	Zyprexa
Oxazepam	Serax
Oxazolam	Serenal
Oxyperitine	Forit, Integrin
Pancuronium	Pavulon
Paraldehyde	Paral
Paroxetine	Paxil, Seroxat
Penfluridol	Cyperon
Pentobarbital	Nembutal
Perazine	Taxilan
<u>Perfluorodecolin</u>	
<u>Perfluorodecahydronophthalene</u>	
<u>Perfluorooctylbromide</u>	
<u>Perfluorotripropylamine</u>	
<u>Perfluorocarbons</u>	
Periciazine	Alodept, etc.
Perlazine	Hypnodin
Perphenazine	Trilafon
Phenaglycodol	Acalo, Alcamid, etc.
Phenelzine	Nardelzine, Nardil
Phenobarbital	Luminal
Phentermine	Iomamin
Piminodine	Alvodine, Cimadon
Pimozide	Orap
Pinazepam	Domar
Pipamperone	Dipiperon
<u>Pipecuronium</u>	<u>Arduan</u>
Pipequaline	
Piperacetazine	Psymod, Quide
Piperocaine	Metycaine
Pipotiazine	Lonseren, Piportil
Pipradrol	Dataril, Gerondyl, etc.
Piquindone	
Prazepam	Verstran, Centrax
Prilocaine	Citanest
Prochlorperazine	Darbazine, Compazine
Propanidid	
Propiomazine	Largon
Propionylpromazine	Tranvet
Propiram	
Propofol	Diprivan, Disoprivan
Propoxycaine	Ravocaine
Prothipendyl	Dominal
Protriptyline	Concordin, Triptil
Proxibarbital	Axeen, Centralgol
Pyrithyldione	Hybersulfan, Sonodor
Quazipam	Doral

Drug	Trade Name
Quetiapine	Seroquel
Racemethorphan	
Racemorphan	
Raclopride	
<u>Ractopamine</u>	<u>Raylean</u>
Remoxipride	Roxiam
Reserpine	Serpasil
Rilmazafone	
Risperidone	
Ritanserlin	
Rivastigmine	Exelon
<u>Rocuronium</u>	<u>Zemuron</u>
<u>Rofecoxib</u>	<u>Vioxx</u>
Romifidine	Sedivet
Ropivacaine	Naropin
Secobarbital (Quinalbarbitone)	Seconal
Selegiline	Eldepryl, Jumex
Sertraline	Lustral, Zoloft
Snake Venoms	
<u>Somatrem</u>	<u>Protropin</u>
<u>Somatropin</u>	<u>Nutropin</u>
Spiclomazine	
Spiperone	
Succinylcholine	Sucostrin, Quelin, etc.
Sulfondiethylmethane	
Sulfonmethane	
Sulforidazine	Inofal
Sulpiride	Aiglonyl, Sulpitil
Sultopride	Barnetil
Talbutal	Lotusate
Tandospirone	
Temazepam	Restoril
Tetrabenazine	Nitoman
Tetracaine	Pontocaine
Tetrazepam	Musaril, Myolastin
Thebaine	
Thialbarbital	Kemithal
Thiamylal	Surital
Thiethylperazine	Torecan
Thiopental	Pentothal
Thiopropazate	Dartal
Thiopropazine	Majeptil
Thioridazine	Mellaril
Thiothixene	Navane
Tiapride	Italprid, Luxoben, etc.
Tiletamine	Component of Telazol
Timiperone	Tolopelon

Drug	Trade Name
Tofisopam	Grandaxain, Seriel
Topiramate	Topamax
Tramadol	Ultram
Tranlycypromine	Parnate
Trazodone	Desyrel
<u>Tretoquinol</u>	<u>Inolin</u>
Triazolam	Halcion
Tribromethanol	
Tricaine methanesulfonate	Finquel
Trichloroethanol	
Tricholoethylene	Trilene, Trimar
Triclofos	Triclos
Trifluomeprazine	Nortran
Trifluoperazine	Stelazine
Trifluperidol	Triperidol
Triflupromazine	Vetame, Vesprin
Trimipramine	Surmontil
Tubocurarine (Curare)	Metubin
Tybamate	Benvil, Nospan, etc.
Urethane	
<u>Valdecocib</u>	
Valnoctamide	Nirvanyl
Venlafaxine	Effexor
Veralipride	Accional, Veralipril
Vercuronium	Norcuron
Viloxazine	Catatrol, Vivalan, etc.
Vinbarbital	Delvinol
Vinylbital	Optanox, Speda
Yohimbine	
<u>Zaleplon</u>	<u>Sonata</u>
<u>Ziprasidone</u>	<u>Geodon</u>
Zolazepam	
Zolpidem	Ambien, Stilnox
<u>Zomepirac</u>	<u>Zomax</u>
Zopiclone	Imovan
Zotepine	Lodopin
Zuclopenthixol	Ciatyl, Cesordinol

(3) Class 3

Class 3 drugs are drugs/medication/foreign substances that may or may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than class 2 drugs.

Drug	Trade Name
Acebutolol	Sectral
Acepromazine	Atrovet, Notensil, PromAce®
Albuterol (Salbutamol)	Proventil, Ventolin

Drug	Trade Name
<u>Almotriptan</u>	<u>Axert</u>
Alprenolol	
Amibenonium	Mytelase, Myeuran
Aminophylline	Aminophyllin, etc.
<u>Amitraz</u>	<u>Mitaban</u>
Amlodipine	Norvasc
Amyl nitrite	
Arecoline	
Atenolol	Tenormin
Atropine	
<u>Benazeprilat, Benazepril and MC-Tab</u>	<u>Lotensin</u>
Betaxolol	Kerlone
Bethanidine	Esbatal
Biperiden	Akineton
Bisoprolol	Zebeta, Bisobloc, etc.
Bitolterol	Effectin
<u>Bolasterone</u>	
<u>Boldione</u>	
Bretylum	Bretylol
Brimonidine	Alphagan
Bromfenac	Duract
Bromodiphenhydramine	
<u>Bufexamac</u>	
Bumetanide	Bumex
Butorphanol	Stadol, Torbugesic
<u>Calusterone</u>	
Candesartan	Atacand
Captopril	Capolen
Carazolol	Carbace, Conduction
Carbachol	Lentin, Doryl
Carbamezapine	Tegretol
Carbinoxamine	Clistin
Carteolol	Cartrol
Carvedilol	Coreg
<u>Celecoxib</u>	<u>Celebrex</u>
Cimeterol	
<u>Clemastine</u>	<u>Tavist</u>
Clenbuterol	Ventipulmin
Clonidine	Catapres
<u>Clostebol</u>	
Cyclandelate	Cyclospasmol
Cycrimine	Pagitane
<u>Danazol</u>	<u>Danocrine</u>
<u>Dehydrochloromethyltestosterone</u>	

Drug	Trade Name
<u>Deracoxib</u>	<u>Deremaxx</u>
<u>Desoxymethyltestosterone</u>	
Detomidine	Dormosedan
Dextropropoxyphene	Darvon
Diazoxide	Proglycem
<u>Diflunisal</u>	
Dimeflin	
Diphenhydramine	Benadryl
Dipyridamole	Persantine
<u>Divalproex</u>	<u>Depakote</u>
Dobutamine	Dobutrex
<u>Doxazosin</u>	
Doxylamine	Decapryn
Dyphylline	
Edrophonium	Tensilon
<u>Eletripan</u>	<u>Relpax</u>
Enalapril (metabolite enalaprilat)	Vasotec
<u>Ergoloid mesylates</u>	
Erthrityl tetranitrate	Cardilate
Esmolol	Brevibloc
Etamiphylline	
Ethacrynic Acid	Edecrin
<u>Ethosuximide</u>	<u>Zarontin</u>
<u>Ethylestrenol</u>	<u>Maxibolin, Organon</u>
Ethylnorepinephrine	Bronkephrine
<u>Etodolac</u>	<u>Lodine</u>
<u>Felbamate</u>	<u>Felbatol</u>
<u>Fenbufen</u>	<u>Cincopal</u>
Fenoldopam	Corlopam
<u>Fenoprofen</u>	<u>Nalfon</u>
Fenoterol	Berotec
Fenspiride	Respiride, Respan, etc.
<u>Fentiazac</u>	
<u>Flurbiprofen</u>	<u>Froben</u>
<u>Flufenamic Acid</u>	
<u>Fluoxymesterone</u>	<u>Halotestin</u>
Flupirtine	Katadolone
<u>Formebolone</u>	
Formoterol	Altram
<u>Fosinopril, Fosinoprilat</u>	<u>Monopril</u>
<u>Fosphenytoin</u>	<u>Cerebyx</u>
<u>Furazabol</u>	
Gabapentin	Neurontin
<u>Gestrinone</u>	
Glycopyrrolate	Robinul
Guanadrel	Hylorel

Drug	Trade Name
Guanethidine	Ismelin
Guanabenz	Wytensin
Heptaminol	Corofundol
Homatropine	Homapin
Hydralazine	Apresoline
<u>4-Hydroxytestosterone</u>	
<u>Ibutilide</u>	<u>Corvert</u>
<u>Iloprost</u>	<u>Ventavis</u>
<u>Indomethacin</u>	<u>Indocin</u>
Ipratropium	
Irbesarten	Avapro
Isoetharine	Bronkosol
Isosorbide dinitrate	Isordil
<u>Kebuzone</u>	
Ketorolac	Toradol
Labetalol	Normodyne
<u>Lamotrigine</u>	<u>Lamictal</u>
<u>Levobunolol</u>	<u>Betagan</u>
<u>Lisinopril</u>	<u>Prinivil, Zestril</u>
Losartan	Hyzaar
Mabuterol	
Mecamylamine	Inversine
Medetomidine	Domitor
<u>Mefenamic Acid</u>	<u>Ponstel</u>
<u>Mestanolone</u>	
<u>Mesterolone</u>	
Metaproterenol	Alupent, Metaprel
<u>Metenolone</u>	
Methacholine	
<u>Methandienone</u>	
<u>Methandriol</u>	<u>Probolis</u>
<u>Methasterone</u>	
Methixene	Trest
Methoxamine	Vasoxyl
Methoxyphenamine	Orthoxide
<u>Methsuximide</u>	<u>Celontin</u>
Methylatropine	
<u>Methyldienolone</u>	
Methyldopa	Aldomet
<u>Methylnortestosterone</u>	
<u>Methyltestosterone</u>	<u>Metandren</u>
<u>Methyl-1-testosterone</u>	
Metolazone	
Metoprolol	Lopressor
Mibefradil	Posicor
<u>Mibolerone</u>	
Midodrine	Pro-Amiline

Drug	Trade Name
Minoxidil	Loniten
Moexipril (metabolite moexiprilat)	Uniretic
Muscarine	
<u>Namumetone</u>	<u>Anthraxan, Relafen, Reflifex</u>
Nadol	Corgard
<u>Naloxone</u>	<u>Narcan</u>
<u>Naltrexone</u>	<u>Revia</u>
<u>Nandrolone</u>	<u>Nandrolin, Laurabolin, Durabolin</u>
Naratriptan	Amerge
Nefopam	
Neostigmine	Prostigmine
<u>Niflumic Acid</u>	<u>Nifluril</u>
<u>Nimesulide</u>	
Nitroglycerin	
<u>19-Norandrostenediol</u>	
<u>19-Norandrostenedione</u>	
<u>Norbolethone</u>	
<u>Norethandrolone</u>	
<u>Nylidrine</u>	<u>Arlidin</u>
<u>Olmesartan</u>	<u>Benicar</u>
<u>Oxabolone</u>	
<u>Oxandrolone</u>	<u>Anavar</u>
<u>Oxcarbazepine</u>	<u>Trileptal</u>
Oxprenolol	Trasicor
<u>Oxymesterone</u>	
<u>Oxymetholone</u>	<u>Adroyd, Anadrol</u>
Papaverine	Pavagen, etc.
Paramethadione	Paradione
Pargyline	Eutonyl
Penbutolol	Levatol
Pentaerythritol tetranitrate	Duotrate
Pentazocine	Talwin
<u>Perindopril</u>	<u>Biprel</u>
Phenoxybenzamine	Dibenzylamine
Phentolamine	Regitine
Phenylephrine	Isophrin, Neo-Synephine
Phenylpropanolamine	Propadrine
Physostigmine	Eserine
Pindolol	Viskin
Pirbuterol	Maxair
Piretanide	Arelix, Tauliz
<u>Piroxicam</u>	<u>Feldene</u>
Prazosin	Minipress

Drug	Trade Name
Primidone	Mysoline
Procaine	
Procaterol	Pro Air
Procyclidine	Kemadrin
Promazine	Sparine
Promethazine	Phenergan
Propentophylline	Karsivan
Propranolol	Inderal
<u>Prostanazol</u>	
Protokylol	Ventaire
Pseudoephedrine	Cenafed, Novafed
Pyridostigmine	Mestinson, Regonol
Pyrilamine	Neoantergan, Equihist
((Ractopamine	Raylean))
<u>Quinapril, Quinaprilat</u>	<u>Accupril</u>
<u>Quinbolone</u>	
<u>Ramipril, metabolite Ramiprilat</u>	<u>Altace</u>
Ritodrine	Yutopar
Rizatriptan	Maxalt
Salmeterol	
Scopolamine (Hyoscine)	Triptone
Sibutramine	Meridia
<u>Sildenafil</u>	<u>Viagra</u>
Sotalol	Betapace, Sotacor
<u>Spirapril, metabolite Spiraprilat</u>	<u>Renomax</u>
<u>Stenbolone</u>	
<u>Sulindac</u>	<u>Clinoril</u>
Sumatriptan	Imitrex
<u>Tadalafil</u>	<u>Cialis</u>
Telmisartan	Micardis
<u>Tenoxicam</u>	<u>Alganex, etc.</u>
<u>Tepoxalin</u>	
<u>Terazosin</u>	<u>Hytrin</u>
Terbutaline	Brethine, Bricanyl
Testolactone	Teslac
<u>Tetrahydrogestrinone</u>	
Theophylline	Aqualphyllin, etc.
<u>Tiaprofenic Acid</u>	<u>Surgam</u>
Timolol	Blocardrin
Tolazoline	Priscoline
<u>Tolmetin</u>	<u>Tolectin</u>
Torsemide (Torasemide)	Demadex
Trandolapril (and metabolite, Trandolaprilat)	Tarka
<u>Trenbolone</u>	<u>Finoplix</u>
Trihexylphenidyl	Artane

Drug	Trade Name
Trimethadione	Tridione
Trimethaphan	Arfonad
Tripelennamine	PBZ
<u>Valerenic Acid</u>	
Valsartan	Diovan
<u>Vardenafil</u>	<u>Levitra</u>
Xylazine	Rompun, Bay Va 1470
Zolmitriptan	Zomig
Zonisamide	Zonegran
<u>Δ-1-androstene-3, 17-diol</u>	
<u>Δ-1-androstene-3, 17-dione</u>	
<u>Δ-1-dihydrotestosterone</u>	

(4) Class 4

Class 4 drugs include therapeutic drugs/medications/foreign substances that would be expected to have less potential to affect the performance of a racing horse than class 3 drugs.

Drug	Trade Name
Acetaminophen (Paracetamol)	Tylenol, Tempra, etc.
Acetanilid	
Acetazolamide	Diamox, Vetamox
Acetophenetidin (Phenacetin)	
Acetylsalicylic acid (Aspirin)	
((Aclufenae))	
Aclomethasone	Aclovate
Aldosterone	Aldocortin, Electro cortin
Ambroxol	Ambril, etc.
Amcinonide	Cyclocort
<u>Amiloride</u>	<u>Moduretic; Midamor</u>
Aminocaproic Acid	Amicar, Caprocid
Aminodarone	
2-Aminoheptaine	Tuamine
Aminopyrine	
Amisometradine	Rolictron
Amlopidine	Norvasc, Ammivin
Amrinone	
Anisotropine	Valpin
Antipyrine	
Apazone (Azapropazone)	Rheumox
Aprindine	
Baclofen	Lioresal
Beclomethasone	Propaderm
Benazepril	Lotrel
Bendroflumethiazide	Naturetin
((Benoxaprofen))	
Benoxinate	Dorsacaine
Benzocaine	

Drug	Trade Name
Benzthiazide	
Bepridil	Bepadin
Betamethasone	Betasone, etc.
Bethanechol	Urecholine, Duvoid
Boldenone	Equipoise
Bromhexine	Oletor, etc.
Brompheniramine	Dimetane, Disomer
Budesonide	Pulmacort, Rhinocort
Butacaine	Butyn
Butamben (butyl aminobenzoate)	Butesin
Butoxycaine	Stadacain
((Calusterone	Methosorb))
Camphor	
((Carisoprodol	Relo, Soma
Celecoxib	Celebrex))
<u>Carprofen</u>	<u>Rimadyl</u>
<u>Cetirizine</u>	<u>Zyrtec</u>
Chlormerodrin	Neohydrin
Chlorophenesin	Maolate
Chloroquine	Avloclor
Chlorothiazide	Diuril
Chlorpheniramine	Chlortriemton, etc.
Chlorthalidone	Hydroton
Chlorzoxazone	Paraflex
Cinchocaine	Nupercaine
<u>Clanobutin</u>	
Clibucaine	Batrax
Clidinium	Quarezan, Clindex, etc.
Clobetasol	Temovate
Clocortolone	Cloderm
Clofenamide	
Clormecaine	Placacid
Colchicine	
Cortisone	Cortone, etc.
Cyclizine	Merazine
Cyclobenzaprine	Flexeril
Cyclomethylcaine	Surfacaine
Cyclothiazide	Anhydron, Renazide
Cyproheptadine	Periactin
((Danazol	Danoerine))
Dantrolene	Dantrium
Dembroxol (Dembrexine)	Sputolysin
Deoxycorticosterone	Percortin, DOCA, Descotone, Dorcostrin
Desonite	Des Owen
Desoximetasone	Topicort

Drug	Trade Name
Dexamethasone	Azium, etc.
Dextromethorphan	
Dibucaine	Nupercainal, Cinchocaine
Dichlorphenamide	Daramide
Diclofenac	Voltaren, Voltarol
Diflorasone	Florone, Maxiflor
Diflucortolone	Flu-Cortinest, etc.
((Diflunisal))	
Digitoxin	Crystodigin
Digoxin	Lanoxin
Dihydroergotamine	
Diltiazem	Cardizem
Dimethisoquin	Quotane
Diphenoxylate	Difenoxin, Lomotil
Dipyron	Novin, Methampyrone
Disopyramide	Norpace
Dromostanolone	Drolban
Dyclonine	Dyclone
Eltenac	
Ergonovine	Ergotrate
Ergotamine	Gynergen, Cafegot, etc.
Etanercept	Enbrel
Ethoheptazine	Zactane
((Ethosuximide	Zarontin))
Ethotoin	Peganone
Ethoxzolamide	Cardrase, Ethamide
Ethylaminobenzoate (Benzocaine)	Semets, etc.
((Ethylestrenol	Maxibolin, Organon
Etodolac	Lodine))
Felodipine	Plendil
((Fenbufen	Cineopal
Fenclozic acid	Myalex
Fenopropfen	Nalfon))
Fexofenadine	Allegra
<u>Firocoxib</u>	
Flecainide	Idalon
Floctafenine	Idalon, Idarac
Flucinolone	Synalar, etc.
Fludrocortisone	Alforone, etc.
((Flufenamic acid))	
Flumethasone	Flucort, etc.
Flumethiazide	Ademol
Flunarizine	Sibelium
Flunisolide	Bronilide, etc.
Flunixin	Banamine
Fluocinolone	Synalar

Drug	Trade Name
Fluocinonide	Licon, Lidex
<u>Fluorometholone</u>	<u>FML</u>
Fluoroprednisolone	Predef-2X
((Fluoxymesterone	Halotestin))
Fluprednisolone	Alphadrol
Flurandrenolide	Cordran
((Flurbiprofen	Froben))
Fluticasone	Flixonase, Flutide
Guaifenesin (glycerol guaiacolate)	Gecolate
Halcinonide	Halog
Halobetasol	Ultravate
Hexocyclium	Tral
Hexylcaine	Cyclaine
Hydrochlorthiazide	Hydrodiuril
Hydrocortisone (Cortisol)	Cortef, etc.
Hydroflumethiazide	Saluron
Ibuprofen	Motrin, Advil, Nurpin, etc.
((Indomethacin	Indocin))
Infliximab	Remicade
Isoflupredone	Predef
Isometheptene	Octin, Octon
Isopropamide	Darbid
((Isoxicam	Maxicam))
Isosuprine	Vasodilan
Isradipine	DynaCirc
Ketoprofen	Orudis
Letosteine	Viscotiol, Visiotal
((Loperamide	Imodium))
Loratidine	Claritin
Meclizine	Antivert, Bonine
Meclofenamic Acid	Arquel
Medrysone	Medriusar, etc.
((Mefenamic acid	Ponstel))
Meloxicam	Mobic
Mepenzolate	Cantil
Mephenesin	Tolserol
Meralluride	Mercuhydrin
Merbaphen	Novasural
Mercaptomerin	Thiomerin
Mercumalilin	Cumertilin
Mersalyl	Salyrgan
Metaxalone	Skelaxin
((Methandriol	Probolie))
Methandrostenolone	Dianabol
Methantheline	Banthine

Drug	Trade Name
Methapyrilene	Histadyl, etc.
Methazolamide	Naptazane
Methdilazine	Tacaryl
Methocarbamol	Robaxin
Methotrexate	Folex, Nexate, etc.
Methscopolamine	Pamine
((Methsuximide	Celontin))
Methylchlorthiazide	Enduron
Methandrostenolone	Dianabol
Methylergonovine	Methergine
Methylprednisolone	Medrol
((Methyltestosterone	Metandren))
Methysergide	Sansert
Metiamide	
Metoclopramide	Reglan
Mexilitine	Mexilil
Milrinone	
Mometasone	Elocon
Montelukast	Singulair
((Nabumetone	Anthraxan, Relafen,
	Reliflex))
Naepaine	Amylsine
((Nandrolone	Nandrolin, Laurabolin,
	Durabolin))
Naphazoline	Privine
Naproxen	Equiproxen, Naprosyn
Nicardipine	Cardine
Nifedipine	Procardia
((Niflumic acid	Nifluril
Nimesulide))	
Nimodipine	Nemotop
Norethandrone	
Nortestosterone	Nemotop
<u>Olsalazine</u>	<u>Dipentum</u>
Orphenadrine	Norlfex
((Oxandrolone	Anavar))
Oxaprozin	Daypro, Deflam
Oxymetazoline	Afrin
((Oxymetholone	Adroyd, Anadrol))
Oxyphenbutazone	Tandearil
Oxyphencyclimine	Daricon
Oxyphenonium	Antrenyl
Paramethasone	Haldrone
Pentoxyfylline	Trental, Vazofirin
Phenacemide	Phenurone
Phensuximide	Milontin
<u>Phenylbutazone</u>	

Drug	Trade Name
Phenytoin	Dilantin
((Piroxicam	Feldene))
Polythiazide	Renese
Pramoxine	Tronothaine
Prednisolone	Delta-Cortef, etc.
Prednisone	Meticorten, etc.
Probenecid	
Procainamide	Pronestyl
Propafenone	Rythmol
Propantheline	Pro-Banthine
Proparacaine	Ophthaine
Propylhexedrine	Benzedrex
Quinidine	Quinidex, Quinocardine
((Rofecoxib	Vioxx))
Salicylamide	
Salicylate	
Spironalactone	Aldactone
Stanozolol	Winstrol-V
Sulfasalazine	Azulfidine, Azaline
((Sulindae	Clinoril
Tenoxicam	Alganex, etc.))
Terfenadine	Seldane, Triludan
Testosterone	
Tetrahydrozoline	Tyzine
Theobromine	
Thiosalicylate	
Thiphenamil	Trocinate
((Tiaprofenic acid	Surgam))
Tocainide	Tonocard
((Tolmetin	Tolectin))
Tranexamic Acid	
((Trenbolone	Finoplix))
Triamcinolone	Vetalog, etc.
Triamterene	Dyrenium
Trichlormethiazide	Naqua, Naquasone
((Tolmetin	Tolectin
Tranexamic acid))	
Tridihexethyl	Pathilon
Trimeprazine	Temaril
Tripolidine	Actidil
Tuaminoheptane	Tuamine
Vedaprofen	
Verapamil	Calan, Isoptin
Xylometazoline	Otrivin
Zafirlukast	Accolate
Zeranol	Ralgro

Drug	Trade Name
Zileuton	Zyflo
((Zomepirae	Zomax))

(5) Class 5

Class 5 drugs include those therapeutic medications for which concentration limits have generally been established by racing jurisdictions as well as certain miscellaneous agents such as DMSO and other medications.

Drug	Trade Name
Anisindione	
Cilostazol	Pletal
Cimetidine	Tagamet
Cromolyn	Intel
Dicumarol	Dicumarol
Dimethylsulfoxide (DMSO)	Domoso
Dimethylsulphone (MSM)	
Diphenadione	
<u>Esomeprazole</u>	<u>Nexium</u>
Famotidine	Gaster, etc.
Lansoprazole	
<u>Mesalamine</u>	<u>Asacol</u>
Misoprostel	Cytotec
Nedocromil	Tilade
Nizatidine	Axid
Omeprazole	Prilosec, Losec
<u>Pantoprazole</u>	<u>Protonix</u>
Phenindione	Hedulin
Phenprocoumon	Liquamar
Pirenzapine	Gastrozepin
Polyethylene glycol	
<u>Rabeprazole</u>	<u>Aciphex</u>
Ranitidine	Zantac
Warfarin	Coumadin, Coufarin

(6) Nonclassified substances

Nonclassified substances are considered to have no effect on the physiology of a horse, except to improve nutrition or treat or prevent infections or parasite infestations. These substances normally include antimicrobials, antiparasitic drugs, and nutrients such as vitamins.

WSR 07-24-091
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed December 5, 2007, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-13-036.

Title of Rule and Other Identifying Information: Chapter 170-03 WAC, DEL hearing rules, these rules allow the department of early learning to continue providing due process hearing procedures to child care providers. No rules are being appealed or amended.

Hearing Location(s): Department of Early Learning, 649 Woodland Square Loop, Room 230, Lacey, WA 98503 (one block north of Pacific, off College Street on Woodland Square Loop - next to HarborStone Bank), on January 8, 2008, at 10 a.m.

Date of Intended Adoption: Not earlier than March 1, 2008.

Submit Written Comments to: Andres Fernando, Rules Coordinator, P.O. Box 40970, Olympia, WA 98504, e-mail lisa.larue@del.wa.gov, fax (360) 413-3482, by January 8, 2008, 5 p.m.

Assistance for Persons with Disabilities: Contact Millie Jaeger by January 2, 2008, (360) 725-4926.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSHB 2964 [2SHB 2964] (chapter 265, Laws of 2006) created the new department of early learning, effective July 1, 2006. The department had existed in the past as the division of child care and early learning, a part of DSHS. These rules set up a process for hearings in those instances when an applicant for a child care license is denied the license and denied clearance to work with children. With the creation of the department of early learning, the DSHS hearing rules in Title 388 WAC became obsolete for the purpose of regulating child care. These new rules are needed to allow the new department of early learning to continue the business of conducting hearings. This is vital to the health and safety of children in care. These rules are necessary to implement the legislature intent in SSHB 2964 [2SHB 2964].

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: Chapter 43.215 RCW, section 301, chapter 265, Laws of 2006.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: Department of early learning, governmental.

Name of Agency Personnel Responsible for Drafting: Laura Dallison, P.O. Box 40970, Olympia, WA 98504, (360) 725-4678; Implementation: Larry Horne, P.O. Box 40970, Olympia, WA 98504, (360) 725-4695; and Enforcement: Amie Lapp-Payne, P.O. Box 40970, Olympia, WA 98504, (360) 725-4932.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required for hearing regulations (RCW 19.85.025(3)).

A cost-benefit analysis is not required under RCW 34.05.328. Not required for hearing regulations (RCW 34.05.310 (4)(g)(i)).

December 5, 2007

Amie Lapp-Payne

Deputy Director

Chapter 170-03 WAC

DEL HEARING RULES

I. GENERAL PROVISIONS

NEW SECTION

WAC 170-03-0010 Purpose and scope. (1) **Application.** This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of early learning (DEL) and:

(a) Individuals or entities who are applicants for child care licenses or who are licensees of DEL and are aggrieved by a DEL denial of an application or a revocation, suspension, or modification of a license;

(b) Applicants for employment or employees of licensed child care agencies, child care providers, staff, volunteers, contracted providers, or other individuals who are required to meet background check standards before being authorized to care for or have unsupervised access to children in child care and who are disqualified by DEL;

(c) Individuals receiving child care subsidies under the seasonal child care program who dispute a program decision or licensed/certified providers who dispute an overpayment under the seasonal child care program.

(2) **Relation to statutes and rules.** The rules of this chapter are intended to supplement RCW 43.215.305, the statute governing hearing rights for applicants and licensees; the Administrative Procedure Act (APA), chapter 34.05 RCW; and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH). If a provision of this chapter conflicts with a provision in any chapter containing a substantive rule, the provision in the chapter containing the substantive rule governs.

(3) **Relation to actions and rules of other agencies.** Actions of DEL sometimes rely in part on actions taken by other agencies, most notably the department of social and health services (DSHS), or are taken in conjunction with the actions of other agencies. For example, DSHS's division of licensed resources/child protective services (DLR/CPS) has statutory responsibility for investigating allegations of child abuse or neglect in licensed child care agencies. If DLR/CPS finds child abuse or neglect occurred in a child care facility, the person who is the subject of the finding will have a right to a hearing to challenge that finding under DSHS rules. If the subject is a licensed provider, the child care license may be denied, revoked, suspended, or modified as a result of the circumstances and finding and the provider also would have a right to a hearing under DEL hearing rules. To the extent the child abuse or neglect case and the licensing case can be consolidated or combined in one hearing, they should be combined.

(4) **Application and amendments.** This chapter and any amendments to this chapter apply to cases pending at the time of the adoption of the rule or amendment, unless the amendment or rule-making order specifically states that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone in

order to comply with the amendment, unless the amendment expressly says so.

(5) **Effective date.** This chapter is initially effective July 3, 2006. In addition to cases arising on or after the effective date, this chapter, and not its DSHS predecessor, applies to all pending DEL cases that have not gone to a full hearing before an ALJ by July 3, 2006, and to cases in which an initial decision is subject to review, but in which a petition for review has not been filed by July 3, 2006. This chapter does not apply to cases in which the hearing was held or begun prior to July 3, 2006, and/or which are awaiting initial decisions; Provided, Parts VIII and IX of this chapter, governing review of initial and final orders, will apply to review of any initial orders mailed after the effective date of this chapter.

NEW SECTION

WAC 170-03-0020 Definitions. The following definitions apply to this chapter:

(1) **"Adjudicative proceeding"** means a hearing before an administrative law judge concerning an appeal of department action pursuant to RCW 43.215.305.

(2) **"Administrative law judge" or "ALJ"** means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DEL employees or DEL designees.

(3) **"Business days"** means all days except Saturdays, Sundays and legal holidays.

(4) **"Calendar days"** means all days including Saturdays, Sundays and legal holidays.

(5) **"Case"** means the entire proceeding following the filing of a request for hearing with OAH.

(6) **"Continuance"** means a change in the date or time of a prehearing conference, hearing or deadline for other action.

(7) **"DEL" or "department"** means the department of early learning.

(8) **"Documents"** means papers, letters, writings, or other printed or written items.

(9) **"Ex parte contact"** means a written or oral communication with an ALJ or review judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(10) **"Final order"** means an order that is the final DEL decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to a review judge. If an ALJ's initial order is appealed to a review judge, the review judge's order is DEL's final decision.

(11) **"Good cause"** means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules.

(12) **"Hearing"** means a proceeding before OAH that gives an aggrieved party an opportunity to be heard in disputes resulting from actions taken against the party by DEL. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar

term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 170 of the Washington Administrative Code, chapter 10-08 WAC, or other law.

(13) **"Initial order"** is a decision made by an ALJ that may be reviewed by a review judge.

(14) **"OAH"** means the office of administrative hearings. This is a separate agency and not part of DEL.

(15) **"Party"** means a person or entity to whom a DEL adverse action is directed and who has a right to be involved in the hearing process. DEL also is a party.

(16) **"Representative"** means the person selected by a party to represent that party in an administrative hearing. **"Lay representative"** means a person or advocate who is assisting a party in presenting that party's case in administrative hearings. **"DEL representative"** means an employee of DEL, a DEL contractor, or an employee of the office of the attorney general authorized to represent DEL in an administrative hearing.

(17) **"Record"** means the official documentation of the hearing process. The record includes tape recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

(18) **"Review"** means the act of reviewing initial orders and issuing the DEL final order as provided by RCW 34.05.-464.

(19) **"Review judge"** or **"DEL review judge"** means an attorney employed by or designated by DEL to act as the reviewing officer and who is authorized to review initial orders and to prepare and enter the final agency order.

(20) **"Rule"** means a state regulation, including a licensing standard. Rules are found in the Washington Administrative Code (WAC).

(21) **"Stay"** means an order temporarily halting the DEL decision or action.

(22) Words of command such as **"will," "shall,"** and **"must"** are words that impose a mandatory obligation on a participant in the hearing process. The word **"may"** is used when referring to a discretionary act to be taken by a participant in the hearing process.

NEW SECTION

WAC 170-03-0030 Computing time for meeting deadlines in the hearing process. (1) When counting days to find out when the time allowed or prescribed for an action under these rules or to meet a hearing deadline:

(a) Do not include the day of the action, notice, or order. For example, if an initial order is mailed on Tuesday and a party has twenty-one days from the date of mailing to request a review, count Wednesday as the first day. Similarly, if a DEL notice of denial, revocation, suspension, or modification of a license is received on a Wednesday and an individual has twenty-eight days from the date of receipt to file a request for an adjudicative proceeding, count Thursday as the first day.

(b) Count the last day of the period, unless the last day is a Saturday, Sunday or legal holiday, in which case the deadline is the next business day.

(2) For periods of seven days or less, count only business days. For example, if you have seven days to respond to a

review request that was mailed to you on Friday, May 10, the response period ends on Tuesday, May 21.

(3) For periods over seven days, count every day, including Saturdays, Sundays, and legal holidays.

(4) The deadline ends at 5:00 p.m. on the last day.

II. HEARING RIGHTS AND REQUESTS

NEW SECTION

WAC 170-03-0040 The right to a hearing. (1) A person or entity has a right to a hearing only if a law or DEL rule expressly gives that right and a hearing is timely requested.

(2) A party has only a limited time to request a hearing. The deadline for the request is set by statute or DEL rule. In most cases, DEL will send a notice of adverse action that gives specific information about how, where and when to request a hearing.

(3) A challenge to a DEL adverse action is heard in an administrative hearing by an administrative law judge (ALJ) employed by the office of administrative hearings (OAH). Not all actions of DEL may be challenged through the hearing.

(4) If a party requests a hearing, one will be scheduled.

(5) If DEL or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right. The ALJ will decide either:

(a) There is no right to a hearing and dismiss the case; or

(b) There is a right to a hearing and proceed with the hearing.

NEW SECTION

WAC 170-03-0050 Requesting a hearing. (1) A request for hearing must be made in writing. DEL will provide forms that requesting parties may use to request a hearing. The request for hearing can be made by the party requesting the hearing or by the party's representative.

(2) The hearing request shall include:

(a) The requesting party's name, address, and telephone number;

(b) A brief explanation of why the requesting party disagrees with the DEL adverse action;

(c) Any assistance, such as a foreign or sign language interpreter or accommodation for a disability, needed by the requesting party;

(d) A copy of the notice from DEL stating the adverse action.

(3) Within twenty-eight days of receipt of notice of DEL's adverse action, the request shall be filed with OAH and served on DEL.

NEW SECTION

WAC 170-03-0060 Filing the request for hearing. (1) Filing is the act of delivering documents to OAH at the location listed in WAC 170-03-0070.

(2) The date of filing is the date documents are actually received by OAH during office hours.

(3) A party may file documents with OAH by:

(a) Personal service (hand delivery);

- (b) First class, registered, or certified mail;
 - (c) Fax transmission, if the party also mails a copy of the document the same day;
 - (d) Commercial delivery service; or
 - (e) Legal messenger service.
- (4) A party cannot file documents by e-mail.

NEW SECTION

WAC 170-03-0070 Location of office of administrative hearings. (1) The office of administrative hearings (OAH) is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except legal holidays.

(2) The address for the office of administrative hearings (OAH) is:

Office of Administrative Hearings
2420 Bristol Court S.W., 1st Floor
P.O. Box 42488
Olympia, WA 98504-2488
360-664-8717
360-664-8721 (fax)

NEW SECTION

WAC 170-03-0080 Service of notice and documents.

(1) Service is the act of delivering a copy of documents to the opposing party. Service gives the opposing party notice of the request for hearing or other action. When a document is given to a party, that party is considered served with official notice of the contents of the document.

- (2) A party may serve another party by:
 - (a) Personal service (hand delivery);
 - (b) First class, registered, or certified mail;
 - (c) Fax, if the party also mails a copy of the document the same day;
 - (d) Commercial delivery service; or
 - (e) Legal messenger service.
- (3) A party cannot serve documents by e-mail.
- (4) A party must serve all other parties or a party's representative, if the party is represented, whenever the party files a pleading (request for hearing), brief or other document with OAH or the review judge or when required by law.
- (5) Service is complete when:
 - (a) Personal service is made;
 - (b) Mail is properly stamped, addressed and deposited in the United States mail;
 - (c) Fax produces proof of transmission;
 - (d) A parcel is delivered to a commercial delivery service with charges prepaid; or
 - (e) A parcel is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 170-03-0090 Proof of service. A party may prove that an opposing party was served with documents by providing any of the following:

- (1) A sworn statement by the person who served the document;
- (2) The certified mail receipt signed by the recipient;

- (3) An affidavit or certificate of mailing;
- (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package;
- (5) Proof of fax transmission; or
- (6) Acknowledgment by the party being served.

NEW SECTION

WAC 170-03-0100 Representation during the hearing process. (1) The party requesting the hearing may represent himself or herself or may have another person, except a DEL employee, act as the representative.

(2) The representative may be a friend, relative, community advocate, attorney, paralegal, or lay representative.

(3) The representative shall provide OAH and the other parties with the representative's name, address, and telephone number. If the representative is an attorney or lay representative, the representative must file a written notice of appearance in the action. If the representative is not an attorney, the party must provide a written statement to DEL authorizing the release of information about the party to the representative.

(4) DEL may be represented by an employee of DEL, a DEL contractor, or an assistant attorney general.

III. INTERPRETER SERVICESNEW SECTION

WAC 170-03-0110 The right to an interpreter in the hearing process. (1) If a party or witness has limited English proficiency (LEP), OAH will provide an interpreter during the hearing at no cost.

(2) If OAH is notified that a party is a limited English-speaking person (LES), all notices concerning hearings must:

- (a) Be written in the party's primary language; or
- (b) Include a statement, in the primary language, explaining the importance of the notice and informing the party how to get help in understanding the notice and responding to it.

NEW SECTION

WAC 170-03-0120 Definitions. The following definitions apply to rules relating to interpreter services.

(1) "**Limited English proficient person**" includes limited English-speaking persons or other persons unable to readily communicate in spoken English.

(2) "**Limited English-speaking person**" means a person who, because of non-English-speaking cultural background or disability (including a hearing impairment), cannot readily speak or understand the English language.

(3) "**Hearing impaired person**" means a person who, because of a hearing or speech impairment, cannot readily speak, understand or communicate in spoken language.

NEW SECTION

WAC 170-03-0130 Interpreter qualifications. (1) OAH must provide a qualified interpreter to assist any person who:

- (a) Has limited English proficiency; or
- (b) Is limited English speaking or hearing impaired; and
- (c) Is a party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) Relatives of any party and DEL employees may not be used as interpreters.

(4) The ALJ must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If at any time before or during the hearing the ALJ finds that the interpreter does not provide accurate and effective communication, OAH must provide another interpreter.

NEW SECTION

WAC 170-03-0140 Waiver of interpreter services. (1) An eligible party may waive interpreter services.

(2) A request for waiver must be made in writing or through a qualified interpreter on the record.

(3) The ALJ must determine that the waiver has been knowingly and voluntarily made.

(4) A waiver of interpreter services may be withdrawn at any time before or during the hearing.

(5) A waiver of interpreter services at the hearing constitutes a waiver of a right to challenge any aspect of the hearing based on a lack of understanding resulting from an inability to understand or a lack of proficiency in the English language.

NEW SECTION

WAC 170-03-0150 Requirements that apply to the use of interpreters. (1) Interpreters must:

(a) Use the interpretive mode that the parties, the limited English proficient, limited English speaking, or hearing impaired person, the interpreter, and the ALJ consider the most accurate and effective;

(b) Interpret statements made by the parties, witnesses, and the ALJ;

(c) Not disclose information about the hearing without the written consent of the parties unless required by law; and

(d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may videotape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

NEW SECTION

WAC 170-03-0160 Requirements that apply to decisions involving limited English-speaking parties. (1) When an interpreter is used at a hearing involving limited English-

speaking parties, the ALJ must explain that the decision will be written in English but that a party using an interpreter may contact the interpreter for an oral translation of the decision at no cost.

(2) Interpreters must provide a telephone number where they can be reached to the ALJ and to the LES party. This number must be included in any decision or order mailed to the parties.

(3) OAH or the review judge must mail a copy of a decision or order to the interpreter for use in oral translation.

IV. PREHEARING PROCEDURESNEW SECTION

WAC 170-03-0170 Notice of hearing. (1) When a hearing is requested, OAH sends the parties a written notice of the hearing or prehearing conference.

(2) The notice of hearing or prehearing conference will include:

(a) The names, mailing addresses, and telephone numbers of all parties and of their representatives;

(b) The name, mailing address, and telephone number of the ALJ;

(c) The date, time, place, and nature of the hearing or prehearing conference;

(d) The legal authority and jurisdiction for the hearing or prehearing conference; and

(e) The date of the hearing request.

(3) OAH also will send information with the notice of hearing or prehearing conference stating:

(a) If a party and the party's representative fail to attend or participate in a prehearing conference or a hearing, that party may lose the right to a hearing and the ALJ may enter an order of default or an order dismissing the case.

(b) If a party or witness needs a qualified interpreter because the party or witness is entitled to an interpreter under WAC 170-03-0110 and 170-03-0130, OAH will provide an interpreter at no cost.

(c) Whether the hearing or prehearing conference is to be held by telephone or in person, and how to request a change in the way it is held.

(d) How to indicate any special needs for a party or witness.

(e) How to contact OAH if a party or witness has a safety concern.

NEW SECTION

WAC 170-03-0180 Prehearing conferences. (1) A prehearing conference is a formal meeting that may be conducted by an ALJ before a full hearing. A prehearing conference may not be conducted in some cases. In others, more than one prehearing conference may be necessary.

(2) Either the ALJ or a party may request a prehearing conference, but the ALJ decides whether to hold a prehearing conference. OAH sends notice of the time and date of the prehearing conference to all parties.

(3) An ALJ may conduct the prehearing conference in person, by telephone conference call, by electronic means, or in any other manner acceptable to the parties.

(4) Attendance of the parties and their representatives is mandatory. A party may lose the right to participate during the hearing if that party and their representative does not attend the prehearing conference. Your appeal may be dismissed if you and your representative do not attend.

(5) Additional prehearing conferences may be requested by the parties and/or set by the ALJ to address the procedural or other issues specific to the case.

NEW SECTION

WAC 170-03-0190 Purposes of prehearing conference. (1) The purposes of the prehearing conference are to clarify issues, set deadlines for the parties to exchange information regarding witnesses and evidence, and set the time for the hearing.

(2) During a prehearing conference the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time and place of the hearing;

(c) Identify accommodation and safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the DEL notice of adverse action or the appealing party's hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline for each party to file and serve the names and phone numbers of witnesses, and copies of all documents or other exhibits that will be presented at the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or DEL rule;

(k) Consider a motion for summary judgment or other motion; or

(l) Determine any other procedural issues raised by the parties.

NEW SECTION

WAC 170-03-0200 Prehearing order. (1) After the prehearing conference ends, the ALJ will send a prehearing order describing:

(a) The decisions made or actions taken during the conference;

(b) Any changes to DEL's or other party's initial documents; and

(c) Any agreements reached.

(2) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(3) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(4) Prehearing orders are not final appealable orders of the department.

NEW SECTION

WAC 170-03-0210 Assignment and challenge of assignment of administrative law judge. (1) OAH assigns an ALJ at least five business days before the hearing and discloses that assignment in writing to the parties. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing.

(2) A party may file a motion of prejudice against an ALJ under RCW 34.12.050 by:

(a) Sending a written motion of prejudice at least three business days before the hearing, and before the ALJ rules on a discretionary issue in the case.

(b) The motion of prejudice must include an affidavit that a party does not believe that the ALJ can hear the case fairly.

(c) The party must send the request to the chief administrative law judge in care of the OAH field office where the ALJ works and send a copy of the request to all other parties or, if other parties are represented, to the representatives.

(3) The first timely request for a different ALJ is automatically granted. Any later request may be granted or denied by the chief ALJ or a designee.

(4) A party may also request that an ALJ or review judge be disqualified under RCW 34.05.425, for bias, prejudice, conflict of interest, or any other good cause or if one of the parties or a party's representative has an ex parte contact with the ALJ or review judge by:

(a) Sending a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge. A party must promptly make the petition upon discovery of facts establishing grounds for disqualification.

(b) A party must send or deliver the petition to the ALJ or review judge assigned to the case and send a copy of the petition to all other parties or, if other parties are represented, to the representatives. The ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

V. LAWS APPLIED IN ADMINISTRATIVE HEARINGS

NEW SECTION

WAC 170-03-0220 Rules an ALJ or review judge must apply when making a decision. (1) ALJs and review judges must first apply the DEL rules adopted in the Washington Administrative Code.

(2) If no DEL rule applies, the ALJ or review judge must decide the issues according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, rules, and published appellate court decisions.

NEW SECTION

WAC 170-03-0230 Challenges to validity of DEL rules. (1) Neither an ALJ nor a review judge may decide that a DEL rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a DEL rule is raised during the hearing, the ALJ or review judge may allow argument for later court review.

NEW SECTION

WAC 170-03-0240 Amendment to DEL notice or party's request for hearing. (1) The ALJ must allow DEL to amend (change) the notice of a DEL adverse action before or during the hearing to match the evidence and facts.

(2) If DEL amends its notice, it must put the change in writing and give a copy to the ALJ and the other parties.

(3) The ALJ may allow an appealing party to amend a hearing request before or during the hearing to conform with an amended DEL notice.

(4) If there is an amendment to either the DEL notice or the appealing party's request for hearing, the ALJ must offer to continue or postpone the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier DEL notice or from the appealing party's request for hearing.

(5) If the ALJ grants a continuance, OAH must send a new hearing notice at least seven business days before the new hearing date.

NEW SECTION

WAC 170-03-0250 Changes of address. (1) Parties and representatives must tell DEL and OAH, as soon as possible, when the party's or the representative's name, mailing address or telephone number changes.

(2) If OAH and DEL are not notified of a change in a party's or a representative's mailing address and either DEL or OAH continues to send documents to the address stated in the file, the ALJ and DEL may assume that the documents were received.

NEW SECTION

WAC 170-03-0260 Continuances. (1) Any party may request a continuance either orally or in writing.

(2) Before contacting the ALJ to request a continuance, a party shall contact the other parties, if possible, to find out if they will agree to a continuance.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agree to the continuance.

(a) If the parties agree to a continuance, the ALJ will grant the request, unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ will set a hearing to decide whether there is good cause to grant or deny the request for continuance.

(4) If a request for continuance is granted, OAH will send written notice of the changed time and date of the hearing.

NEW SECTION

WAC 170-03-0270 Order of dismissal. (1) An order of dismissal is an order sent by the ALJ to end the hearing. The

order is made by agreement of the parties, or because the party who requested the hearing withdrew the request, failed to appear, or refused to participate.

(2) If a hearing is dismissed because the appealing party withdrew the request, did not appear, or refused to participate, the DEL decision stands.

(3) If the hearing is dismissed due to a written agreement between the parties, the parties must follow the agreement.

NEW SECTION

WAC 170-03-0280 Vacating an order of default or order of dismissal. (1) A party may ask the ALJ to vacate (set aside) an order of default or dismissal.

(a) A request to vacate an order must be filed with OAH within twenty-one calendar days after the date the order of default or dismissal was mailed. If no request is received within that deadline, the order becomes a final order.

(b) The request to vacate an order of default or dismissal must specify why the party believes there is good cause for the order to be vacated.

(2) OAH will schedule a hearing on the request to vacate the order.

(3) At the hearing, the ALJ will receive evidence and argument from the parties on whether there is good cause for an order of default to be vacated.

(4) The ALJ will vacate an order of dismissal and reinstate the hearing if the defaulted party shows good cause or if the DEL representative agrees to waive the deadline.

(5) An agreed order of dismissal may be vacated only upon proof that a party has violated a condition of the agreed order of dismissal.

NEW SECTION

WAC 170-03-0290 Stay of DEL action. (1) Except as set forth in WAC 170-03-0300, at any point in the proceeding before OAH or the review judge, the appealing party may request that an ALJ or review judge stay (stop) a DEL action until there is a decision entered by the ALJ or review judge.

(2) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is made for good cause. In finding good cause the ALJ must determine:

(a) The party requesting the stay is likely to prevail in the hearing on the merits;

(b) The party requesting the stay will suffer irreparable injury, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances of the case.

NEW SECTION

WAC 170-03-0300 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a license when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) A licensee who contests suspension of a license by the department may obtain a stay of the effectiveness of that order only as set forth in this section.

(3) The licensee may request a stay by including such a request in the request for hearing or in a subsequent motion. The request for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based.

(4) Upon receipt of a request for a stay, the ALJ will schedule a hearing on the request. The hearing may be combined with a prehearing conference. If it appears that a hearing on the merits and issues of the case should be consolidated with the request for a stay, the ALJ may advance the hearing date on its own initiative or by request of the parties.

(5) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the licensing action;

(b) The licensee will suffer irreparable injury, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license.

(6) Economic hardship of itself shall be an insufficient reason for a stay of a suspension of a license.

(7) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a request for a stay, will expedite the hearing and decision on the merits.

(8) The decision on the request for the stay is subject to review by the review judge at the request of either DEL or the licensee. The request for review must be filed not later than seven days following the date the decision on the request for stay is mailed by OAH to the parties.

(9) A request for review by the review judge shall be promptly determined. The decision on the request for review by the review judge shall not be subject to judicial review.

VI. HEARINGS

NEW SECTION

WAC 170-03-0340 Conduct of hearings. (1) Hearings may be held in person or by telephone conference or other electronic means.

(2) All parties, their representatives and witnesses may attend the hearing in person or by telephone conference or other electronic means at the discretion of the ALJ.

(3) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

(4) When a hearing is held by telephone or other electronic means, all documentary evidence must be filed and served in advance of the hearing.

(5) All hearings must be recorded.

NEW SECTION

WAC 170-03-0350 Authority of the administrative law judge. (1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing, provided that the ALJ's authority shall be limited to determining whether the sanction imposed or action taken by the department was warranted and/or justified under the evidence presented during the hearing. The ALJ shall not have authority to substitute or impose an alternative sanction, remedy or action.

(2) As needed, the ALJ may:

(a) Administer oaths and affirmations;

(b) Determine the order for presenting evidence;

(c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;

(d) Rule on objections, motions, and other procedural matters;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and receive relevant evidence;

(g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Request additional exhibits and/or testimony following a finding that the additional evidence is necessary to complete the record provided all parties are given a full opportunity for cross-examination and/or rebuttal;

(j) Take official notice of facts pursuant to RCW 34.05.452(5);

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

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

(m) Issue an order of default pursuant to RCW 34.05.-440;

(n) Hold prehearing conferences;

(o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;

(p) Decide whether a party has a right to a hearing;

(q) Permit and regulate the taking of discovery;

(r) Consider granting a stay if authorized by law or DEL rule; and

(s) Take any other action necessary and authorized by any applicable statute or rule.

(3) The ALJ may, upon his or her own motion or the motion of any party, order that multiple administrative proceedings be consolidated for hearing if they involve common issues or parties.

(4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that:

(a) The waiver is necessary to avoid manifest injustice to the unrepresented party; and

(b) That the waiver would not prejudice any other party.

(5) The ALJ shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

NEW SECTION

WAC 170-03-0360 Order of the hearing. (1) At the hearing, the ALJ:

- (a) Explains the rights of the parties;
- (b) Marks and admits or rejects exhibits;
- (c) Ensures that a record is made;
- (d) Explains that a decision is mailed after the hearing;

and

- (e) Notifies the parties of appeal rights.

(2) The parties may:

- (a) Make opening statements to explain the issues;
- (b) Offer evidence to prove their positions, including oral or written statements of witnesses;
- (c) Question the witnesses presented by the other parties;

and

- (d) Give closing arguments about what the evidence shows and what laws apply.

(3) At the end of the hearing if the ALJ does not allow more time to send in evidence, the record is closed.

NEW SECTION

WAC 170-03-0390 Evidence. (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents or copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony given with the opportunity for cross-examination by the other parties may be given more weight by the ALJ.

(5) The ALJ may only consider admitted evidence to decide a case.

NEW SECTION

WAC 170-03-0400 Introduction of evidence into the record. (1) The ALJ may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses to the ALJ and to all other parties. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

- (a) They have good cause for missing the deadline; or
- (b) The other parties agree to waive the deadline.

(2) The ALJ may admit and consider hearsay evidence.

Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. The ALJ may only base a finding on hearsay evidence if the ALJ finds that the parties had the opportunity to question or contradict it.

(3) The ALJ may reject evidence, if it:

- (a) Is not relevant;
- (b) Repeats evidence already admitted;
- (c) Is from a privileged communication protected by law;

or

(d) Is otherwise legally improper.

(4) Except in cases where the department's notice of adverse action alleges the person lacks the character to provide for the needs of any child in care or to have unsupervised

access to any child in care, evidence regarding character or reputation shall not be admissible. In cases where such evidence is admissible, the ALJ shall exercise reasonable control over the number of character witnesses so as to avoid duplication of testimony and evidence and needless consumption of time.

NEW SECTION

WAC 170-03-0410 Objections to evidence. (1) Although a party may offer any documents and testimony at the hearing to support the party's position, other parties may object to the evidence and may question the witnesses. For example, a party may object to the authenticity or admissibility of any exhibit, or offer argument about how much weight the ALJ should give the exhibit.

(2) The ALJ determines whether to admit the evidence and what weight (importance) to give it.

(3) If the ALJ does not admit the evidence, the party may make an offer of proof to show why the ALJ should admit it. The offer of proof preserves the issue for appeal. To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence.

(4) If a witness refuses to answer any question ruled proper by the ALJ, the ALJ has discretion to strike all testimony previously given by that witness on the proceeding.

NEW SECTION

WAC 170-03-0420 Stipulations. (1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.

(2) If an ALJ accepts a stipulation, the ALJ must enter it into the record.

NEW SECTION

WAC 170-03-0430 Exhibits. (1) Proposed exhibits are documents or other objects that a party wants the ALJ to consider when reaching a decision. After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

(2) The ALJ may require the parties to mark and number their proposed exhibits before the hearing and to provide copies to the other parties as far ahead of the hearing as possible.

(3) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(4) The ALJ may also exclude proposed exhibits from the record.

NEW SECTION

WAC 170-03-0440 Judicial notice. (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations, such as a calendar, building code or standard of practice.

(2) An ALJ may consider and admit evidence by taking judicial notice.

(3) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(4) The ALJ must give the parties time to object to judicial notice evidence.

NEW SECTION

WAC 170-03-0450 Witnesses. (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

(3) Witnesses may include:

(a) The appealing party or a DEL representative;

(b) Anyone a party or the ALJ asks to be a witness.

(4) The ALJ decides who may testify as a witness.

(5) Unless DEL agrees, a current or former DEL employee may not be an expert witness against DEL if that employee was actively involved in the case while working for DEL.

NEW SECTION

WAC 170-03-0460 Requiring witnesses to testify or provide documents. (1) A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony, or to provide books, documents, or other items.

(2) ALJs, DEL, and attorneys for the parties may prepare subpoenas.

(3) If a party is not represented by an attorney, the party may ask the ALJ to prepare a subpoena on that party's behalf.

(a) The ALJ may schedule a hearing to decide whether to issue a subpoena.

(b) There is no cost to prepare a subpoena, but a party may have to pay for:

(i) Serving a subpoena;

(ii) Complying with a subpoena; and

(iii) Witness fees according to RCW 34.05.446(7).

(4) A party may request that an ALJ quash (set aside) or change the subpoena at any time before the deadline given in the subpoena.

(5) An ALJ may set aside or change a subpoena if it is unreasonable.

NEW SECTION

WAC 170-03-0470 Serving a subpoena. (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

NEW SECTION

WAC 170-03-0480 Testimony. (1) Direct examination. All witnesses may be asked questions by the party that calls the witness to testify. Each witness:

(a) Must affirm or take an oath to testify truthfully during the hearing;

(b) May testify in person or by telephone;

(c) May request interpreters from OAH at no cost to the parties;

(d) May be subpoenaed and ordered to appear according to WAC 170-03-0460.

(2) Cross-examination. The parties have the right to cross-examine (question) each witness called by any other party.

(3) If a party has a representative, only the representative, and not the party, may question the witness.

(4) The ALJ may also question witnesses.

NEW SECTION

WAC 170-03-0490 Burden of proof. (1) The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct under the standard of proof required.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

(3) The ALJ decides if a party has met the burden of proof.

NEW SECTION

WAC 170-03-0500 Equitable estoppel. (1) Equitable estoppel is a legal doctrine defined in case law that may prevent DEL from taking some action against a party in a proceeding to challenge an overpayment notice issued by DEL.

(2) There are five elements of equitable estoppel that must be proved by clear and convincing evidence. All of the following elements must be proved:

(a) DEL made a statement or took action or failed to take action, which is inconsistent with its later claim or position regarding an overpayment.

(b) The appealing party relied on DEL's original statement, action or failure to act.

(c) The appealing party will be injured if DEL is allowed to contradict the original statement, action or failure to act.

(d) Equitable estoppel is needed to prevent a manifest injustice.

(e) The exercise of government functions is not impaired.

(3) If the ALJ concludes that all of the elements of equitable estoppel in subsection (2) of this section have been proved with clear and convincing evidence, DEL is stopped

or prevented from taking action or enforcing its claim for repayment of the overpayment.

NEW SECTION

WAC 170-03-0510 Closing the record. When the record is closed, no more evidence may be taken, without a showing of good cause. The record is closed:

- (1) At the end of the hearing if the ALJ does not allow more time to send in evidence or argument; or
- (2) After the deadline for sending in evidence or argument is over.

VII. INITIAL ORDERS

NEW SECTION

WAC 170-03-0520 Timing of the ALJ's decision. (1) After the record is closed, the ALJ must write an initial order and send copies to the parties.

- (2) The maximum time an ALJ has to send an initial order is ninety calendar days after the record is closed.

NEW SECTION

WAC 170-03-0530 Contents of the initial order. The ALJ initial order must:

- (1) Identify the hearing decision as a DEL case;
- (2) List the name and docket number of the case and the names of all parties and representatives;
- (3) Find the specific facts determined to exist by the ALJ, based on the hearing record, and relied on by the ALJ in resolving the dispute;
- (4) Explain why evidence is credible when the facts or conduct of a witness is in question;
- (5) State the law that applies to the dispute;
- (6) Apply the law to the facts of the case in the conclusions of law;
- (7) Discuss the reasons for the decision based on the facts and the law;
- (8) State the result;
- (9) Explain how to request changes in the decision and the deadlines for requesting them;
- (10) State the date the decision becomes final; and
- (11) Include any other information required by law or DEL program rules.

NEW SECTION

WAC 170-03-0540 Finality of initial order. If no one requests review of the initial order or if a review request is dismissed, the initial order becomes the DEL final decision twenty-one calendar days after the date it is mailed to the parties by OAH.

NEW SECTION

WAC 170-03-0550 Challenges to the initial order. (1) If a party disagrees with an ALJ's initial order because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 170-03-0560.

(2) If a party disagrees with the reasoning and result of an initial order and wants it changed, the party must request review by the review judge as provided in WAC 170-03-0570 through 170-03-0620.

NEW SECTION

WAC 170-03-0560 Correcting clerical errors in ALJ's decisions. (1) A clerical error is a mistake that does not change the result or intent of the decision. Some examples of clerical error are:

- (a) Missing or incorrect words or numbers;
 - (b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or
 - (c) Math errors when adding the total of an overpayment.
- (2) A party may ask for a corrected ALJ decision by making the request in writing and sending it to the OAH office that held the hearing. A copy of the request must be sent to the other parties or their representatives.
- (3) A request to correct a clerical error must be made within ten days of the date the decision was mailed to the parties by OAH.

(4) When asking for a corrected decision, a party must clearly identify the clerical error.

(5) When a party requests a corrected initial or final order, the ALJ must either:

- (a) Send all parties a corrected order; or
 - (b) Deny the request within three business days of receiving it.
- (6) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(7) Requesting a corrected initial order for a case does not extend the deadline to request review of the initial order by the review judge.

VIII. REVIEW OF INITIAL ORDERS

NEW SECTION

WAC 170-03-0570 Appeal of the initial order. (1) Review of the initial order may occur when a party disagrees with or wants a change in an initial order, other than correcting a clerical error.

(2) A party must request review of an initial order from the DEL review judge as provided in WAC 170-03-0580 through 170-03-0640.

(3) If more than one party requests review, each request must meet the deadlines in WAC 170-03-0580.

(4) The review judge considers the request, the initial order, and record, before deciding if the initial order may be changed.

(5) Review does not include another hearing by the DEL review judge.

NEW SECTION

WAC 170-03-0580 Time for requesting review. (1) The review judge must receive the written petition for review

on or before the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party both:

- (a) Asks for more time before the deadline expires; and
- (b) Shows good cause for requesting more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

- (a) The review judge receives the review request on or before the thirtieth calendar day after the deadline; and
- (b) A party shows good cause for missing the deadline.

NEW SECTION

WAC 170-03-0590 Petition for review. (1) A party must make the review request (petition for review) in writing and clearly identify the:

(a) Parts of the initial order with which the party disagrees; and

(b) Arguments supporting the party's position.

(2) The petition for review must be filed with the review judge and a copy sent to the other parties and their representatives.

(3) The review judge can be contacted at the following address or at the address stated on the letter containing instructions for obtaining review mailed with the initial order:

Review Judge
Department of Early Learning
P.O. Box 40970
Olympia, WA 98504-0970
360-725-4665

(4) After receiving a party's review request, the review judge will send a copy to the other parties, their representatives and OAH.

NEW SECTION

WAC 170-03-0600 Response to petition for review. (1) A party does not have to respond to the review request. A response is optional.

(2) If a party responds, that party must send the response so that the review judge receives it on or before the seventh business day after the date a copy of the petition for review was mailed to the party by the review judge.

(3) The responding party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, the party must contact the review judge by the deadline in subsection (2) of this section and show good cause for an extension of time.

(5) A review judge may accept and consider a party's response even if it is received after the deadline.

NEW SECTION

WAC 170-03-0610 Decision process. (1) After the response deadline, the record on review is closed unless there is a good cause to reopen the record.

(2) A review judge is assigned to the review after the record is closed.

(3) The review judge only considers evidence given at the original hearing.

(4) The review judge will decide the appeal without oral argument, unless the review judge determines that oral argument is necessary for resolution of the appeal.

(5) The review judge enters a final order that affirms, changes, dismisses or reverses the initial order, or remands (returns) the case to OAH for further specified action.

NEW SECTION

WAC 170-03-0620 Authority of the review judge. (1) The review judge has the same decision-making authority as an ALJ, but must consider the ALJ's opportunity to observe the witnesses.

(2) The review judge's order is the DEL final order in the case. If the review judge's final order upholds the department's adverse action, the appealing party must comply with the final order unless the appealing party obtains a stay of the effectiveness of the final order from the review judge.

IX. REVIEW OF THE FINAL ORDER

NEW SECTION

WAC 170-03-0630 Request for reconsideration. (1) If a party disagrees with the final order issued by a review judge and wants it reconsidered, the party may ask the review judge to reconsider the final order because the party believes the review judge made a mistake. However, the appealing party must comply with the final order pending reconsideration. Filing a petition for reconsideration does not stay the effectiveness of the final order.

(2) If a party asks for reconsideration of the final order, the reconsideration process must be completed before judicial review is sought.

(3) A request for reconsideration must be made in writing and must clearly state the reasons why the party wants the final order reconsidered.

(4) The review judge must receive the written reconsideration request on or before the tenth calendar day after the final order was mailed by the review judge to the parties. The party requesting reconsideration must send a copy of the request to all parties or, if the parties are represented, to their representatives.

(5) If a reconsideration request is received by the review judge after the deadline, the final order will not be reconsidered. However, the review judge may extend the deadline if a party:

- (a) Asks for more time before the deadline expires; and
- (b) Demonstrates good cause for the extension.

(6) After receiving a reconsideration request, the review judge will send a copy to the other parties and representatives giving them time to respond.

(7) If a party does not request reconsideration or ask for an extension within the deadline, the final order will not be reconsidered.

NEW SECTION

WAC 170-03-0640 Response to a request for reconsideration. (1) A party does not have to respond to a request for reconsideration. A response is optional.

(2) If a party responds, that party must send a response to the review judge by or before the seventh business day after the date OAH or the review judge mailed the request to the party.

(3) A party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, OAH or the review judge may extend the deadline if the party demonstrates good cause for an extension within the deadline in subsection (2) of this section.

NEW SECTION

WAC 170-03-0650 Ruling on request for reconsideration. (1) After the review judge receives a reconsideration request, within twenty calendar days the review judge must either:

(a) Dispose of the petition; or

(b) Send all parties a written notice setting a date by which the review judge will act on the petition.

(2) If the review judge does not dispose of the petition or send the parties written notice setting a date by which the review judge will act on the petition within twenty days of receipt of the reconsideration request, the request is denied.

(3) The review judge decision is final when the reconsideration decision is mailed or the date the reconsideration request is denied.

NEW SECTION

WAC 170-03-0660 Judicial review. (1) Judicial review is the process of appealing a final order to a court.

(2) Any party, except DEL, may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The petition must be properly filed and served within thirty calendar days of the date OAH or the review judge mails the final order in the case.

(3) Filing an appeal of a final order does not stay the effectiveness of the final order.

(4) RCW 34.05.510 through 34.05.598 contain further details of the judicial review process.

WSR 07-24-098
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed December 5, 2007, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-18-076.

Title of Rule and Other Identifying Information: The Washington state parks and recreation commission has deter-

mined the need to amend rules in chapter 352-28 WAC, Tree, plant and fungi cutting, removal and/or disposal.

Hearing Location(s): Silverdale Community Center, 9729 Silverdale Way N.W., Silverdale, WA 98383, (360) 337-5350, on January 18, 2008, at 9:00 a.m.

Date of Intended Adoption: January 18, 2008, at 9:00 a.m.

Submit Written Comments to: Robert Fimbel, Chief, Resource Stewardship, Washington State Parks, HQ Stewardship, 7150 Cleanwater Drive, Olympia, WA 98504, phone (360) 902-8592, fax (360) 902-8517, e-mail robert.fimbel@parks.wa.gov, submit comments by December 21, 2007.

Assistance for Persons with Disabilities: Contact Pauli Larson by December 21, 2007, TTY (360) 664-3133 or (360) 902-8505.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state parks and recreation commission has determined the need to amend chapter 352-28 WAC following an agency study on issues related to the management, sale and removal of its natural resources materials, and the collection of fauna as a part of agency approved research permits. The latter pertains to the necessity to implement changes to RCW 79A.05-165 that became effective July 22, 2007.

Reasons Supporting Proposal: Changes to RCW 79A.05.165 that became effective July 22, 2007, allow for the collection of fauna from state park lands with an approved agency research permit and approved collection permit from the Washington department of fish and wildlife.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.035, 79A.05.070.

Statute Being Implemented: RCW 79A.05.165.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The Washington state parks and recreation commission reviewed the draft language changes to chapter 352-28 WAC on November 15, 2007, and support their adoption.

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Rob Fimbel, State Park HQ, P.O. Box 42650, Tumwater, WA 98504-2650, (360) 902-8592; and Enforcement: Phil Shave, State Park HQ, P.O. Box 42650, Tumwater, WA 98504-2650, (360) 902-8606.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This chapter of administrative rule does not regulate or have economic impact through regulations on small business. There are no compliance costs to small business as a result of the modifications to these rules.

A cost-benefit analysis is not required under RCW 34.05.328. Significant legislative rule-making requirements are not imposed on the state parks and recreation commission, nor has the commission voluntarily applied those requirements.

December 5, 2007

Jim French

Administrator of
Statewide Recreation Programs

Chapter 352-28 WAC

~~((FREE, PLANT AND FUNGI CUTTING, REMOVAL AND/OR DISPOSAL))~~ **PROTECTION AND CONSERVATION OF STATE PARK NATURAL RESOURCES**

AMENDATORY SECTION (Amending WSR 96-01-078, filed 12/18/95, effective 1/18/96)

WAC 352-28-005 Definitions. When used in this chapter the following words and phrases shall have the meanings designated in this section unless a different meaning is expressly provided or unless the context clearly indicates otherwise.

(1) "Catastrophic forest event" means a natural or accidental devastation of major proportions that results in drastic alteration of the natural environment by, but not limited to, wind, fire, insect infestation, forest disease, flooding, or landslide.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Conservation" means the professional management of the agency's natural resources to ensure their long-term presence, function and enjoyment by the public.

(4) "Director" means the director of the Washington state parks and recreation commission.

~~((4))~~ (5) "Endangered species" means each plant, fungus and lichen species identified as endangered on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as endangered by the Washington department of fish and wildlife in WAC 232-12-014.

~~((5))~~ (6) "Sensitive species" means each plant, fungus and lichen species identified as sensitive on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as sensitive on the list of such species prepared by the Washington department of fish and wildlife.

~~((6))~~ (7) "Threatened species" means each plant, fungus and lichen species identified as threatened on the list of such species prepared by the department of natural resources Washington natural heritage program and each wildlife species identified as threatened on the list of such species prepared by the Washington department of fish and wildlife.

AMENDATORY SECTION (Amending WSR 05-17-105, filed 8/16/05, effective 9/16/05)

WAC 352-28-010 Cutting, collection and removal ~~((criteria))~~ of natural resources. (1) ~~((Significant))~~ **Trees:**

(a) **Significant trees:** Significant trees means living and dead standing trees > 10 inches in diameter at breast height (4.5 feet above the ground). Significant trees in any area under the jurisdiction and/or management of the commission shall ~~((, except in fire))~~ be removed only after they have been evaluated, rated and marked by a professional forester, certified arborist, or staff member trained in agency-approved tree risk rating and abatement techniques. In addition, except where deemed an emergency tree, or in the event of wildfire, weather, or other natural emergencies, significant trees can

be cut or removed only after compliance with (d) of this subsection and subsection (4) of this section, agency review through the tree activity worksheet process and upon the written approval of the director or the ~~((assistant directors of the operations and resources development divisions when so designated by the director. Except in emergencies and when feasible, significant trees shall be removed only after they have been marked or appraised by a professional forester. Significant trees include all old-growth trees, mature trees, and all other younger trees of ten inches or greater in diameter at four and one-half feet in height. In case of fire, weather, or other natural emergencies, the director or the designee of the director may declare that an emergency exists and thereby authorize the cutting or removal of damaged or down significant trees that are an imminent threat to persons and/or property.~~

(b) The cutting or removal of any significant trees in a natural area, natural forest area or a natural area preserve shall, except in emergencies as defined in subsection (1)(a) of this section, be approved only by the director and only after consultation with the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program, the preparation of a mitigation plan for affected resources, and a public hearing on each such proposed cutting or removal conducted in the county/counties in which the cutting or removal is to take place as determined by the director. Prior notice of a hearing shall be published in a newspaper of general circulation in the county/counties in which the park is located. Any person who requests notification of such proposed cutting or removal shall be sent prior notice of a hearing by mail. A summary of the testimony presented at a hearing or received in writing shall be presented to) designee of the director.

~~((2))~~ **Protected species:** The cutting or removal of trees, other plants, or dead organic matter in any area known to be inhabited by endangered, threatened, or sensitive species shall, except in emergencies as defined in subsection (1)(a) of this section, follow requirements of the department of fish and wildlife for animals and of the department of natural resources for plants and be approved only by the director after consultation with those agencies, and the preparation of a mitigation plan for affected species.

~~((3))~~ **Land classification criteria:** Trees or other plants))

(b) **Emergency trees:** Emergency trees means any tree that has already failed (cracked, tipped, diseased, failed or standing dead) or in the judgment of a professional forester, certified arborist, or staff member trained in tree risk rating and abatement techniques approved by the agency, and which due to its location, poses an imminent threat to a target. Imminent means likely to occur at any moment, and target means a structure, facility, or person that has the potential to be hit or impacted by a falling tree or tree part. The park manager or designee trained in tree risk rating and abatement techniques as prescribed by the agency forester or arboriculture manager is authorized to immediately close the target area, and where the target cannot be relocated, cut or remove the emergency tree.

(c) The cutting or removal of any significant trees in landscapes classified recreation, heritage, or resource recreation by the commission shall, except in the case of emer-

agency trees as defined in (b) of this subsection, occur only after agency review through the tree activity worksheet process and the written approval of the director or the designee of the director.

(d) The cutting or removal of any significant trees in a natural area, natural forest area or natural area preserve shall, except in emergencies as defined in (b) of this subsection, be approved only by the director and only after consultation with the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program, the preparation of a mitigation plan for affected resources, and a public hearing on each such proposed cutting or removal conducted in the county/counties in which the cutting or removal is to take place as determined by the director. Prior notice of a hearing shall be published in a newspaper of general circulation in such county. Any person who requests notification of such proposed cutting or removal shall be sent prior notice of a hearing. A summary of the testimony presented at a hearing or received in writing shall be presented to the director.

(e) The cutting and/or removal of significant and emergency trees shall be done by park personnel, unless the personnel lack necessary expertise or resources. Trees identified as emergencies will be scheduled for immediate treatment. All emergency and significant trees requiring treatment, when feasible and justifiable, should be considered for pruning, crown reduction, target relocation, or similar practices in an effort to avoid tree cutting or removal. If trees are cut or removed by a contractor, park personnel shall provide on-site supervision to ensure that work and safety standards are met to prevent harm or damage to persons, trees, nontree vegetation, soils, organic matter and other park resources. When feasible, equipment shall be kept on existing roads and parking areas. Areas damaged during cutting or removal shall be restored.

(2) Nontimber plants, fungi, and dead organic matter: The cutting or removal of any native plant, fungi, or dead organic matter, other than those specified in WAC 352-32-350, 352-28-030 and 352-28-040, will only occur as a part of a resource conservation plan approved by the director or the designee of the director.

(3) Protected species: Natural resources may be cut and/or removed from areas supporting protected species, or for the purposes of enhancing habitat for protected species, under the following conditions:

(a) The cutting or removal of trees, other plants, fungi, or dead organic matter in any area known to be inhabited by endangered, threatened, or sensitive species shall, except in emergencies as defined in subsection (1)(b) of this section, follow requirements of the department of fish and wildlife and of the department of natural resources Washington natural heritage program and be approved only by the director after consultation with those agencies, and the preparation of a mitigation plan for affected species.

(b) The cutting or removal of trees, other plants, fungi, or dead organic matter to enhance the habitat of a sensitive, threatened, or endangered species as defined in WAC 352-28-005 (5) through (7), on lands managed by the commission or on other state lands, will only occur as a part of an inter-agency agreement or resource conservation plan that involves

consultation with the Washington department of fish and wildlife, department of natural resources Washington natural heritage program, and as appropriate, other agencies and groups with expertise with these species, and is approved by the director or the designee of the director.

(4) Land classification (chapter 352-16 WAC) criteria: Natural resources may be cut and/or removed from the areas listed below for the following reasons only:

(a) Natural area preserves:

(i) Maintenance or construction of service roads, boundary fences, or trails, or modification of conditions only as may be required ~~((to))~~, and only where absolutely necessary, to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural area preserve management plan prepared in consultation with the department of natural resources Washington natural heritage program.

~~((iii))~~ (iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

~~((iii))~~ (iv) Control of ~~((forest))~~ diseases and insect infestations where adjacent ~~((forests))~~ lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ~~((forest))~~ ecosystem health as deemed appropriate by the director.

~~((iv))~~ (v) Prevent the deterioration or loss of historical/cultural resources.

~~((v))~~ (vi) Maintenance or construction of fire lanes for abatement of fires.

(vii) Collection of specimens as specified in WAC 352-28-040, including consultation with the department of natural resources Washington natural heritage program.

(b) Natural areas and natural forest areas:

(i) Maintenance or construction of trails, trail structures, trail head facilities, interpretive sites, utility easements, or service roads only as may be required, and only where absolutely necessary to meet park management goals and mitigated in a resource conservation plan that involves consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies and is approved by the director or the designee of the director.

(ii) Maintain or restore a native plant community, species population, or ecological process as specified in a natural resource conservation plan prepared in consultation with the department of natural resources Washington natural heritage program, and as appropriate other agencies.

(iii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

~~((iii))~~ (iv) Control of ~~((forest))~~ diseases and insect infestations where adjacent ~~((forests))~~ lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur, after consultation with the department of natural resources Washington natural heritage

program and other agencies and groups with expertise in ~~((forest))~~ ecosystem health as deemed appropriate by the director or the designee of the director.

~~((iv))~~ (v) Prevent the deterioration or loss of historical/cultural resources.

~~((v))~~ (vi) Maintenance or construction of service roads for abatement of fires.

~~((vi))~~ Modification of conditions only as may be required to maintain or restore a native plant community, species population, or ecological process. (vii) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(c) Recreation areas, resource recreation areas, and heritage areas:

(i) Area clearing necessary for park maintenance, and/or park development projects for day use and overnight recreation facilities, road and utility easements, and administrative facilities.

(ii) Correction of conditions hazardous to persons, properties, and/or facilities on or adjacent to park land.

(iii) Cleanup of trees fallen, tipped, or damaged by the weather, fire, or other natural causes where they directly interfere with park management activities.

(iv) Creation of ~~((diversity of tree))~~ diverse native trees and other plants, coarse woody debris, and fungi sizes, ages, and species to achieve visual aspects that resemble a formal landscape, natural or historical setting, or to improve wildlife habitat.

(v) ~~((Daylighting as appropriate to the site.~~

~~((vi))~~ Maintenance or creation of a regenerating natural environment that will sustain low ground cover, shrubs, and understory and overstory trees to provide screening, wind, and sun protection.

~~((vii))~~ (vi) Control of ((forest)) diseases and insect infestations where adjacent ((forests)) lands are severely jeopardized or where a drastic alteration of the natural environment is expected to occur.

~~((viii))~~ (vii) Prevent the deterioration or loss of historical/cultural resources.

~~((ix))~~ (viii) Maintenance or construction of service roads for abatement of fires.

~~((x))~~ (ix) Modification of conditions to maintain or restore a desired plant community, species population, or ecological process.

~~((xi))~~ (x) Grazing, hay removal, or other similar activities when performed under authority of a permit from the commission or director.

~~((4) Hazard tree review: At least two persons, one being a qualified professional in forestry or arboriculture, shall examine potentially hazardous trees and rate such trees in accordance with department of natural resources, report number 42, detection and correction of hazard trees in Washington's recreation areas. The rating of each tree examined shall be recorded on a hazard tree form by each of the two persons who examine such trees. For trees identified as hazardous and when feasible, action such as, but not limited to, pruning, topping, crown reduction, and relocation of a target facility, shall be taken prior to tree cutting or removal.~~

~~(5) Tree cutting and removal operations: Tree cutting or removal shall be done by park personnel, unless the per-~~

~~sonnel lack necessary expertise. If tree cutting or removal work is done by a contractor, park personnel shall provide daily on-site supervision to ensure that work and safety standards are met to prevent harm or damage to persons, trees, shrubbery, soils, and other park resources. When feasible, trees shall be felled in sections with the tops and limbs lowered first by guy wires and ropes in order to protect adjacent old-growth trees and the integrity of the remaining stand. Only skid trails premarked by park personnel may be used and equipment shall be kept on existing roads and parking areas to the fullest extent possible. When feasible, all trees damaged during cutting or removal shall be repaired.~~

~~(6))~~ (xi) Collection of edibles as specified in WAC 352-28-030 or specimens as specified in WAC 352-28-040.

(5) Use of fallen trees: Except where they may create safety hazards and/or interfere with the normal operation of a park, fallen trees shall be left on the ground when deemed environmentally beneficial or used for park purposes such as, but not limited to, approved building projects, trail mulching, and firewood. In natural area preserves, natural forest areas ~~((and)),~~ natural areas, and resource recreation areas first consideration shall be given to leaving trees on the ground for natural purposes.

AMENDATORY SECTION (Amending Resolution No. 76, filed 3/27/84)

WAC 352-28-020 ((Timber)) Resource sales and leases. ((1) Qualification for sale of timber:

~~Only timber which qualifies for cutting and removal under RCW 43.51.045(2), WAC 352-28-010, and which is surplus to the needs of the park may be sold and such timber may be sold only because of the presence of one or more of the following conditions:~~

~~(a) The timber significantly hinders the public use or operation of a park and is of such a quantity that park personnel cannot dispose of it in a timely manner.~~

~~(b) The timber is cut or removed as part of a park maintenance or development project, or conservation practice.~~

~~(c) The timber is cut or removed as part of a road or utility easement.~~

~~(d) The timber is blown down, burned, or damaged by a catastrophic forest event.~~

~~(2) Procedures and general provisions:~~

~~(a) A public meeting on each proposed sale shall be conducted in the county in which the sale is to take place. Prior notice of a meeting shall be published in a newspaper of general circulation in such county. Any person who requests notification of proposed sales shall be sent prior notice of a meeting by mail. A summary of the testimony presented at a meeting or received in writing shall be presented to the commission. All sales shall require approval by a majority of the commission.~~

~~(b) Sales shall be conducted through an agreement with the department of natural resources pursuant to RCW 43.30.260 or by the director or the designee of the director in accordance with (c) through (j) of this subsection.~~

~~(c) Prior to requesting bids, park personnel shall record the height and diameter at four and one-half feet in height of each standing tree identified for sale. Park personnel shall~~

conduct a cruise of all timber identified for sale, appraise the value of such timber, and establish a minimum acceptable bid. ~~Provided, That a cruise of downed timber may be based upon ten percent of such timber. Complete records of the assumptions used to make these appraisals and estimated minimum acceptable bids shall be maintained.~~

~~(d) Sales shall be granted on the basis of competitive, sealed bids or public auction made by responsible qualified bidders. At least three qualified bidders shall be invited to bid and an advertisement for bids shall be published in a newspaper of general circulation in the county in which the sale is to take place. Reasonable efforts shall be made to invite bids from prospective contractors operating or living in or near the general location of the sale.~~

~~(e) All sales shall be granted on the basis of the highest bid from a responsible qualified bidder. No timber shall be sold for less than the minimum acceptable bid established by park personnel. Any bid shall be rejected if the prospective contractor is deemed unqualified. To qualify for bidding, a contractor must be of good character and reputation with demonstrated abilities and capacities sufficient to perform the contract and must not have failed to perform satisfactorily on any current or previous forest products sale contract with the state.~~

~~(f) All timber sold shall be measured, graded, and counted by a sealing bureau. Provided, That when a sealing bureau is not located in the vicinity of a log buyer, such measuring, grading, and counting shall be performed according to standard log grading practices by a log buyer agreed to by a contractor and the director or the designee of the director.~~

~~(g) All sales shall require sufficient liability and property damage insurance and also sufficient surety bonding by the contractors to insure protection of the state and satisfactory contract compliance and completion.~~

~~(h) All sales shall require contract validation by the director or the designee of the director. The number of additional trees which may be added to a sale approved by the commission shall be no more than four percent of the board feet of the trees included in an approved sale. The addition of trees to a sale approved by the commission may occur only upon the approval of the director or the designee of the director.~~

~~(i) All sales shall require authorization by the state of Washington, department of general administration, division of purchasing as provided in RCW 43.19.1919; also, all sales shall be granted, subject to approval of any governing agency as may be required by legal condition of land title and/or timber ownership and/or by state or federal statute.~~

~~(j) All contracts shall be of a form approved by the attorney general with special provisions to tailor a contract to the particular needs of a park site.) The following qualifications, procedures, and general provisions pertain to the sale of, or leasing of lands containing, tree, plant or fungi resources from commission owned or managed lands:~~

(1) The sale of natural resources associated with commission owned or managed lands, or the lease of lands containing natural resources to be sold, will be undertaken only where they advance a commission approved capital development, are part of a resource conservation plan or interagency agreement approved by the director or the designee of the

director, or are deemed by the director or the designee of the director to advance agency stewardship goals. Sales of natural resources from lands owned, leased or managed by the commission, are limited to lands classified as resource recreation, recreation, or heritage as defined in chapter 352-16 WAC, and must be consistent with criteria specified in WAC 352-28-010. Resources from other land classes must meet the criteria specified in WAC 352-28-010 prior to their consideration for sale.

(2) Prior to resource sales from lands owned, leased or managed by the commission, qualified park personnel or their designated agent shall conduct an inventory or cruise of the materials, appraise the value of such materials, and establish a minimum acceptable bid.

(a) Where trees are to be sold, the following qualifications must be met:

(i) Only timber which qualifies for cutting and removal under RCW 79A.05.035(2), WAC 352-28-010, and which is surplus to the needs of the park may be sold.

(ii) The timber significantly hinders the public use or operation of a park and is of such a quantity that park personnel cannot dispose of it in a timely manner.

(iii) The timber is cut or removed as part of a commission approved park maintenance or development project, or road or utility easement; a plan to address blown-down, burned, or damaged trees resulting from a catastrophic forest event; part of a resource conservation plan to maintain or restore a native plant community, species population, or ecological processes; or an agency approved maintenance or development project that contains a resource conservation plan.

(iv) Timber shall be appraised using methods consistent with those applied by the Washington department of natural resources. Complete records of the methods and assumptions used to make the timber appraisal and estimated minimum acceptable bids shall be maintained.

(b) Where nontimber resources are to be sold from lands owned, leased or managed by the commission, the following qualifications must be met:

(i) The removal of natural resources from commission owned or managed lands will only occur where the sale is part of a resource conservation plan to maintain or restore a native plant community, species population, or ecological processes.

(ii) The commission cannot achieve its stewardship goals without selling the resources or leasing the lands designated in the conservation plan noted in WAC 352-28-020(2).

(2) A public meeting on each proposed sale or lease shall be conducted in the county in which the sale or lease is to take place. Prior notice of a hearing shall be published in a newspaper of general circulation in such county. Any person who requests notification of proposed sale or lease shall be sent prior notice of a meeting by mail. A summary of the testimony presented at a meeting or received in writing shall be presented to the director.

(3) Sales or leases where the appraised value of the materials is in excess of twenty-five thousand dollars in appraised value or the value specified for direct sales in RCW 79.15.-050, whichever is larger, shall require approval by a majority of the commission. Public testimony related to the sale or

lease will be presented to the commission. Sales or leases where the appraised value of the materials is less than or equal to twenty-five thousand dollars, or the direct sale value specified in RCW 79.15.050, shall require approval by the director. Public testimony related to the sale or lease will be presented to the director.

(4) Sales or leases shall be conducted through an agreement with the department of natural resources pursuant to RCW 43.30.530 or by the director or the designee of the director in accordance with subsections (6) through (11) of this section. Director approved sales may use a direct sales approach as specified in RCW 79.15.050.

(5) Sales or leases shall be granted on the basis of competitive, sealed bids or public auction made by responsible qualified bidders. At least three qualified bidders shall be invited to bid and an advertisement for bids shall be published in a newspaper of general circulation in the county in which the sale or lease is to take place. Reasonable efforts shall be made to invite bids from prospective contractors operating or living in or near the general location of the sale.

(6) All sales or leases shall be granted on the basis of the highest bid from a responsible qualified bidder. No materials shall be sold for less than the minimum acceptable bid established by park personnel. Any bid shall be rejected if the prospective contractor is deemed unqualified. To qualify for bidding, a contractor must be of good character and reputation with demonstrated abilities and capacities sufficient to perform the contract and must not have failed to perform satisfactorily on any current or previous products sale contract with the state.

(7) All timber sold shall be measured, graded, and counted by a scaling bureau. When a scaling bureau is not located in the vicinity of a log buyer, such measuring, grading, and counting shall be performed according to standard log grading practices by a log buyer agreed to by a contractor and the director or the designee of the director.

(8) All sales or leases shall require sufficient liability and property damage insurance and also sufficient security bonding by the contractors to ensure protection of the state and satisfactory contract compliance and completion.

(9) All sales or leases shall require contract validation by the director or the designee of the director. The quantity of material which may be added to an approved sale, lease or donation shall be no more than four percent of the total material included in an approved sale or lease. The addition of materials to an approved sale, lease or donation may occur only upon the approval of the director or the designee of the director.

(10) All sales shall require authorization by the state of Washington, department of general administration, division of purchasing as provided in RCW 43.19.1919; also, all sales or leases shall be granted, subject to approval of any governing agency as may be required by legal condition of land title and/or timber ownership and/or by state or federal statute.

(11) All contracts shall be of a form approved by the attorney general with special provisions to tailor a contract to the particular needs of a park site.

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

AMENDATORY SECTION (Amending WSR 05-17-105, filed 8/16/05, effective 9/16/05)

WAC 352-28-030 Harvest of edibles. Nonmarine edible plants and edible fruiting bodies, including mushrooms, shall be managed by the agency in accordance with WAC 352-28-010. The commercial harvest of edibles is not allowed on park lands. The harvest of edibles for personal consumption, or scientific or educational projects, is subject to the following conditions:

(1) Personal consumption: The recreational harvest, possession, or transport of edible plants and edible fruiting bodies including, but not limited to, mushrooms, berries, and nuts, is allowed up to an amount of two gallons per person per day, unless otherwise posted at the park. The harvest amount may be comprised of one or more species. The harvest may occur within the following park classification areas: Recreation, resource recreation, natural, natural forest, heritage, or in parks not yet classified. No harvest of edible plants or edible fruiting bodies, including mushrooms, is allowed within a natural area preserve. This rule is not intended to limit federally reserved tribal rights, including treaty rights.

(2) Scientific or educational projects: The harvest of edible plants and/or edible fruiting bodies, including mushrooms, for scientific or educational projects is subject to ~~((the prior written approval of the director or designee))~~ an approved agency research permit as described in WAC 352-28-040. The approval shall specify a harvest amount not to exceed the minimum quantity necessary for the purposes of the project. The harvest may occur within all park classification areas.

(3) Harvest techniques that involve raking or other techniques that have the potential to degrade park natural or cultural resources are prohibited.

(4) The director or the designee of the director may close, temporarily close, or condition public access to certain park areas for recreational harvesting of edibles upon finding that the activity degrades or threatens to degrade the park's natural or cultural resources, or to protect public health, safety, and welfare. Such closure shall be posted at the entrance to the park area affected and at the park office.

NEW SECTION

WAC 352-28-040 Research permits and research collections. Fauna, flora, fungi, and organic and inorganic materials may be removed from parklands for research purposes in accordance with RCW 79A.05.165. Removal for scientific or educational purposes is subject to the approval of an agency approved research permit signed by the director or the designee of the director. Collections involving fauna will require an approved collection permit from the Washington department of fish and wildlife. Collections involving endangered, threatened, or sensitive species will require approval from the Washington department of fish and wildlife and the department of natural resources Washington natural heritage program.

NEW SECTION

WAC 352-28-050 Protecting and restoring degraded natural resources. The state park system contains a diverse array of natural resources. Select resources, of high biological significance, may warrant a high-level of protection from human impacts to preserve them. In addition, efforts to rehabilitate or restore these resources may require little or no human impacts during the recovery period. Hence, public access to park lands may be limited or prohibited for short or long periods of time by the director, or the designee of the director, where the following criteria are met:

(1) A significant resource is deemed at risk of degradation from human activities;

(2) A conservation plan, involving consultation with the department of natural resources Washington natural heritage program and other agencies and groups with expertise in ecosystem health as deemed appropriate by the director or the designee of the director, has been developed to protect, restore, or rehabilitate the significant resources; and

(3) A public meeting on all closures destined to exceed one year is conducted in the county in which the affected park lands occur. Prior notice of a hearing shall be published in a newspaper of general circulation in such county. Any person who requests notification of the proposed closure shall be sent prior notice of the meeting by mail. A summary of the testimony presented at a meeting or received in writing shall be presented to the director.