

WSR 08-04-008
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed January 24, 2008, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-23-021.

Title of Rule and Other Identifying Information: WAC 392-121-250 and 392-121-270, Finance—General apportionment—Certificated instructional staff.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on March 11, 2008, at 9:30 a.m.

Date of Intended Adoption: March 12, 2008.

Submit Written Comments to: Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, e-mail penny.coker@k12.wa.us, fax (360) 753-4201, by March 10, 2008.

Assistance for Persons with Disabilities: Contact Clarice Nnanubu by March 10, 2008, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule revisions expand the definition of "nondegreed" to provide a clearer standard/criteria of what constitutes a nondegreed vocational/career and technical education (CTE) instructional employee.

Currently, a complicated series of rules provide recognition for the industry experience of vocational/CTE instructors, for purposes of salary placement on LEAP allocation documents. These unclear rules place districts at risk as they make good faith efforts to place their CTE instructors correctly. These rule revisions establish a clearer standard for recognition of the industry experience for a narrow group of CTE instructors, effective for the 2007-08 school year. Based on 2005-06 staff mix errors noted in audit memos by the state auditor's office, this rule clarification would affect the place of thirty to fifty CTE instructors statewide for a cost of \$150,000 to \$250,000 (\$5,000 per instructor).

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

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

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Addition-

ally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

January 24, 2008
 Dr. Terry Bergeson
 Superintendent of
 Public Instruction

AMENDATORY SECTION (Amending WSR 06-19-045, filed 9/15/06, effective 10/16/06)

WAC 392-121-250 Definition—Highest degree level. As used in this chapter, the term "highest degree level" means:

- (1) The highest degree earned by the employee from a regionally accredited institution of higher education;
- (2) "Nondegreed" for a certificated instructional employee who holds no bachelor's or higher level degree; or
- (3) "Nondegreed" for a certificated instructional employee who holds a valid vocational/career and technical education certificate acquired as the result of industrial experience rather than college training ~~((and who has a degree earned from a regionally accredited institution of higher education prior to the issue of the initial vocational/career and technical education certificate, which is incidental to or not related to the vocational/career and technical education certificate))~~ pursuant to WAC 181-77-041: Provided, That the employee has obtained no other past or present education certificate or permit in which a degree is required pursuant to chapter 181-79A WAC.

AMENDATORY SECTION (Amending WSR 06-19-045, filed 9/15/06, effective 10/16/06)

WAC 392-121-270 Placement of certificated instructional employees on LEAP salary allocation documents. Each certificated instructional employee shall be placed on LEAP salary allocation documents with the highest placement based on the employee's highest degree level, total eligible credits, and certificated years of experience each defined in this chapter: Provided, That(=)

- (1) If an employee holds more than one degree of the same level, additional credits shall be counted after the first degree.
- (2) An employee whose highest degree is a bachelor's degree, whose total eligible credits are ninety or greater, and whose total eligible credits earned prior to January 1, 1992, were less than one hundred thirty-five shall be placed on the BA + 90 column.
- (3) An employee whose highest degree level is nondegreed shall be placed on the BA columns except that such persons holding valid vocational/career and technical education certificates with one hundred thirty-five or more eligible credits shall be placed on the MA + 0 column.
- (4) A vocational/career and technical education instructor who obtains a bachelor's degree while employed in the state of Washington as a nondegreed vocational/career and technical education instructor and for whom one hundred thirty-five or more eligible credits determined pursuant to WAC 392-121-259 were reported on Report S-275 prior to the awarding of that bachelor's degree shall continue to be

placed on the MA + 0 column and shall not advance to any other column unless a master's degree is obtained.

(5) For placement on LEAP salary allocation documents, total eligible credits and certificated years of experience shall be rounded to the nearest whole number. One-half credit or year shall be rounded to the next highest credit or year.

WSR 08-04-023

**WITHDRAWAL OF PROPOSED RULES
BUILDING CODE COUNCIL**

(By the Code Reviser's Office)

[Filed January 29, 2008, 7:53 a.m.]

WAC 51-56-0400 and 51-56-0700, proposed by the building code council in WSR 07-15-080 appearing in issue 07-15 of the State Register, which was distributed on August 1, 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 08-04-024

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF ECOLOGY**

(By the Code Reviser's Office)

[Filed January 29, 2008, 7:53 a.m.]

WAC 173-900-660, 173-900-670, 173-900-680 and 173-900-690, proposed by the department of ecology in WSR 07-15-037 appearing in issue 07-15 of the State Register, which was distributed on August 1, 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 08-04-046

**PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION**

[Filed January 31, 2008, 2:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-21-047, 07-21-048, 07-21-049, 07-21-050, 07-21-051, and 07-21-052.

Title of Rule and Other Identifying Information: WAC 139-10-310 Requirement of corrections supervisory training.

Hearing Location(s): 19010 1st Avenue South, Burien, WA 98418 [98148], on March 12, 2008, at 10:00 a.m.

Date of Intended Adoption: March [12], 2008.

Submit Written Comments to: Doug Blair, 19010 1st Avenue South, Burien, WA 98148, e-mail dblair@cjtc.state.wa.us, fax (206) 835-7928, by February 15, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal is to eliminate WAC 139-10-310, 139-10-320, 139-10-410, 139-10-420, 139-10-510, and 139-10-520.

Legislative changes during the 2006-2007 legislative session incorporated the supervisory training requirements for corrections into RCW 43.101.350 and WAC 139-25-110. These rules are no longer needed.

Statutory Authority for Adoption: RCW 43.101.080.

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

Name of Proponent: Criminal justice training commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Doug Blair, 19010 1st Avenue South, Burien, WA 98148, (206) 835-7352.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The change in this rule is to eliminate duplication. The same rules are in existence in another section of the WAC. Eliminating the duplication will have no impact.

A cost-benefit analysis is not required under RCW 34.05.328. Repeal of these rules is for the purpose of eliminating duplication caused by a change in RCW 43.101.350.

January 31, 2008

Cheryl A. Price

Public Records Officer

WSR 08-04-047

**PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION**

[Filed January 31, 2008, 2:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-21-054.

Title of Rule and Other Identifying Information: WAC 139-30-015 Firearms certification—Application, this rule sets the conditions that must be met before a private security guard can be licensed as an armed private security guard. The fee is included in the rule as are the conditions that must be met if the officer carries more than one weapon.

Hearing Location(s): 19010 1st Avenue South, Burien, WA 98418 [98148], on March 12, 2008, at 10:00 a.m.

Date of Intended Adoption: March 12, 2008.

Submit Written Comments to: Doug Blair, 19010 1st Avenue South, Burien, WA 98148, e-mail dblair@cjtc.state.wa.us, fax (206) 835-7928, by February 15, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will accurately reflect the actual fee being charged for the firearms permit. It also provides clarity to the process that a person must complete if they choose to carry more than one weapon as a part of their assignment.

Statutory Authority for Adoption: RCW 43.101.080.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Doug Blair, 19010 1st Avenue South, Burien, WA 98148, (206) 835-7352.

A cost-benefit analysis is not required under RCW 34.05.328. Proposal is exempt under RCW 19.85.025(2); therefore, a cost-benefit analysis is not required.

January 31, 2008

Cheryl A. Price

Public Records Officer

AMENDATORY SECTION (Amending WSR 03-07-098, filed 3/19/03, effective 4/19/03)

WAC 139-30-015 Firearms certification—Application. (1) Any application for firearms certification shall:

(a) Be filed with the commission on a form provided by the commission;

(b) Be signed by the principal owner, principal partner, or a principal corporate officer, of the licensed private security company employing the applicant;

(c) Establish through required documentation or otherwise that applicant:

(i) Is at least twenty-one years of age; and

(ii) Possesses a valid and current private security guard license.

(d) Be accompanied by payment of a processing fee (~~((of thirty-one dollars))~~ as set by the commission.

(2) After receipt and review of an application, the commission will provide written notification within ten business days to the requesting company regarding applicant's eligibility to obtain and possess a firearms certificate.

(3) An armed private (~~((detective must obtain a separate firearm certificate))~~ security guard must be qualified by a firearms instructor certified by the commission, and provide the commission with proof of the initial qualification for each firearm that he/she is authorized to use in the performance of his/her duties. All firearms carried by armed private security guards in the performance of their duties must be owned or leased by the employer.

(4) It shall be the responsibility of the employer to insure that the armed private detective demonstrates proficiency standards on an annual basis with each firearm that he/she is certified to use. Proficiency standards shall be set by the commission.

WSR 08-04-048

PROPOSED RULES

CRIMINAL JUSTICE

TRAINING COMMISSION

[Filed January 31, 2008, 2:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-056 [07-21-056].

Title of Rule and Other Identifying Information: WAC 139-35-015 Firearms certification—Application, this rule sets the conditions that must be met before a private detective can be licensed as an armed private detective. The fee is included in the rule as are the conditions that must be met if the person carries more than one weapon.

Hearing Location(s): 19010 1st Avenue South, Burien, WA 98148 [98148], on March 12, 2008, at 10:00 a.m.

Date of Intended Adoption: March 12, 2008.

Submit Written Comments to: Doug Blair, 19010 1st Avenue South, Burien, WA 98148, e-mail dblair@cjtc.state.wa.us, fax (206) 835-7928, by February 15, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will accurately reflect the actual fee being charged for the firearms permit. It also provides clarity to the process that a person must complete if they choose to carry more than one weapon as a part of their assignment.

Statutory Authority for Adoption: RCW 43.101.080.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Doug Blair, 19010 1st Avenue South, Burien, WA 98148, (206) 835-7352.

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

A cost-benefit analysis is not required under RCW 34.05.328. Proposal is exempt under RCW 19.85.025(2); therefore, a cost-benefit analysis is not required.

December 14, 2007

Cheryl A. Price

Public Records Officer

AMENDATORY SECTION (Amending WSR 03-07-098, filed 3/19/03, effective 4/19/03)

WAC 139-35-015 Firearms certification—Application. (1) Any application for firearms certification shall:

(a) Be filed with the commission on a form provided by the commission;

(b) Be signed by the principal owner, principal partner, principal corporate officer, or designated agent of the licensed private detective agency employing the applicant;

(c) Establish through required documentation or otherwise that applicant:

(i) Is at least twenty-one years of age; and

(ii) Possesses a valid and current private detective license.

(d) Be accompanied by payment of a processing fee (~~((of thirty-one dollars))~~ as set by the commission.

(2) After receipt and review of an application, the commission will provide written notification within ten days to the requesting agency regarding applicant's eligibility to obtain and possess a firearms certificate.

(3) An armed private detective must (~~((obtain a separate firearm certificate))~~ be qualified by a firearms instructor cer-

tified by the commission and provide the commission with proof of the initial qualification for each firearm that he/she is authorized to use in the performance of his/her duties.

(4) It shall be the responsibility of the employer to insure that the armed private detective demonstrates proficiency standards on an annual basis with each firearm that he/she is certified to use. Proficiency standards shall be set by the commission.

WSR 08-04-052
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed January 31, 2008, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-18-090.

Title of Rule and Other Identifying Information: WAC 458-20-258 Travel agents and tour operators, this rule provides information on the tax obligations of persons engaging in business as a travel agent or tour operator.

Hearing Location(s): Capital Plaza Building, 1025 Union Avenue S.E., 4th Floor Conference Room, Olympia, WA 98504, on March 12, 2008, at 10:00 a.m.

Date of Intended Adoption: March 19, 2008.

Submit Written Comments to: Mark Bohe, Interpretations and Technical Advice, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, phone (360) 570-6133, fax (360) 586-0127.

Assistance for Persons with Disabilities: Contact Sandy Davis at (360) 725-7499, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will clarify the rate applicable to tour operators based on 1996 legislation; permit both travel agent and tour operator income to be apportioned in the same manner as under WAC 458-20-194; provide additional information and examples on pass-through; and clarify the application of lodging taxes in the travel industry.

Reasons Supporting Proposal: The revisions are necessary to provide current and accurate tax-reporting guidance, particularly with respect to income apportionment, pass-through treatment, and the application of lodging taxes in the travel industry.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.260(5) and other tax statutes relative to the travel industry.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360)

570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The revised rule, as proposed, does not impose new performance requirements or administrative burdens on any small business not required by statute or the state and/or federal constitution.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

January 31, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-17-003, filed 8/2/90, effective 9/2/90)

WAC 458-20-258 Travel agents and tour operators.

(1) **Introduction.** This section ~~((describes the business and occupation (B&O) taxation of travel agents and tour operators. Travel agents are taxed at the special travel agent rate under RCW 82.04.260(10). Tour operators are generally taxed under the service or other business classification under RCW 82.04.290. However, the business activities of tour operators may sometimes include activities like those of a travel agent. This section recognizes the overlap of activities and taxes them consistently.~~

(2) Definitions:

(a) "Commission" means the fee or percentage of the charge or their equivalent, received in the ordinary course of business as compensation for arranging the service. The customer or receiver of the service, not the person receiving the commission, is always responsible for payment of the charge.

(b) "Pass-through expense" means a charge to a tour operator business where the tour operator is acting as an agent of the customer and the customer, not the tour operator, is liable for the charge. The tour operator cannot be primarily or secondarily liable for the charge other than as agent for the customer. See: ~~WAC 458-20-111 Advances and reimbursements.~~

(c) "Tour operator business" means a business activity of providing directly or through third party providers, transportation, lodging, meals, and other associated services where the tour operator purchases or itself provides any or all of the services offered, and is itself liable for the services purchased.

(d) "Travel agent business" means the business activity of arranging transportation, lodging, meals, or other similar services which are purchased by the customer and where the travel agent or agency merely receives a commission for arranging the service.

(3) Travel agents:

(a) The gross income of a travel agent or a travel agent business is the gross commissions received without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense. It is taxed at the special travel agent rate.

(b) Gross receipts, other than commissions, from other business activities of a travel agent, including activities as a tour operator, are taxed in the appropriate B&O classification, service, retailing, etc., as the case may be.

(4) Tour operators.

(a) The gross income of a tour operator or a tour operator business is the gross commissions received when the activity is that of a travel agent business.

(i) When a tour operator receives commissions from a third party service provider for all or a part of the tour or tour package, the gross income of the business for that travel agent activity is the commissions received.

(b) However, if the activity is that of a tour operator business, receipts are B&O taxable in the service classification without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense; **except**, receipts attributable to pass-through expenses are not included as part of the gross income of the business.

(5) Examples:

(a) A travel agent issues an airplane ticket to a customer. The cost of the ticket is \$250 which is paid by the customer. The travel agent receives \$25 from the airline for providing the service.

(i) The gross income of the business for the travel agent is the \$25 commission received.

(ii) The gross income of the business is taxed at the special travel agent rate.

(b) A tour operator offers a tour costing \$1,500 per person. The tour cost consists of \$800 airfare, \$500 lodging and meals, and \$200 bus transportation. The tour operator has an arrangement with each of the service providers to receive a 10% commission for each service of the tour, which in this case is \$150 (\$80 + \$50 + \$20). The tour operator issues tickets, etc, only when paid by the customer and is not liable for any services reserved but not provided.

(i) The tour operator is engaged in a travel agent activity and the gross income of the business is commissions received, \$150.

(ii) The gross income of the business, \$150, is taxed at the special travel agent rate.

(c) The same facts as in example (b) except that the tour operator has a policy of requiring 10% or \$150 as a down payment with the remaining \$1,350 payable 20 days prior to departure with 95% refundable up to 10 days prior to departure and nothing refunded after 10 days prior to departure. The customer cancels 15 days prior to departure and is refunded \$1,425 with the tour operator retaining \$75.

(i) The gross income of the tour operator business is the \$75 retained. No amount is attributable to pass-through expense since the tour operator was not obligated to the service provider in the event of cancellation and the tour operator was not acting as the agent of the customer.

(ii) The gross income of the business, \$75, is taxed in the service B&O tax classification.

(d) A tour operator offers a package tour for the Super-bowl costing \$800 per person. The tour operator purchases noncancellable rooms in a hotel for \$300 per room for 2 nights, and game tickets which cost \$100 each. The package includes airfare which costs \$200 per person for which the tour operator receives the normal commission of \$20. As an extra feature, the tour operator offers to provide, for an extra cost, special event tickets, if available, at his cost of \$50 each. The tour operator is B&O taxable as follows:

(i) The gross income of the tour operator business is \$600 (\$800 less \$200 airfare). Because the tour operator purchased the rooms and the game tickets in its own name and is liable for the rooms or tickets if not resold, the tour operator is not operating as a travel agent business and is B&O taxable in the service classification. If the tour operator receives a commission on the rooms sold to itself, the activity remains taxable as a tour operator business under the service classification and the commission received is treated as a cost discount, not included in the gross income of the business.

(ii) The \$50 received for the special event ticket is attributable to a pass-through expense and is not included in the gross income of the tour operator business. The special event ticket receipt is attributable to a pass-through expense because the tour operator is acting as an agent for the customer.

(iii) The \$20 received as commission from the sale of the airfare is a travel agent business activity and is included as gross income of a travel agent and taxed at the special travel agent rate)) provides information on the tax obligations of persons engaging in business as a travel agent or tour operator. Engaging in business as a travel agent means arranging transportation, lodging, meals, or other similar services which are purchased by the customer and for which the travel agent or agency merely receives compensation, such as a commission, for arranging the service. Engaging in business as a tour operator means providing directly or through third party providers, transportation, lodging, meals, and other associated services where the tour operator purchases for its use or itself provides any or all of the services offered. A travel business may include both travel agent and tour operator activities. This section recognizes the overlap of activities and taxes them consistently.

(2) Other sections: examples.

(a) The following sections may contain additional relevant information:

- WAC 458-20-111 (Advances and reimbursements);
- WAC 458-20-118 (Sale or rental of real estate, license to use real estate);
- WAC 458-20-12401 (Special stadium sales and use tax);
- WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.);
- WAC 458-20-175 (Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce);
- WAC 458-20-180 (Motor transportation, urban transportation);
- WAC 458-20-183 (Amusement, recreation, and physical fitness services); and
- WAC 458-20-194 (Doing business inside and outside the state).

(b) Examples. This section contains a number of examples that identify facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(3) Business and occupation tax.

(a) Reporting classification. Gross income from engaging in business as a travel agent or tour operator is reported

under the "travel agent/tour operator" B&O classification. Gross income from engaging in other business activities are taxed under the appropriate B&O classification, service, retailing, etc., as the case may be. "Gross income" generally means the value proceeding or accruing by reason of the business engaged in, including gross proceeds of sales, commissions, and compensation for the rendition of services, all without any deductions for costs or losses. See RCW 82.04.080 for the complete definition of "gross income." However, a limited exclusion, explained below, may apply.

(b) Limited exclusion from gross income: Advances and reimbursements. Persons purchasing transportation, lodging, meals, or other similar or associated services solely as an agent may exclude from gross income amounts received from the principal as an advance or reimbursement of charges, but only if all elements of WAC 458-20-111 are met, including:

(i) The advance or reimbursement is received for the purchase of services in accordance with the regular and usual custom of the agent's profession;

(ii) The principal alone is liable to pay for the travel services. The agent may not have any primary or secondary liability to pay for the services other than as agent for the customer or client; and

(iii) The agent does not or cannot render the services and no liability attaches to the agent for such services.

(c) Examples:

(i) TTT Travel Services is hired to book airline tickets for a customer. After locating a flight the customer wants, TTT purchases the ticket in the name of the customer. The airline agrees that TTT has no liability to pay for the flight and that the customer alone is liable to pay for the flight. The customer agrees that TTT has no liability for providing the purchased service, and the customer will not be entitled to a refund from TTT if the flight is canceled. In these circumstances, TTT may exclude an advance or reimbursement received from its customer as repayment for the purchase of airline tickets from its gross income. However, if ABC Travel provided the airline with a guarantee of payment, then TTT would have a secondary liability to pay for the tickets, and would not be entitled to exclude the advance or reimbursement from gross income.

In either case, TTT must include all commission income received from the airline and all service or other fees it collects from the customer for travel agency services.

(ii) TTT Travel Services offers a Washington state tour priced at \$1,500 per person. The tour price consists of \$800 airfare, \$500 lodging, and \$200 bus transportation. TTT has an arrangement with each of the service providers to receive a 10% commission for each service included in the tour, which in this case is \$150 (\$80 + \$50 + \$20). TTT issues tickets, etc., only when paid by the customer and is not liable to pay for any of the travel services reserved but not provided. The gross income of the business is commissions received, \$150, taxed at the travel agent/tour operator rate.

(iii) Assume the same facts as in example (ii), except that TTT is liable to pay the bus company for the bus transportation. The gross income of TTT is the commissions received for the airfare and lodging, plus the full amount received for the bus transportation, a total of \$330 (\$80 + \$50 + \$200), taxed at the travel agent/tour operator rate.

(iv) Assume the same facts as in example (ii), except that TTT is liable to pay the hotel for the hotel rooms. The gross income of TTT is the commissions received for the airfare and bus transportation, plus the full amount received for the hotel rooms, a total of \$600 (\$80 + \$20 + \$500), taxed at the travel agent/tour operator rate. TTT must pay retail sales tax on its purchase of the hotel rooms, because the hotel rooms are purchased by TTT as a consumer for its own use in providing tours and not merely for resale.

(v) TTT has a policy requiring customers to pay a 10% nonrefundable down payment for the tour, with the remaining balance due at departure. If a customer cancels the tour, TTT retains the 10% deposit. TTT must include the entire deposit retained in its gross income. This is true even if TTT pays all or part of the deposit retained to a hotel, airline, or other service provider as a cancellation or similar fee. TTT may only exclude funds paid to a service provider as a cancellation or similar fee if TTT pays the fee solely as the agent of the customer; the fee obligation is that of the customer alone; and TTT has no liability for the fee. See WAC 458-20-111.

(vi) TTT offers a package tour for the Superbowl priced at \$800 per person. TTT purchases noncancellable rooms in a hotel for \$300 per room for 2 nights, and game tickets which cost \$100 each. The package includes airfare which costs \$200 per person for which the customer, rather than TTT, is liable. However, TTT receives the normal commission of \$20 from the airline. As an extra feature, TTT offers to provide special event tickets, if available, at its cost of \$50 each. TTT is taxable as follows:

TTT's gross income is \$620 (\$800 less \$200 airfare, plus \$20 commission). Because TTT purchased the rooms and the game tickets as a consumer and is liable for the rooms or tickets if not resold, B&O tax applies to the gross receipts for those travel services. If TTT also receives a commission on the rooms from the hotel, the commission is treated as a cost discount and not included in the gross income of the business.

The \$50 received for the special event ticket is not included in gross income because TTT is acting as an agent for the customer in purchasing the tickets, pursuant to WAC 458-20-111.

(d) Apportionment. Persons engaging in business as a travel agent or tour operator may be eligible to apportion gross income reportable under the "travel agent/tour operator" classification in the same manner as under WAC 458-20-194. Travel agents and tour operators must meet the nexus requirements and may use any of the apportionment methods approved under WAC 458-20-194.

(i) Example. ABC Travel has offices in Washington, Oregon, and California. ABC Travel has a toll-free number for use by customers served by all offices, but all calls to that number are received by employees in the California office. ABC Travel may apportion its gross income in the same manner as under WAC 458-20-194.

(ii) Example. Amuseum Tours Inc., a Washington company, offers week long tour packages. Each tour includes lodging and sightseeing activities in Washington, Idaho, and Montana. Amuseum Tours, Inc. may apportion its gross income in the same manner as under WAC 458-20-194.

(4) Lodging tax. Persons furnishing lodging are required to collect and remit any lodging tax levied by a

county or city on the sale of or charge made for the furnishing of lodging. See, e.g., RCW 35.101.050, 36.100.040, 67.28.-180, and 67.40.090. Lodging taxes do not apply to commissions or fees received directly from a customer for the provision of lodging-related travel services such as offering information about the availability of lodging to a customer and/or facilitating the reservation of lodging for that customer, where the travel agent or tour operator does not itself furnish the lodging. A travel agent or tour operator is not furnishing lodging if it has no right to use, possess, sublease, or sublicense the rooms.

For example, a hotel (located in a jurisdiction with a lodging tax) agrees to provide hotel rooms to customers of ABC Travel. The hotel agrees to charge a rate of \$100 per night per room, with the understanding that ABC Travel will charge its customers a higher amount for the rooms, including charges for ABC's services in facilitating the lodging. Customers of ABC Travel obtain the right to possession and use of the room and other facilities directly from the hotel and recognize they will pay a commission or fee to ABC Travel for its services. ABC Travel does not obtain a lease of or license for the rooms, or any other right of possession or use. No liability for the rooms, other than as agent for the customer or client, attaches to ABC Travel. ABC Travel charges its customers \$125 per night for the rooms, retaining \$25 and remitting \$100 to the hotel.

In these circumstances, ABC Travel is not furnishing lodging to its customers. The hotel is furnishing lodging and must collect and remit any applicable lodging tax on the charge made for that service: \$100. The additional \$25 paid by the customer is a fee or commission paid to ABC Travel for its travel services, not part of the sale of or charge made for the furnishing of lodging. ABC Travel must pay B&O tax on the \$25 at the travel agent/tour operator rate.

WSR 08-04-071

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed February 4, 2008, 11:49 a.m.]

The Washington department of fish and wildlife is withdrawing WAC 232-28-353, 232-28-354, and 232-28-431 from the CR-102 filed as WSR 08-03-143 on January 23, 2008.

These WACs will be included in new CR-102s at a future date.

Loreva M. Preuss
Criminal Justice Liaison and
Administrative Regulations Coordinator
Enforcement Program

WSR 08-04-073

PROPOSED RULES DEPARTMENT OF TRANSPORTATION

[Filed February 4, 2008, 2:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-052.

Title of Rule and Other Identifying Information: State ferries and toll bridges, WAC 468-300-010, 468-300-020, and 468-300-040.

The proposed WAC rules extend the expiration date for some Washington state ferries (WSF) tariffs to conform to legislation extending WSF's existing tariffs until October 2009.

Hearing Location(s): Transportation Commission Board Room, Transportation Building, 310 Maple Park Avenue S.E., Olympia, WA 98501-2361, on Wednesday, March 19, 2008, at 1:00 p.m.

Date of Intended Adoption: March 19, 2008.

Submit Written Comments to: Raymond G. Deardorf, WSF Planning Director, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, e-mail Deardorf@wsdot.wa.gov, fax (206) 515-3499, by March 19, 2008.

Assistance for Persons with Disabilities: Contact transportation commission office by March 19, 2008, TTY (360) 705-7070 or (206) 515-3460.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Some of WSF's tariffs currently expire on April 30, 2008 (e.g., tariffs for in-need organization discounts, bundled single fare media, and oversized vehicle transfers in the San Juan Islands). The proposed WAC rule revisions extend such expiration dates through October 10, 2009.

No major effects are anticipated.

Reasons Supporting Proposal: The Washington state legislature directed WSF to retain the existing ferry tolls until October 2009. The proposed WAC revisions will conform the tariff expiration dates to the term directed by the legislature.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.326.

Statute Being Implemented: RCW 47.56.030 and 47.60.326.

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

Name of Proponent: Washington state department of transportation and Washington state ferries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Raymond G. Deardorf, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, (206) 515-3491.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered this rule and determined that it does not affect more than 10% of one industry of 20% of all industry.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed WAC rule revisions are necessary to conform to legislation extending WSF's current tariffs until October 2009.

February 4, 2008

Reema Griffith

Administrator

Transportation Commission

AMENDATORY SECTION (Amending WSR 07-08-064, filed 3/29/07, effective 5/1/07)

WAC 468-300-010 Ferry passenger tolls.

EFFECTIVE 03:00 A.M. May 1, 2007

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Multiride Media 20 Rides ¹	Monthly Pass ⁵	Bicycle Surcharge ^{2,6}
Via Passenger-Only Ferry						
*Seattle-Vashon	8.70	4.35	7.40	73.60	117.80	1.00
Via Auto Ferry						
*Fauntleroy-Southworth	5.20	2.60	4.20	41.60	66.60	1.00
*Seattle-Bremerton						
*Seattle-Bainbridge Island						
*Edmonds-Kingston	6.70	3.35	5.40	53.60	85.80	1.00
Port Townsend-Keystone	2.60	1.30	2.10	41.60	66.60	0.50
*Fauntleroy-Vashon						
*Southworth-Vashon						
*Pt. Defiance-Tahlequah	4.30	2.15	3.45	34.40	55.05	1.00
*Mukilteo-Clinton	3.95	1.95	3.20	31.60	50.60	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sunday-Tuesday	9.85	4.90	7.90	71.20	N/A	2.00 ⁷
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Wednesday-Sat- urday	10.95	5.45	8.80	71.20	N/A	2.00 ⁷
Between Lopez, Shaw, Orcas and Friday Harbor ⁴	N/C	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	16.00	8.00	12.80	N/A	N/A	4.00 ⁸
From Lopez, Shaw, Orcas and Fri- day Harbor to Sidney@	6.00	3.00	4.80	N/A	N/A	1.00 ⁹
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ³	22.00	11.00	17.60	N/A	N/A	5.00 ¹⁰

All fares rounded to the next multiple of \$0.05.
 * These routes operate as a one-point toll collection system.

¹MULTIRIDE MEDIA - Shall be valid only for 90-days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. Subsequent to the implementation of the Electronic Fare System (EFS) in the fall of 2005, this will be replaced by a 20 ride card valid for 90 days from the date of purchase. For mail order deliveries, WSF may add additional days to allow for delivery times. Starting on the earliest fare change opportunity (May 1 or the second Sunday in October) at a minimum 6 months after completion of system-wide implementation of the Electronic Fare System (EFS), purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers paying with commuter vouchers made available through local transit agencies or qualifying for the senior/disabled and youth fares.

²BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

³ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

⁴INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

⁵PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount.

The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.

⁶BICYCLE PERMIT - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney for a \$20.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.

⁷BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 until the second Sunday in October).

⁸BICYCLE SURCHARGE - This becomes \$6.00 during peak season.

⁹BICYCLE SURCHARGE - This becomes \$2.00 during peak season.

¹⁰BICYCLE SURCHARGE - This becomes \$8.00 during peak season.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 80% of full fare rounded to the next multiple of \$ 0.05.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a Medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel. This program will expire after (~~April 30, 2008~~) October 10, 2009.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director

for a specific discount in order to enhance total revenue and effective only at designated times on designated routes.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect. Due to space limitations, authorized school groups will not be permitted to use one of the passenger-only routes without prior WSF approval.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiride media as a customer convenience. This media shall be valid only (~~until the first of May following the date of purchase~~) through October 10, 2009, after which time the coupons shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

PEAK SEASON SURCHARGE - A 20% surcharge shall be applied to passengers from May 1 to the second Sunday in October, except those using frequent user fare media, on the Anacortes to Lopez, Shaw, Orcas and Friday Harbor routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

AMENDATORY SECTION (Amending WSR 07-08-064, filed 3/29/07, effective 5/1/07)

WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.

EFFECTIVE 03:00 A.M. May 1, 2007

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver ⁴	Vehicle Under 20' Over Height Charge ¹	Multiride Media 20 Rides ²
Fauntleroy-Southworth Port Townsend/Key-stone	8.90	7.60	8.90	142.40
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	11.55	9.85	11.55	184.80
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	14.80	12.65	14.80	118.40
Mukilteo-Clinton	6.85	5.85	6.85	109.60
10 Rides - 5 Round Trips				
*Anacortes to Lopez - Sunday-Tuesday	23.95	19.00	23.95	99.75
*Lopez - Wednesday-Saturday	26.60	21.10	26.60	99.75
*Shaw, Orcas - Sunday-Tuesday	28.75	23.80	28.75	119.65
*Shaw, Orcas - Wednesday-Saturday	31.90	26.40	31.90	119.65
*Friday Harbor - Sunday-Tuesday	34.15	29.20	34.15	142.15
*Friday Harbor - Wednesday-Saturday	37.90	32.40	37.90	142.15

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver ⁴	Vehicle Under 20' Over Height Charge ¹	Multiride Media 20 Rides ²
Between Lopez, Shaw, Orcas and Friday Harbor ³	16.65	16.65	16.65	66.40
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	42.95	35.95	42.95	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations ⁶	27.95	19.95	42.95	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	12.80	9.80	12.80	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁷	5.80	2.80	12.80	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	55.75	44.75	55.75	N/A

EFFECTIVE 03:00 A.M. May 1, 2007

ROUTES	Motorcycle ⁵ Incl. Driver Stowage ¹ One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage ¹ One Way	Motorcycle Oversize Charge ¹	Motorcycle Frequent User Commuter 20 Rides ²
Fauntleroy-Southworth Port Townsend/Key-stone	3.85	2.55	1.30	61.60
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	5.00	3.30	1.65	80.00
*Fauntleroy-Vashon *Southworth-Vashon *Pt. Defiance-Tahlequah	6.40	4.25	2.10	51.20
Mukilteo-Clinton	2.95	1.95	1.00	47.20
*Anacortes to Lopez - Sunday-Tuesday	12.70	7.75	2.85	105.75
*Lopez - Wednesday-Saturday	14.10	8.60	3.15	105.75
*Shaw, Orcas - Sunday-Tuesday	13.65	8.70	3.80	113.65
*Shaw, Orcas - Wednesday-Saturday	15.15	9.65	4.20	113.65
*Friday Harbor - Sunday-Tuesday	14.75	9.80	4.90	122.65
*Friday Harbor - Wednesday-Saturday	16.35	10.85	5.40	122.65
Between Lopez, Shaw, Orcas and Friday Harbor ³	4.75	4.75	4.75	N/A
Anacortes to Sidney and Sidney to all destinations	21.40	13.40	5.40	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations ⁶	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	7.40	4.40	1.40	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁷	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁵	28.80	17.80	6.80	N/A

All fares rounded to the next multiple of \$0.05.
 * These routes operate as a one-point toll collection system.

¹SIZE - All vehicles up to 20' in length and under 7'6" shall pay the vehicle under 20' toll. Vehicles up to 20' but over 7'6" in height shall pay an overheight charge of 100% of the vehicle full fare. Motorcycles with trailers, sidecars, or any vehicle licensed as a motorcycle with three or more wheels will pay an oversize motorcycle charge of 100% of the motorcycle full fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identifica-

tion which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

²MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund. For mail order deliveries, WSF may add additional days to allow for delivery time. Starting on the earliest fare change opportunity (May 1 or the second Sunday in October) at a minimum 6 months after completion of system-wide implementation of the Electronic

Fare System (EFS), purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers paying with commuter vouchers made available through local transit agencies or qualifying for the senior/disabled and youth fares.

³INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

⁴SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

⁵ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

⁶RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

⁷RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from the first Sunday in May to the second Sunday in

October except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel. This program will expire after ((April 30, 2008)) October 10, 2009.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. This media shall be valid only ((until the first of May following the date of purchase)) through October 10, 2009, after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

AMENDATORY SECTION (Amending WSR 07-08-064, filed 3/29/07, effective 5/1/07)

WAC 468-300-040 Oversize vehicle ferry tolls.

EFFECTIVE 03:00 A.M. May 1, 2007

ROUTES	Oversize Vehicle Ferry Tolls ¹							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Fauntleroy-Southworth								
Port Townsend/Keystone	13.35	26.70	35.60	44.50	53.40	62.30	71.20	0.90

ROUTES	Oversize Vehicle Ferry Tolls ¹							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Seattle-Bainbridge Island								
Seattle/Bremerton								
Edmonds-Kingston	17.35	34.65	46.20	57.75	69.30	80.85	92.40	1.20
*Fautleroy-Vashon								
*Southworth-Vashon								
*Pt. Defiance-Tahlequah	22.20	44.40	59.20	74.00	88.80	103.60	118.40	1.50
Mukilteo-Clinton	10.30	20.55	27.40	34.25	41.10	47.95	54.80	0.70
*Anacortes to Lopez - Sunday-Tuesday ²	35.95	71.85	95.80	119.75	143.70	167.65	191.60	2.40
*Anacortes to Shaw, Orcas - Sunday-Tuesday ²	43.15	86.25	115.00	143.75	172.50	201.25	230.00	2.90
*Anacortes to Friday Harbor - Sunday-Tuesday	51.25	102.45	136.60	170.75	204.90	239.05	273.20	3.45
*Anacortes to Lopez - Wednesday-Saturday ²	39.90	79.80	106.40	133.00	159.60	186.20	212.80	2.70
*Anacortes to Shaw, Orcas - Wednesday-Saturday ²	47.85	95.70	127.60	159.50	191.40	223.30	255.20	3.20
*Anacortes to Friday Harbor - Wednesday-Saturday	56.85	113.70	151.60	189.50	227.40	265.30	303.20	3.80
Between Lopez, Shaw, Orcas and Friday Harbor ³	25.00	49.95	66.60	83.25	99.90	116.55	133.20	N/A
<i>International Travel</i>								
Anacortes to Sidney to all destinations - Recreational Vehicles and Buses	64.45	64.45	85.90	107.40	128.85	150.35	171.80	2.15
Anacortes to Sidney and Sidney to all destinations - Commercial Vehicles	64.45	128.85	171.80	214.75	257.70	300.65	343.60	4.30
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations - Recreational Vehicles and Buses	49.45	49.45	70.90	92.40	113.85	135.35	156.80	2.15
Travelers with advanced reservations (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations ⁵ - Commercial Vehicles	49.45	113.85	156.80	199.75	242.70	285.65	328.60	4.30
Lopez, Shaw, Orcas and Friday Harbor to Sidney - Recreational Vehicles and Buses	19.20	19.20	25.60	32.00	38.40	44.80	51.20	0.65
- Commercial Vehicles	19.20	38.40	51.20	64.00	76.80	89.60	102.40	1.30
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney ⁶ - Recreational Vehicles and Buses	12.20	12.20	18.60	25.00	31.40	37.80	44.20	0.65
- Commercial Vehicles	12.20	31.40	44.20	57.00	69.80	82.60	95.40	1.30
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) ⁴ - Recreational Vehicles and Buses	83.65	83.65	111.50	139.40	167.25	195.15	223.00	2.80
- Commercial Vehicles	83.65	167.25	223.00	278.75	334.50	390.25	446.00	5.60

¹OVERSIZE VEHICLES - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel

free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 20-30 feet in length and over 7'6" in height shall be charged the 20-30 foot length and under 7'6" in height fare for vehicles equipped with wheelchair lift or other mechanism designed to accommodate the person with the disability.

- ²TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: May 1, 2007 - (~~April 30, 2008~~) October 10, 2009, \$56.50 base season, \$76.25 peak season.
- ³INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.
- ⁴ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.
- ⁵RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.
- ⁶RESERVATION FARES - These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.
- COMMERCIAL VEHICLE RESERVATION FEES - For commercial vehicles traveling with reservations a participation fee (\$200 for summer schedule season, \$100 for each of the other schedule seasons) will be charged. Fees will be collected when reservations are confirmed.
- PEAK SEASON SURCHARGE - A peak season surcharge shall apply to all oversize vehicles. The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle.
- SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate. The senior citizen discount shall apply to the driver of an oversize vehicle.
- PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.
- DISCOUNT FROM REGULAR TOLL - Effective June 1, 2005, through fall of 2005, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in spring 2006, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.
- GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.
- SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.
- EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only

be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

WSR 08-04-078
PROPOSED RULES
EXECUTIVE ETHICS BOARD

[Filed February 4, 2008, 3:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-13-001 on June 6, 2007.

Title of Rule and Other Identifying Information: WAC 292-110-010 Use of state resources.

Hearing Location(s): 2425 Bristol Court, Conference Room 148, Olympia, WA 98504, on March 14, 2008, at 9:00.

Date of Intended Adoption: March 14, 2008.

Submit Written Comments to: Melanie de Leon, P.O. Box 40149, Olympia, WA 98504-0149, e-mail ethics@atg.wa.gov, fax (360) 486-3955, by February 28, 2008.

Assistance for Persons with Disabilities: Contact Ruthann Bryant by March 3, 2008, (360) 586-3265.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Further clarifies RCW 42.52.160. Allows that all forms of technology (computers, e-mail, internet, and telephones) are treated alike. The amendment also reinforces the fact that all communications made on a state-owned device may be subject to the Public Records Act.

The amendment also clarifies that public resources may not be used to support an outside business or group, including a private business or political party. However, public resources may be used to support a nonprofit organization if provided for by law or authorized by an agency director.

Reasons Supporting Proposal: The board receives many questions regarding the use of state resources. By amending the rule, we believe that agency employees will gain a better understanding of the rules and regulations of the Ethics in Public Service Act.

Statutory Authority for Adoption: RCW 42.52.360.

Statute Being Implemented: Chapter 42.52 RCW.

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

Name of Proponent: Executive ethics board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Melanie de Leon, 2425 Bristol Court, Olympia, WA 98504, (360) 586-6759.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. There is no fiscal impact on the state.

January 30, 2008

Melanie de Leon
Executive Director

AMENDATORY SECTION (Amending WSR 02-07-074, filed 3/18/02, effective 4/18/02)

WAC 292-110-010 Use of state resources. (1) **State-ment of principles - stewardship.** The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is a responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations. Personal benefit or gain may include ~~((a use solely for personal convenience, or))~~ a use to avoid personal expense. Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer ~~((and))~~ or state employee, or with the state officer or state employee who authorizes such use. Employees and officials are cautioned that their own personal use of state resources should never interfere with another state official or employee, ~~((or))~~ nor obligate another employee to make personal use of state resources. In addition, state employees have an affirmative duty to ensure that any personal use of state resources is the most efficient in terms of overall time and resources.

(2) **Permitted uses.** Use of state resources that is reasonably related to the conduct of official state duties, or otherwise allowed by statute, does not violate RCW 42.52.160. In addition, an agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty ~~((or))~~. An example ~~((of))~~ of such use would be conducting an agency combined fund drive campaign. ~~((Such uses shall be specifically authorized in writing and any use shall strictly conform to specific agency guidance.))~~ Agencies are strongly encouraged to use caution when authorizing these types of activities.

(3) **Permitted uses - under limited circumstances.** Extensive or repeated personal misuse of state resources, including state time, significantly undermines public trust in state government. Nevertheless, a very limited personal use of state resources that supports organizational effectiveness would not undermine public trust and confidence. An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee. In addition, and notwithstanding the prohibition in RCW 42.52.160(1), but subject to subsection (6) of this section, a state officer or employee may make an occasional but limited use of state resources only if each of the following conditions are met:

- (a) There is little or no cost to the state;
- (b) Any use is brief in duration, occurs infrequently ~~((;))~~ and is the most effective use of time or resources. A single use daily to ensure the health and safety of a family member does not violate RCW 42.52.160;
- (c) The use does not interfere with the performance of the officer's or employee's official duties;
- (d) The use does not disrupt or distract from the conduct of state business due to volume or frequency;
- (e) The use does not disrupt other state employees and does not obligate them to make a personal use of state resources; and

(f) The use does not compromise the security or integrity of state property, information, or software. Agencies are encouraged to develop technology policies which act to safeguard the integrity of state property information and software.

(4) **Permitted use of computers ~~((and))~~, electronic mail, ~~((and))~~ the internet and other technologies.** A state officer or employee may use state ~~((computers and other))~~ equipment ~~((to access computer networks or other data bases, including))~~ such as the telephone, the internet and electronic mail, provided such use conforms to ethical standards under subsection (3) of this section, and the use is not otherwise prohibited under subsection (6) of this section. ~~((A state officer or employee may use state computers and other equipment to access the internet only if the officer's or employee's agency has adopted a policy governing internet access that is consistent with subsections (3) and (6) of this section.))~~

(5) **No expectation of privacy.** Technologies such as electronic mail, facsimile transmissions, the internet, and voice mail ~~((are technologies that))~~ may create an electronic record. This is what separates these from other forms of communication such as a telephone conversation. ~~((An))~~ The ethics rules do not distinguish between the various forms of communication. Electronic records ~~((is))~~ are reproducible and ~~((is))~~ therefore ~~((not))~~ cannot be considered private. Such records may be subject to disclosure under the public disclosure law, or may be disclosed for audit or legitimate state operational or management purposes.

(6) **Prohibited uses.** The state Constitution, state and federal laws, and the Ethics in Public Service Act strictly prohibit certain private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees generally. This rule explicitly prohibits at all times the following private uses of state resources ~~((;))~~:

- (a) Any use for the purpose of conducting an outside business or private employment;
- (b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to ~~((;))~~ a private business ~~((; a non-profit organization;))~~ or a political party ~~((;))~~. Supporting or promoting the interests of a nonprofit organization is also prohibited, unless provided for by law or authorized by an agency head or designee ~~((;))~~;
- (c) Any use for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Such a use of state resources is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2);
- (d) Any use for the purpose of participating in or assisting in an effort to lobby the state legislature, or a state agency head. Such a use of state resources is specifically prohibited by RCW 42.17.190, subject to the exceptions in RCW 42.17.190(3);
- (e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy; and
- (f) Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

(7) **Reimbursement for personal use.** Establishing a system for reimbursement for private or personal use of state resources undermines the purpose of the Ethics in Public Service Act and imposes significant administrative burdens on state agencies. However, the board recognizes that in some limited situations, such as officers or employees working at remote locations, a system of reimbursement may be appropriate. Any system of reimbursement must be established by the agency in advance, and must result in little or no cost to the state, including administrative costs. To be ~~((valid))~~ permitted under this rule, the board must approve any reimbursement system implemented by an agency.

(8) **Agency policies encouraged.** State agencies are encouraged to adopt policies applying these principles to their unique circumstances. Agency policies that are approved by the board qualify for "safe harbor" under WAC 292-120-035. Nothing in this rule is intended to limit the ability of an agency to adopt policies that are more restrictive. However, violation of a more restrictive agency policy by itself will not constitute a violation of RCW 42.52.160, even if it would constitute a violation of agency policy.

(9) **Frequently asked questions and examples.** The board maintains a list of frequently asked questions and examples that provide additional guidance regarding this rule. State officers and employees are encouraged to review this document at the board's web site www.wa.gov/ethics or to request a copy of the document through the board's office.

Washington State Executive Ethics Board
2425 Bristol Court SW
P.O. Box 40149
Olympia, WA 98504-0149
Or by electronic mail at: ethics@atg.wa.gov

WSR 08-04-079
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed February 4, 2008, 3:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-107.

Title of Rule and Other Identifying Information: The department is amending WAC 388-550-5450 Supplemental distributions to approved trauma service centers.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 11, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 12, 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 DSHSRPAU-

RULESCOORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on March 11, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by March 4, 2008, TTY (360) 664-6178 or (360) 664-6097 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 language to update the method for determining supplemental distributions to hospitals beginning with state fiscal year (SFY) 2008 and to clarify that the deadline for adjusting qualified trauma claims submitted to the health and recovery services administration (HRSA) by hospitals is consistent with the deadline for trauma claims submitted to HRSA by physicians and other clinical providers.

Reasons Supporting Proposal: The rule does not add additional costs to providers and helps ensure that the total amount of supplemental distributions for the trauma care fund (TC) disbursed to eligible hospitals in any biennium does not exceed the amount appropriated by the legislature for that biennium.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Statute Being Implemented: RCW 74.09.160 and 74.168.040.

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

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Ayuni Wimpee, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1835.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ayuni Wimpee, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1835, fax (360) 753-7315, e-mail wimpea@dshs.wa.gov.

January 31, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-14-090, filed 6/29/07, effective 8/1/07)

WAC 388-550-5450 Supplemental distributions to approved trauma service centers. (1) The trauma care fund (TCF) is an amount legislatively appropriated to the department each biennium, at the legislature's sole discretion, for the purpose of supplementing the department's payments to eligible trauma service centers for providing qualified trauma services to eligible Medicaid fee-for-service clients. Claims for trauma care provided to clients enrolled in the department's managed care programs are not eligible for supplemental distributions from the TCF.

(2) Beginning with trauma services provided after June 30, 2003, the department makes supplemental distributions from the TCF to qualified hospitals, subject to the provisions in this section and subject to legislative action.

(3) To qualify for supplemental distributions from the TCF, a hospital must:

(a) Be designated or recognized by the department of health (DOH) as an approved Level 1, Level 2, or Level 3 adult or pediatric trauma service center;

(b) Meet the provider requirements in this section and other applicable WAC;

(c) Meet the billing requirements in this section and other applicable WAC;

(d) Submit all information the department requires to ensure services are being provided; and

(e) Comply with DOH's Trauma Registry reporting requirements.

(4) Supplemental distributions from the TCF are:

(a) Allocated into five fixed payment pools of equal amounts. Timing of payments is described in subsection (5) of this section. Distributions from the payment pools to the individual hospitals are determined by first summing each eligible hospital's qualifying payments since the beginning of the service year and expressing this amount as a percentage of total payments to all eligible hospitals for qualifying services provided during the service year to date. Each hospital's qualifying payment percentage for the service year-to-date is multiplied by the available amount ((in the current period pool)) for the service year-to-date, and then the department subtracts what has been allocated to each hospital for the service year-to-date to determine the portion of the current quarterly payment pool to be paid to each qualifying hospital. This method for determining supplemental distributions to hospitals applies to TCF allotments beginning with state fiscal year (SFY) 2008. This method supersedes and preempts the method adopted in rule and effective August 1, 2007. Eligible hospitals and qualifying payments are described in (i) through (iii) of this subsection:

(i) Qualifying payments are the department's payments to Level 1, Level 2, and Level 3 trauma service centers for qualified Medicaid trauma cases since the beginning of the service year. The department determines the countable payment for trauma care provided to Medicaid clients based on date of service, not date of payment;

(ii) The department's payments to Level 1, Level 2, and Level 3 hospitals for trauma cases transferred in since the beginning of the service year. A Level 1, Level 2, or Level 3 hospital that receives a transferred trauma case from any lower level hospital is eligible for the enhanced payment, regardless of the client's injury severity score (ISS). An ISS is a summary rating system for traumatic anatomic injuries; and

(iii) The department's payments to Level 2 and Level 3 hospitals for qualified trauma cases (those that meet or exceed the ISS criteria in subsection (4)(b) of this section) that these hospitals transferred to a higher level designated trauma service center since the beginning of the service year.

(b) Paid only for a Medicaid trauma case that meets:

(i) The ISS of thirteen or greater for an adult trauma patient (a client age fifteen or older);

(ii) The ISS of nine or greater for a pediatric trauma patient (a client younger than age fifteen); or

(iii) The conditions of subsection (4)(c).

(c) Made to hospitals, as follows, for a trauma case that is transferred:

(i) A hospital that receives the transferred trauma case qualifies for payment regardless of the ISS if the hospital is designated or recognized by DOH as an approved Level 1, Level 2, or Level 3 adult or pediatric trauma service center;

(ii) A hospital that transfers the trauma case qualifies for payment only if:

(A) It is designated or recognized by DOH as an approved Level 2 or Level 3 adult or pediatric trauma service center; and

(B) The ISS requirements in (b)(i) or (b)(ii) of this subsection are met.

(iii) A hospital that DOH designates or recognizes as an approved Level 4 or Level 5 trauma service center does not qualify for supplemental distributions for trauma cases that are transferred in or transferred out, even when the transferred cases meet the ISS criteria in subsection (4)(b) of this section.

(d) Not funded by disproportionate share hospital (DSH) funds; and

(e) Not distributed by the department to:

(i) Trauma service centers designated or recognized as Level 4 or Level 5;

(ii) Critical access hospitals (CAHs), except when the CAH is also a Level 3 trauma service center. Beginning with qualifying trauma services provided in ((state fiscal year ()))SFY((+)) 2007, the department allows a hospital with this dual status to receive distributions from the TCF; or

(iii) Any hospital for follow-up surgical services related to the qualifying trauma incident but provided to the client after the client has been discharged for the initial qualifying injury.

(5) Distributions for an SFY are divided into five "quarters" and paid as follows:

(a) Each quarterly distribution paid by the department from the TCF totals twenty percent of the amount designated by the department for that SFY;

(b) The first quarterly supplemental distribution from the TCF is made six months after the SFY begins;

(c) Subsequent quarterly payments are made approximately every four months after the first quarterly payment is made, except as described in subsection (d);

(d) The "fifth quarter" final distribution from the TCF for the same SFY is:

(i) Made one year after the end of the SFY;

(ii) Based on the SFY that the TCF designated amount relates to; and

(iii) Distributed based on each eligible hospital's percentage of the total payments made by the department to all designated trauma service centers for qualified trauma cases during the relevant fiscal year.

(6) For purposes of the supplemental distributions from the TCF, all of the following apply:

(a) The department may consider a request for a claim adjustment submitted by a provider only if the request is

received by the department within one year from the date of the initial trauma service;

(b) The department does not allow any carryover of liabilities for a supplemental distribution from the TCF beyond three hundred sixty-five calendar days from the date of discharge (inpatient) or date of service (outpatient). The deadline for making adjustments to a trauma claim is the same as the deadline for submitting the initial claim to the department as specified in WAC 388-502-0150(3). WAC 388-502-0150 (7) does not apply to TCF claims;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total amount of supplemental distributions from the TCF disbursed to eligible hospitals by the department in any biennium cannot exceed the amount appropriated by the legislature for that biennium. The department has the authority to take whatever actions necessary to ensure the department stays within the TCF appropriation.

WSR 08-04-081
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed February 4, 2008, 11:00 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 246-224 WAC, Radiation protection—Radiation machine assembly and registration, WAC 246-224-0010 Definitions, 246-224-0040 What if we have separate locations with radiation machines?, 246-224-0050 When and how do I register?, 246-224-0070 When and how do I report changes to my registration?, 246-224-0080 When and how do I renew my registration?, and 246-224-0090 What are my obligations if I close my facility or get rid of a machine?

Hearing Location(s): Department of Health, Town Center 3, Room 224, 243 Israel Road S.E., Tumwater, WA 98501, on March 11, 2008, at 2:00 p.m.

Date of Intended Adoption: March 12, 2008.

Submit Written Comments to: Ellen G. Haars, Ph.D., X-ray Program, P.O. Box 47827, Olympia, WA 98504-7827, ellen.haars@doh.wa.gov, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2266, by March 11, 2008.

Assistance for Persons with Disabilities: Contact Sharon Grundhoffer by March 1, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 246-224 WAC informs registrants on how to apply for an X-ray registration and pay registration and renewal fees through the department of licensing (DOL). Amendments are needed for clarity and consistency with chapter 246-254 WAC, Radiation protection—Fees.

Reasons Supporting Proposal: Previously, chapter 246-254 WAC, Radiation protection—Fees, was revised in order to participate in DOL's master license service (MLS) and to comply with the governor's enterprise business portal initiative and RCW 19.02.050. Revisions are now needed in chapter 246-224 WAC to inform registrants on how to apply for

their X-ray registration and pay registration and renewal fees through DOL.

Statutory Authority for Adoption: RCW 19.02.050, 43.20B.020, 43.70.110, 70.98.050, 70.98.080.

Statute Being Implemented: RCW 19.02.050, 43.20B.020, 43.70.110, 70.98.050, 70.98.080.

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Terry Frazee, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3213; Implementation and Enforcement: Ellen G. Haars, Ph.D., 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3231.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025(3) and 34.05.310 (4)(g)(ii), an SBEIS is not required for proposed rules that adopt, amend, or repeal a filing or related process requirement for applying to an agency for a license or permit.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

February 4, 2008

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0010 Definitions. "Agent" means a person, company, or dealer; which assembles, installs, repairs, sells, or leases X-ray machines.

"Application" means, for the purpose of this chapter, the master business application and appropriate addenda used by the master license service of the department of licensing (DOL).

"Department" means the department of health.

"DOL" means the department of licensing.

"Facility" means ~~((the location))~~ all buildings, structures, and operations on one contiguous site or identified by one physical location address designation at which one or more radiation machines are installed, manufactured, tested, or used ~~((within one building, vehicle, or in one physical complex))~~.

"FDA" means the United States Food and Drug Administration.

"MLS" means the department of licensing's master license service.

"Radiation" means, for the purposes of this chapter, ionizing radiation, including X-ray, electron beam, and other machine produced particulate radiation.

"Radiation machine" means, for purposes of this chapter, a device that, when operated, produces X-ray or electron radiation, in a prescribed manner, with defined characteristics,

techniques, or parameters. It does not include devices with radioactive material as the only source of radiation.

"Registrant" means the owner or controller of the radiation machine who is responsible for the safe operation of the radiation machine.

"Registration" means providing required information and continuing contact with the department by any person possessing a radiation machine in accordance with regulations adopted by the department.

"Storage" means the status of a radiation machine that is approved by the department as being unable to produce radiation without substantial effort at set-up, reassembly, or reinstallation. For facilities with a radiation control authority, (e.g., radiation safety office) a locking or disabling procedure may serve to provide this status.

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0040 What if we have separate locations with radiation machines? (1) Geographically separate facilities must register separately even if these separate facilities are under one administrative control (e.g., several satellite clinics operated by one health care institution).

(2) Each facility must designate a contact person.

(3) If machines are routinely moved between or among separate facilities, ~~((indicate this when registering))~~ notify DOL prior to the machine being moved, or notify the department at the time shielding plans are submitted for review.

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0050 When and how do I register? (1) You must register with the department ~~((within))~~ through submission of a master business license application and appropriate addendum used by MLS no later than fifteen calendar days of initial use unless shielding plans review is required. ((You may also register anytime before initial use.))

(2) Facilities requiring shielding plan review must register with DOL and submit plans to the department for review prior to construction or installation of radiation machines according to WAC 246-225-030, General requirements—Plan review.

(3) Registration is valid for one year from the department approval date, or any other date as may be determined through partnership with MLS.

~~((3))~~ You must provide, at a minimum, the:

- (a) Owner name;
- (b) Profession and credential of user/registrant;
- (c) Official contact person;
- (d) Site address and phone number;
- (e) Mailing address and phone number (if different from facility);
- (f) Total number and type of radiation machines (tubes) at the facility;
- (g) Installation date(s);
- (h) Seller/installer name; and
- (i) Name of former agent and address of former facility from which the machines were transferred or sold.)

(4) Pay applicable registration fees according to WAC 246-254-053, Radiation machine facility registration fees.

(5) Submit registration information and applicable fees to((:

~~Department of Health~~

~~Revenue Section~~

~~P.O. Box 1099~~

~~Olympia, WA 98507-1099~~

360-236-3230 or 1-800-299-XRAY)) MLS in accordance with their instructions.

Note: For ~~((division of radiation protection))~~ DOL information, visit the following web site:

~~((http://www.doh.wa.gov/ehp/rp/Default.htm.))~~

http://www.dol.wa.gov/business/xray.htm.

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0070 When and how do I report changes to my registration? (1) You must notify ~~((the department))~~ DOL within thirty days of any change to your registration information.

(2) Submit registration changes to:

Department of ~~((Health))~~ Licensing

~~((X-Ray Control Section))~~ Master License Service

P.O. Box ~~((47827))~~ 49034

Olympia, WA 98504-~~((7827))~~ 9034

~~((360-236-3230 or 1-800-299-XRAY))~~ 360-664-1400 or fax 360-570-7875

~~((3))~~ You may notify the department of changes on the registration renewal notice if timely.)

Note: For ~~((division))~~ office of radiation protection information, visit the following web site:

http://www.doh.wa.gov/ehp/rp/Default.htm.

For department of licensing information, visit the following web site:

http://www.dol.wa.gov/business/xray.htm.

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0080 When and how do I renew my registration? (1) You ~~((must renew your registration annually))~~ will receive registration renewal notices from DOL.

(2) You must submit renewal information and the applicable ~~((registration))~~ fees to DOL as specified ~~((in WAC 246-254-053 at least thirty calendar days prior to your registration expiration date. The department provides notice of fees and current registration information ninety days prior to the registration expiration date, and anytime upon request))~~ by MLS.

(3) If ~~((registration is overdue, late fees apply according to WAC 246-254-053, Radiation machine facility registration fees))~~ you do not receive a renewal notice, contact DOL.

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0090 What are my obligations if I close my facility or get rid of a machine? (1) You must notify the department or DOL of the machine status within thirty days of closure or removal.

(2) If the machine is disposed of or transferred within Washington state, you must provide the department the following:

- (a) The name and contact information of the recipient;
- (b) The address of the recipient; and
- (c) The date of the disposal or transfer.

(3) If the machine is to be placed in storage and retained, contact the department for approval.

WSR 08-04-084
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed February 5, 2008, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-087.

Title of Rule and Other Identifying Information: WAC 392-343-080 Value engineering studies, constructability reviews, and building commissioning—Requirements and definition, lowers the threshold for state match funding for building commissioning for common school construction. Allows for state match funding for school construction starting at five thousand square feet.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, on March 17, 2008, at 9:30 a.m.

Date of Intended Adoption: March 18, 2008.

Submit Written Comments to: Scott Black, Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, by March 16, 2008.

Assistance for Persons with Disabilities: Contact Penny Coker by March 16, 2008, TTY (360) 725-6130.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule change is to reconcile the differences in requirements and state funding eligibility between the state funding formula in WAC 392-343-080 and the high-performance public buildings law, chapter 39.35D RCW, in regard to building commissioning. Building commissioning is currently funded starting at fifteen thousand square feet by required at five thousand square feet for projects subject to chapter 39.35D RCW.

Projects between five thousand square feet and fifteen thousand square feet will now be able to receive state match funding for building commissioning.

Reasons Supporting Proposal: Currently, state match to fund building commissioning for school construction projects starts at fifteen thousand square feet. Allowing state match to start at five thousand square feet is necessary because projects over five thousand square feet are not required under another statute to perform building commissioning.

Statutory Authority for Adoption: RCW 28A.525.020 Duties of the superintendent of public instruction.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This change will help school districts pay the fees for building commissioning.

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6268; and Enforcement: Gordon Beck, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6261.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose any costs on school districts.

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

February 5, 2008
 Dr. Terry Bergeson
 Superintendent of
 Public Instruction

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

WAC 392-343-080 Value engineering studies, constructability reviews, and building commissioning—Requirements and definition. At the appropriate time in the design process for a school facility approved by the superintendent of public instruction, the district shall prepare a value engineering study, complete a constructability review, and perform building commissioning for all projects greater than fifty thousand square feet. Value engineering studies(=) and constructability reviews(= ~~and building commissioning~~) shall be optional for projects larger than fifteen thousand square feet but less than fifty thousand square feet. Any project which includes fifteen thousand square feet or less shall be exempt from this requirement. For projects subject to chapter 39.35D RCW, building commissioning must be performed for all projects over five thousand square feet. For the purpose of this section, a value engineering study is defined as a cost control technique which is based on the use of a systematic, creative analysis of the functions of the facility with the objective of identifying unnecessary high costs or functions and/or identifying cost savings that may result in high maintenance and operation costs. The study shall consist of a forty-hour workshop involving a minimum of a five-person team pursuant to WAC 392-344-065. A constructability review is defined as a cost control technique which is based on the review of project documents by mechanical, electrical, structural, construction, and design professionals prior to a request for bids. The purpose of a constructability review is to identify potential claim or problem areas and deficiencies that may occur as a result of errors, ambiguities, omissions, discrepancies, and conflicts in design documents. The study shall consist of a forty-hour workshop involving a minimum of a five-person team pursuant to WAC 392-344-066. Building commissioning is defined as the process of verifying that the installation and performance of selected building systems

meet or exceed the specified design criteria and therefore satisfy the design intent. Building commissioning shall include a physical inspection, functional performance testing, listing of noted deficiencies, and a final commissioning report. Building commissioning shall be performed by a professional agent or authority not contractually or otherwise financially associated with the project design team or contractor. A district shall be eligible for state assistance for a value engineering study, a constructability review, and building commissioning for each qualifying project. The maximum amount of assistance for ~~((each component))~~ value engineering studies and constructability reviews of the study package shall be the state matching percentage multiplied by the greater of the following:

(1) Two-fifths of one percent of the area cost allowance multiplied by the square foot area for the fiscal year funded; or

(2) Twenty thousand dollars.

The maximum amount of assistance for building commissioning shall be as follows:

(a) Seven thousand five hundred dollars for projects larger than five thousand square feet but less than ten thousand square feet;

(b) Ten thousand dollars for projects ten thousand square feet but less than fifteen thousand square feet;

(c) The larger of the following for projects fifteen thousand square feet and above:

(i) Two-fifths of one percent of the area cost allowance multiplied by the square foot area for the fiscal year funded;
or

(ii) Twenty thousand dollars.

WSR 08-04-085

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed February 5, 2008, 11:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-051.

Title of Rule and Other Identifying Information: WAC 392-347-023 State assistance in post 1992 facilities.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, on March 17, 2008, at 9:00 a.m.

Date of Intended Adoption: March 18, 2008.

Submit Written Comments to: Scott Black, Office of Superintendent of Public Instruction, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, by March 16, 2008.

Assistance for Persons with Disabilities: Contact Penny Coker by March 16, 2008, TTY (360) 725-6130.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 392-347-023 to delay the start of the required fifteen year demonstration period of 2% maintenance spending of all school districts seeking state funding for modernization of

post 1992 buildings. The demonstration period would be delayed from January 2008 until January 2009.

Reasons Supporting Proposal: There are ongoing discussions regarding the overall procedures for funding school facilities. The groups looking at the issue are: Legislative task force on school financing, technical advisory panel (TAC) and the superintendent of public instruction nonemployee related costs committee (NERC). The change is needed to allow the delay in the reporting period until final decisions regarding the subject can be made.

Statutory Authority for Adoption: RCW 28A.525.020 Duties of the superintendent of public instruction.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6268; and Enforcement: Gordon Beck, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6261.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose any costs on school districts.

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

February 5, 2008

Dr. Terry Bergeson

Superintendent of

Public Instruction

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

WAC 392-347-023 State assistance in post ~~((1992))~~ 1993 facilities. State assistance for modernization of school facilities accepted by the school district board of directors after January 1, ~~((1993))~~ 1994, shall be limited according to the following conditions:

(1) A school facility shall be ineligible for state assistance if the total expenditures for maintenance of plant and equipment for that facility during the fifteen-year period immediately preceding the project application was below one-half of one percent of the total of the annually determined building replacement values during the same period;

(2) The allowable cost per square foot used to determine the amount of state assistance in any modernization project where the total expenditures for maintenance of plant and equipment for that facility during the fifteen-year period immediately preceding the project application was at least one-half but less than two percent of the total of the annually determined building replacement values during the same period shall be reduced as follows:

(a) The allowable cost per square foot shall be reduced by twenty-two and one-half percent where the above expenditure is at least one-half but less than one percent;

(b) The allowable cost per square foot shall be reduced by fifteen percent where the above expenditure is at least one but less than one and one-half percent;

(c) The allowable cost per square foot shall be reduced by seven and one-half percent where the above expenditure is at least one and one-half but less than two percent;

(3) No reduction in the allowable cost per square foot shall be applied to any modernization project where the total expenditures for maintenance of plant and equipment for that facility during the fifteen-year period immediately preceding the project application was two percent, or greater, of the total of the annually determined building replacement values during the same period;

(4) A district shall not be allowed to replace a school facility through new construction in lieu of modernization under WAC 392-347-042 where the total expenditures for maintenance of plant and equipment for that facility during the fifteen-year period immediately preceding the project application was below two percent of the total of the annually determined building replacement values during the same period.

(5) For the purpose of this section "maintenance of plant and equipment" shall be general fund expenditures charged to maintenance and operations activities 61-supervision and 64-maintenance and capital projects fund expenditures charged to type code 22-remodeling and 42-capital improvements as defined in the *Accounting Manual for Public School Districts*.

WSR 08-04-088
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 5, 2008, 1:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-24-068.

Title of Rule and Other Identifying Information: Chapter 296-46B WAC, Electrical safety standards, administration, and installation.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA, on March 12, 2008, at 9:00 a.m.

Date of Intended Adoption: April 1, 2008.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by March 12, 2008.

Assistance for Persons with Disabilities: Contact Sally Elliott by March 1, 2008, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule making is to amend language in WAC 296-46B-995, regarding appeals. The amendment will move the burden of proof from the appellant to the department for appeals heard before the office of administrative hearings (OAH) or directly by the electrical board. An emergency rule was filed on December 4, 2007, to protect the general welfare of the public. This will make the emergency change permanent. Additional changes will be made to continuing education

courses, to better accommodate electrical administrators, master electricians, electricians, and L&I. Renewing electrical administrators, master electricians, and electricians must now show that they have taken a NEC code update class on the currently adopted code. The change will allow a seven month overlap period for taking either the 2005 or 2008 NEC code change update class required for renewal of an electrician or electrical administrator certificate.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551.

Statute Being Implemented: Chapter 19.28 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: Ron Fuller, Tumwater, Washington, (360) 902-5249; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined they do not require a small business economic impact statement because the proposed rules clarify the language of the rule without changing its effect (see RCW 19.85.025 referencing exemptions listed under RCW 34.05.310 (4)(d)).

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared under chapter 19.85 RCW. The department considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined they do not require a cost-benefit analysis because the proposed rules clarify the language of the rule without changing its effect (see exemptions, RCW 34.05.328 (5)(b)(iv)).

February 5, 2008

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-970 Continuing education. General requirements - continuing education classes requirements for administrator, master electrician, and electrician renewal.

(1) DEFINITIONS - for purposes of this section.

(a) "Applicant" means the entity submitting an application for review.

(b) "Application" means a submittal made by an applicant seeking instructor or class approval.

(c) "Calendar day" means each day of the week, including weekends and holidays.

(d) "Class" means continuing education class or course.

(e) "Contractor" means the entity who has contracted with the department to review and approve/deny continuing education classes and instructors.

(f) "Date of notification" means the date of a request for additional information from the contractor or the approval/denial letter sent to the applicant by the contractor.

(g) "Individual" means an administrator or electrician seeking credit for continuing education.

(h) "Instructor" means an individual who is authorized to instruct an approved continuing education class.

(i) "Working day" means Monday through Friday, excluding state of Washington holidays.

(2) GENERAL.

(a) The department and the electrical board have the right to monitor all approved classes without notice and at no charge.

If the department or electrical board determines that the class or instructor does not meet or exceed the minimum requirements for approval or course length or instructor qualifications, the department may revoke the class or instructor approval and reduce the number of credited hours for the class.

(b) Department-offered classes and the instructors used for those classes are automatically approved and do not need to be sent to the contractor for review.

(c) Instructors who meet the minimum requirements using subsection (5)(b)(i)(D) of this section may only instruct classes sponsored by the manufacturer(s) who verified the instructors' qualifications under subsection (5)(b)(i)(D) of this section.

(d) An individual will not be given credit for the same approved continuing education class taken more than once. No credit will be granted for any class not approved per this section.

(e) Telecommunications administrators do not require continuing educations.

(f) Other administrators, master electricians, and electricians:

(i) To be eligible for renewal of an administrator certificate, master electrician or electrician certificate of competency, the individual must have completed at least eight hours of approved continuing education for each year of the prior certification period. The individual is not required to take the classes in separate years. At least eight hours of the total required continuing education must be on the ~~((currently adopted))~~ changes in the 2008 National Electrical Code ((changes)) or if the renewal is before December 31, 2008, the 2005 National Electrical Code may be substituted. Beginning January 1, 2005, four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and its related WAC(s).

(ii) An individual changing an electrical administrator and an electrician certificate of competency into a master electrician's certificate of competency as allowed in RCW 19.28.191 (1)(a) or (b) must have completed at least eight hours of approved continuing education for each year of the prior electrician certificate period. The individual is not required to take the classes in separate years. Eight hours of the required continuing education must be on the ~~((currently adopted))~~ changes in the 2008 National Electrical Code

~~((changes))~~ or if the renewal is before December 31, 2008, the 2005 National Electrical Code may be substituted. Beginning January 1, 2005, four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and its related WAC(s).

(iii) Any portion of a year of a prior administrator or electrician certificate period is equal to one year for the purposes of the required continuing educations.

(iv) An individual who has both an electrician certificate and an administrator certification may use the same class to fulfill the requirements for continuing education.

(g) Training certificates:

(i) Effective July 1, 2007, to be eligible for renewal of a training certificate, the individual must have completed:

(A) At least sixteen hours of approved basic classroom electrical training classes; or

(B) Equivalent electrical training courses taken as a part of an approved:

- Apprenticeship program under chapter 49.04 RCW; or
- Electrical training program under RCW 19.28.191

(1)(h).

Note that trainees seeking experience credit in the pump and irrigation **(03)** or domestic pumping **(03A)** specialties must take pumping industry basic classroom training classes;

In addition, trainees working in the pump and irrigation **(03)** or domestic pump **(03A)** specialties may be credited for courses approved as a part of the requirements for plumber trainees required in RCW 18.106.070(5).

(h) A continuing education class attended or completed by an individual before the class's effective date cannot be used to meet the certificate renewal requirements.

(i) If neither the electrical board nor the department has a contract in effect as described in this section, the department may, at its option, elect to act as the contractor. If a contractor is not in place and the department elects not to act as the contractor, the electrical board will act as the contractor. If either the electrical board or the department acts as the contractor, the following will apply:

(i) The fee for class or instructor submittal is as set in WAC 296-46B-910(4).

(ii) The electrical board or the department will:

(A) Review the application for completeness within fifteen working days after receipt.

(B) If the application is incomplete, notify the applicant within seven working days of the status of the review and what additional information is required.

(C) Complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information.

(iii) An appeal of a denial by the department will be heard by the full electrical board in accordance with WAC 296-46B-995.

(3) CLASS AND INSTRUCTOR - GENERAL APPROVAL PROCESS.

(a) The contractor will review submitted class and instructor applications to determine whether the application meets the minimum requirements for approval.

(b) The contractor will deny approval of applications that do not meet the minimum requirements.

(c) All applications will be considered to be new applications (i.e., Classes and instructors may not be renewed. All applications must include all information necessary to show conformance with the minimum requirements).

(d) Minimum requirements:

(i) Application review fees:

(A) The contractor may charge a fee for review of an application. Such fees, paid by the applicant, are nonrefundable.

(B) The fee will be as set by contractor between the department and the contractor.

(C) The fee will be set for a minimum of one year.

(D) Upon mutual agreement between the department and the contractor, the fee may be raised or lowered.

(ii) Application:

(A) The applicant must submit a complete application to the contractor at least thirty calendar days prior to offering or instructing a class.

(B) The contractor will only consider material included with the application when reviewing an application.

(C) All applications will consist of:

- One copy of all material;
- Applicant's name, address, contact name, and telephone number;
- All required fees;
- Any other information the applicant wants to consider during the review; and
- Class applications will include:
 - Sponsor's name, address, contact name, and telephone number;
 - Class title;
 - Number of continuing education hours requested for the class;
 - Category of class for which approval is sought (i.e., code update, RCW/WAC update, industry related, basic classroom electrical training, pumping industry, or pumping industry basic classroom training);
 - Any required examinations;
 - Statement of whether the class is open to the public;
 - Class syllabus (e.g., general description of the training, specific NEC articles referenced, time allowed for various subject matter, etc.). Note that for all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction;
 - List of resources (e.g., texts, references, etc.);
 - Copies of all visual aids;
 - Sample of the completion certificate.
- Instructor application will include:
 - Instructor's name, address, telephone number;
 - Copies of credentials or other information showing conformance with the instructor minimum qualifications.

(e) Contractor's review process:

(i) When the application is received, the contractor must:

(A) Date stamp the application;

(B) Review the application for completeness within seven working days after receipt.

(ii) If the application is incomplete, the contractor must within two working days notify the applicant of the status of the review and what additional information is required.

(A) The applicant must provide any additional information requested by the contractor within five working days after the date of notification.

(B) The contractor will deny the application if the additional required information is not received within the five working days after the date of notification.

(iii) When the contractor has received a complete application, the contractor must review and evaluate the application for compliance with the minimum requirements.

The contractor must complete the review and approval/denial process within seven working days upon receipt of a complete application or additional requested information and within two working days notify:

- The applicant in writing; and
- The chief electrical inspector in writing and electronically. The contractor's electronic notification to the chief electrical inspector must be made in a format approved by the chief electrical inspector.

(iv) A notification of denial must include:

(A) Applicant's name and telephone number;

(B) Date of denial;

(C) Sponsor's name and class title if applicable;

(D) Instructor's name if applicable; and

(E) The reason for denial.

(v) A notification of approval:

(A) For classes must include:

- Applicant's name and telephone number;
 - Sponsor's name and telephone number;
 - Class title;
 - Class number;
 - Number of hours approved for the class. Note that the contractor may reduce the hours requested in the application if the review shows that the requested number of hours is excessive;
 - Effective date for this class;
 - Expiration date of class;
 - Category for which the class is approved (i.e., code update, RCW/WAC update, industry related, basic classroom electrical training, pumping industry, or pumping industry basic classroom training);
 - Sample of written class roster and attendance sheet;
 - Type of class (i.e., classroom, correspondence, internet); and
 - Whether the class is open to the public.
- (B) For instructors must include:
- Applicant's name and telephone number;
 - Instructor's name and telephone number;
 - Effective date for the approval; and
 - Expiration date of the approval.

(vi) Applicant's request for review of the contractor's decision:

The applicant's may request a review of the contractor's decision to deny or modify an application:

- All requests for review must be:
 - Made in writing;
 - Received by the chief electrical inspector within twenty calendar days of the contractor's denial; and
 - Accompanied by a review fee of \$109.50. The review fee is nonrefundable.

(4) CLASS APPROVAL PROCESS.

(a) Class approval will be valid for three years except:

(i) If the class is "code update" and a new NEC is adopted by the department within the class approval period, the class approval will be considered automatically revoked; or

(ii) If the class is modified after the application is approved, the class approval will be considered automatically revoked (i.e., change in syllabus, hours, examination, etc.).

(b) Minimum requirements:

(i) Class content:

(A) Industry-related classes must be based on:

- Codes or rules included in the NEC chapters 19.28 RCW or 296-46B WAC;

- Electrical theory based on currently published documents that are readily available for retail purchase; and/or

- Materials and methods that pertain to electrical construction, building management systems, electrical maintenance, or workplace health and safety.

(B) Code update classes must be based on the latest adopted version of the NEC and must specify the NEC articles to be addressed in the class presentation.

(C) RCW/WAC update classes must be based on the latest adopted versions of chapter 19.28 RCW and/or chapter 296-46B WAC.

(D) All basic classroom electrical training classes and pumping industry basic classroom training classes must be classroom instruction only. Correspondence and internet classes are not allowed. All basic classroom electrical training classes must include an appropriate written examination to ensure the participant understands the basic concepts of the class. To successfully complete the class, the participant must score at least seventy percent on the examination.

(E) In addition, for pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction.

(ii) Class length:

(A) The minimum allowed length of a class is two hours; however, the minimum length for a basic classroom electrical trainee classroom training or pumping industry basic classroom trainee classroom training is eight hours that can be delivered in multiple classroom sessions of not less than two hours each.

(B) The maximum allowed credit for a class is twenty-four hours.

(C) Class length must be based on two-hour increments (e.g., 2, 4, 6, 8, etc.).

(D) Class length must be based on the following:

- Classroom instruction will be based on the total hours the individual is in the classroom. A class may be divided into multiple sections so long as each section is not less than two hours in length and all sections are taken within a one month period.

- Correspondence instruction will be based on:

- A written examination (i.e., twenty-five questions will equal one hour of classroom instruction). Individuals must be responsible to determine the correct answer without the assistance of the sponsor.

- Internet instruction will be based on:

- A written examination (i.e., twenty-five questions will equal one hour of classroom instruction).

- Examinations must not direct or point the individual to a correct answer or reference. Individuals must be responsible to determine the correct answer without the assistance of the sponsor.

- To successfully complete a correspondence or internet class, a participant must score at least 70% on the examination required for the class.

(iii) Class material must include:

Supplementary written instruction material appropriate to the type and length of the class.

(iv) Class material may include:

- Supplementary internet material;

- Supplementary texts;

- Other material as appropriate.

(v) Certificates of completion:

(A) The sponsor must award a completion certificate to each individual successfully completing the approved class. To successfully complete a correspondence or internet class, a participant must score at least 70% on the examination required for the class.

(B) The completion certificate must include the:

- Name of participant;

- Participant's Washington certificate number;

- Name of sponsor;

- Name of class;

- Date of class;

- Name of instructor;

- Location of the class:

- If a classroom-type class, the city and state in which the class was given;

- If a correspondence class, state the class is a correspondence class;

- If an internet class, state the class is an internet class;

- Class approval number;

- Number of continuing units; and

- Type of continuing education units.

(vi) Instructors:

(A) For classroom instruction, all instructors must be approved per this section; and

(B) For correspondence and internet instruction, the applicant must show that the sponsor regularly employs at least one staff member who meets the requirements for instructors in this section.

(5) INSTRUCTOR APPROVAL PROCESS:

(a) Instructor approval will be valid for three years except:

(i) If the instructor's credentials are invalidated (e.g., suspension or revocation by the issuing entity) for any reason, approval will be automatically revoked.

(ii) When the instructor approval expires or is revoked, a new application must be submitted to regain approved instructor status.

(b) Minimum requirements:

(i) The application must show that the instructor meets one of the following:

(A) Has a valid Washington administrator, master electrician, or electrician's certificate and has appropriate knowl-

edge of and experience working as an electrical/electronic trainer; or

(B) Is an instructor in a two-year program in the electrical construction trade licensed by the Washington work force training and education coordinating board. The instructor's normal duties must include providing electrical/electronic education; or

(C) Is a high school vocational teacher, community college, college, qualified instructor with a state of Washington approved electrical apprenticeship program, or university instructor. The instructor's normal duties must include providing electrical/electronic education; or

(D) Works for and is approved by a manufacturer of electrical products to teach electrical continuing education.

(ii) Any other information the applicant wants to be considered during the review.

(6) FORMS:

(a) The contractor will:

Develop an appropriate form(s) for the applicant's use when submitting for instructor or class approval;

(b) Applicants must use the contractor's form when submitting an application for review.

(7) PUBLICATIONS:

The contractor will provide the department with appropriate material for use by the department on the electrical program web site and may post the application process, review, and approval requirements on the contractor's web site.

(8) CLASS ATTENDANCE:

(a) The contractor is not responsible for monitoring any individual's attendance or class completion.

(b) The department is not responsible for providing verification of an individual's continuing education history with the class sponsor;

(c) Electrical approved classes offered in Washington:

(i) The sponsor must provide the department with an accurate and typed course attendance/completion roster for each class given. Class attendance will only be verified based on the attendance/completion roster provided by the sponsor. Completion certificates are not an acceptable method of verifying attendance at a class approved in Washington under this chapter.

(A) The typed attendance/completion roster must be provided within thirty days of class completion.

(B) In addition, within seven days, the course sponsor must provide the attendance/completion roster in an internet format provided by the department.

(C) The attendance/completion roster must show each individual's name, Washington certificate number, class number, location of class, date of completion, and instructor's name. The typed roster must contain the signature of the class sponsor's authorized representative.

(ii) The sponsor must provide the individual a certificate of completion within fifteen days after successful class completion. See subsection (4) of this section.

(iii) Individuals will not be granted credit for continuing education classes unless the sponsor's attendance/completion roster shows the individual successfully completed the class.

(iv) The department will keep submitted class rosters on file for four years.

(d) Classes approved under chapter 18.106 RCW for the pumping industry will be verified through the normal roster reporting method for those classes.

(e) Classes offered in other states:

(i) For individuals to apply continuing education units earned from out-of-state classes, one of the following conditions must be met:

(A) The individual must request that the class sponsor submit a complete continuing education class application and gain approval for the class as described in this section for classes and instructors. Application for class or instructor approval will not be considered more than three years after the date the class was offered; or

(B) The department must have entered into a reciprocal agreement with the state providing class approval.

(ii) The individual must provide a copy of an accurate and completed award or certificate from the class sponsor identifying the class location, date of completion, individual's names, and Washington certificate number. The department will only accept a copy of the sponsor's certificate or form as evidence that the individual attended and completed the class. The department must verify all out-of-state sponsor's certificates or forms with the issuing state prior to accepting them as evidence of class completion.

(9) Contractor requirements:

(a) The contractor cannot be a sponsor or instructor.

(b) The contractor cannot be an employee of the department.

(c) The contractor must:

(i) Be an independent entity with no organizational, managerial, financial, design, or promotional affiliation with any sponsor or instructor covered under the contractor's review and approval/denial process;

(ii) Employ at least one staff member having a valid 01-General Administrator or 01-General Master Electrician Certificate. This staff member:

(A) Is responsible for reviewing and determining an application's approval or denial; and

(B) Must sign the written notification provided to applicants for all approvals and denials:

(iii) Receive, review, and process all applications as required in this section;

(iv) Allow the department access to the contractor's facilities during normal working hours to audit the contractor's ability to conform to the contract requirements;

(v) Treat all applications as proprietary information;

(vi) Respond to and attempt to resolve complaints contesting the review or approval/denial process performed by the applicant;

(vii) Notify the department within ten working days of any change in business status or ability to conform to this section;

(viii) Maintain one copy, original or electronic, of all applications and associated materials for a period of three years from the date of receipt.

AMENDATORY SECTION (Amending WSR 06-24-041, filed 11/30/06, effective 12/31/06)

WAC 296-46B-995 Electrical board—Appeal rights and hearings. General.

(1) Chapter 19.28 RCW provides the authority for the duties and responsibilities of the electrical board. Except as provided in chapter 19.28 RCW and this chapter, all proceedings will be conducted according to chapter 34.05 RCW the Administrative Procedure Act and chapter 10-08 WAC, Model rules of procedure. See chapter 34.05 RCW the Administrative Procedure Act for specific definitions not described in this chapter.

(2) See RCW 19.28.311 for the composition of the electrical board.

(3) The board adopts the current edition of the "*Roberts' Rules of Order, Newly Revised.*"

(4) The board will hold regular meetings on the last Thursday of January, April, July, and October of each year per RCW 19.28.311.

(5) The director or the chairperson of the board may call a special meeting at any time.

(6) Each board member must be notified in writing of the agenda, date, time, and place of each regular and special meeting. "Writing" includes by electronic mail, also known as "e-mail," if the member has provided an e-mail address for such notice.

(7) The board or department may elect to have an appeal heard by the office of administrative hearings either tape recorded or transcribed by a court reporter; and the board may so elect regarding hearings or board reviews heard by the board as a whole.

(8) A majority of the board constitutes a quorum for purposes of rendering any decision.

(a) If a majority does not attend a hearing or board review on an appeal, the board may either continue the hearing or board review to a date certain or may hear the testimony and arguments.

(b) If the board hears the testimony and arguments, the members of the board who are absent may make their decisions after hearing the tape recording or reading the transcript, of the hearing or board review.

(c) If the board selects the method in subsection (8)(b) of this section, at the time of the hearing, the board shall set a date certain for the absent members to complete review of the record and for the board as a whole to vote on the decision. The vote in subsection (8)(b) and (c) of this section may occur by U.S. mail, facsimile or by electronic mail and shall be determined by the board at the hearing; the members' votes shall be public record.

(9) All filings and documents for any matter before the board must be submitted to the chief electrical inspector, as secretary to the board, 7273 Linderson Way, P.O. Box 44460, Olympia, WA 98504-4460. The filings may be submitted by ordinary mail, certified or registered mail, or by personal delivery.

(10) All hearings before the board as a whole shall be held on regularly scheduled meeting dates, as listed in subsection (4) of this section, unless the board determines that an alternate date is necessary. All notices of appeal, with a certified check payable to the department in the sum of two hun-

dred dollars if required, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before the regularly scheduled board meeting at which the hearing would occur. The appellant must submit any written argument, briefs testimony or documents for the board's consideration at least twenty days prior to the scheduled hearing.

Appeals

(11) Appeals of penalties issued by the department.

(a) A party may appeal a penalty issued by the department, pursuant to chapter 19.28 RCW and this chapter, to the board. The appeal shall be assigned to the office of administrative hearings.

(b) The appeal must be filed within twenty days after the notice of the decision or penalty is given to the assessed party either by personal service or by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars.

(12) Appeals of proposed decisions issued by the office of administrative hearings.

(a) A party may appeal a proposed decision issued by the office of administrative hearings pursuant to chapter 19.28 RCW to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.

(b) The notice of appeal of a proposed decision must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs testimony or documents for the board's consideration at least twenty days prior to the scheduled hearing.

(13) Appeals of suspension, revocation, or nonrenewal.

(a) An appeal of the suspension or revocation of a license or certificate of competency under RCW 19.28.241 and 19.28.341 or of nonrenewal of a license or certificate of competency under this chapter will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals of a revocation or suspension of a contractor's or administrator's license, must be filed within twenty days after the notice of suspension or revocation is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and shall be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

(14) Appeals of decisions on installation.

(a) A party may seek board review for disputes relating to the interpretation and application of electrical/telecommunications installation or maintenance standards under RCW 19.28.111, 19.28.480, and 19.28.531. The board will conduct

the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs testimony or documents for the board's consideration at least twenty days prior to the scheduled hearing.

(15) Appeals of a continuing education class or instructor for denials or revocations.

A party may appeal a decision issued by the department, pursuant to WAC 296-46B-970 (3)(e)(vi), if the department acts as the contractor pursuant to WAC 296-46B-970 (2)(i) to the superior court per RCW 34.05.542(3).

(16) Appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation.

(a) A party may appeal a decision issued by the department pursuant to WAC 296-46B-997 or 296-46B-999. The appeal will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals pertaining to engineer approval or recognition and accreditation of an electrical testing laboratory, must be filed within twenty days after the notice of the department's decision is served on the subject of said action, either by personal service or by certified mail, return receipt requested, sent to the last known address of the subject and shall be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.

(17) Judicial review of final decisions of the board.

A party may seek judicial review of a final order of the board within thirty days after service of the decision. Appeals of final decisions and orders must be done in accordance with chapter 34.05 RCW.

(18) If appeal(s) according to subsections (11), (12), (13), and (15) of this section are not filed or the appeal is not filed timely, the proposed decision or action becomes final with no further action on the part of the department or the board.

(19) Appeals - general requirements.

(a) Appeals according to subsections (11), (12), or (15) of this section must specify the contentions of the appellant, and must for subsection (12) of this section specify to which conclusions of law and findings of fact the party takes exception. The appeal will be based on the record of the hearing. The board shall not grant a hearing de novo.

(b) In appeals under subsections (12), (13), (14), and (15) of this section, the issues to be adjudicated must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only.

(c) In all appeals of chapter 19.28 RCW and this chapter heard before the office of administrative hearings or directly by the board, the ((appellant)) department has the burden of proof by a preponderance of the evidence.

(d) In all appeals of a decision by the office of administrative hearings to the board, the party aggrieved by the decision of the office of administrative hearings has the burden of proof by a preponderance of the evidence.

Appearance and practice before board.

(20) No party may appear as a representative in proceedings other than the following:

(a) Attorneys at law qualified to practice before the supreme court of the state of Washington;

(b) Attorneys at law qualified to practice before the highest court of record of another state, if the attorneys at law of the state of Washington are permitted to appear as representatives before administrative agencies of the other state, and if not otherwise prohibited by Washington law; or

(c) An owner, officer, partner, or full-time employee of a firm, association, organization, partnership, corporation, or other entity who appears for the firm, association, organization, partnership, corporation or other entity.

(21) All persons appearing in proceedings as a representative must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If a person does not conform to these standards, the board may decline to permit the person to appear as a representative in any proceeding before the board.

WSR 08-04-089

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed February 5, 2008, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-23-115.

Title of Rule and Other Identifying Information: WAC 181-79A-223 Academic and experience requirements for certification—School nurse, school occupational therapist, school physical therapist and school speech-language pathologist or audiologist.

Hearing Location(s): Red Lion Hotel, 18220 International Boulevard, Seattle, WA 98188, on March 19, 2008, at 8:30 a.m.

Date of Intended Adoption: March 19, 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 March 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by March 10, 2008, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The course requirements for speech language pathologists/audiologists, physical therapists, occupational therapists and school nurses were reviewed, and the four role groups recommend the required course topics be rewritten as course outcomes.

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 42736 [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.

February 3, 2008

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-223 Academic and experience requirements for certification—School nurse, school occupational therapist, school physical therapist and school speech-language pathologist or audiologist. Candidates for school nurse, school occupational therapist, school physical therapist and school speech-language pathologist or audiologist certification shall apply directly to the professional education and certification office. Such candidates shall complete the following requirements, in addition to those set forth in WAC 181-79A-150, except state approved college/university professional preparation program:

(1) School nurse.

(a) Initial.

(i) The candidate shall hold a valid license as a registered nurse (RN) in Washington state.

(ii) The candidate shall hold a baccalaureate degree or higher in nursing from a program accredited by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include ~~((schools and society; human growth, development, and learning; American school law; legal responsibilities of the ESA; and the responsibilities of the specific ESA role in a school setting including the state learning goals and essential academic learning requirements:))~~ the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(D) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(E) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(F) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school nurse and have completed forty-five quarter hours (thirty semester hours) of postbaccalaureate course work in education, nursing, or other health sciences.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) School occupational therapist.

(a) Initial.

(i) The candidate shall hold a valid license as an occupational therapist in Washington state.

(ii) The candidate shall hold a baccalaureate (or higher) degree from an American Occupational Therapy Association approved program in occupational therapy.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include ~~((schools and society; human growth, development, and learning; American school law; legal responsibilities of the ESA; and the responsibilities of the specific ESA role in a school setting including the state learning goals and essential academic learning requirements:))~~ the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(D) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(E) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings:

(F) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school occupational therapist and have completed at least fifteen quarter hours (ten semester hours) of course work beyond the baccalaureate degree in occupational therapy, other health sciences or education.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(3) School physical therapist.

(a) Initial.

(i) The candidate shall hold a valid license as a physical therapist in Washington state.

(ii) The candidate shall hold a baccalaureate (or higher) degree from an American Physical Therapy Association accredited program in physical therapy.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include ~~((schools and society; human growth, development, and learning; American school law; legal responsibilities of the ESA; and the responsibilities of the specific ESA role in a school setting including the state learning goals and essential academic learning requirements:))~~ the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law:

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students:

(C) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students:

(D) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making:

(E) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings:

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a tempo-

rary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school physical therapist and have completed fifteen quarter hours (ten semester hours) of course work beyond the baccalaureate degree in physical therapy, other health sciences or education.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(4) School speech-language pathologist or audiologist.

(a) Initial.

(i) The candidate shall have completed all course work (except special project or thesis) for a master's degree from a college or university program accredited by the American Speech and Hearing Association (ASHA) with a major in speech pathology or audiology. Such program shall include satisfactory completion of a written comprehensive examination: Provided, That if any candidate has not completed a written comprehensive examination, the candidate may present verification from ASHA of a passing score on the National Teacher's Examination in speech pathology or audiology as a condition for certification.

(ii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include ~~((schools and society; human growth, development, and learning; American school law; legal responsibilities of the ESA; and the responsibilities of the specific ESA role in a school setting including the state learning goals and essential academic learning requirements:))~~ the following outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law:

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students:

(C) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students:

(D) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making:

(E) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings:

(F) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate

shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall hold a master's degree with a major in speech pathology or audiology, with the exception of a candidate who holds a current and valid Washington state conditional certificate in speech/language pathology as of June 30, 2003.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

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.

WSR 08-04-090
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 5, 2008, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-114.

Title of Rule and Other Identifying Information: WAC 181-82A-202 Certificate endorsements.

Hearing Location(s): Red Lion Hotel, 18220 International Boulevard, Seattle, WA 98188, on March 19, 2008, at 8:30 a.m.

Date of Intended Adoption: March 19, 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 March 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by March 10, 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 change the name of the English as a second language endorsement to better reflect the student population. The proposed name of this endorsement is English language learner. The other endorsement change is to combine the business education endorsement and the marketing education endorsement, better reflecting what these teachers do. The name for this endorsement would be the business and marketing education endorsement.

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 [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.

February 3, 2008

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-19-058, filed 9/14/07, effective 10/15/07)

WAC 181-82A-202 Certificate endorsements.
Teacher certificates shall be endorsed as follows:

- (1) **All levels:**
 - (a) Bilingual education.
 - (b) Designated arts: Dance.
 - (c) Designated arts: Theatre arts.
 - (d) Designated arts: Music: Choral, instrumental or general.
 - (e) Designated arts, visual arts.
 - (f) Designated world languages.
 - (g) English ((~~as a second~~)) language learner.
 - (h) Health/fitness.
 - (i) Library media.
 - (j) Reading.
 - (k) Special education.
- (2) **Early childhood:**
 - (a) Early childhood education.
 - (b) Early childhood special education.
- (3) **Elementary education.**
- (4) **Middle level:**
 - (a) Middle level—Humanities.
 - (b) Middle level—Mathematics.
 - (c) Middle level—Science.
- (5) **Secondary level:**
 - (a) Designated science: Biology.
 - (b) Designated science: Chemistry.
 - (c) Designated science: Earth and space science.
 - (d) Designated science: Physics.
 - (e) Designated career and technical education: Agriculture education, business and marketing education, family and consumer sciences education, ((~~marketing education~~)) and technology education.
 - (f) English language arts.
 - (g) History.
 - (h) Mathematics.
 - (i) Science.
 - (j) Social studies.
 - (k) Traffic safety.

WSR 08-04-091
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 5, 2008, 1:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-112.

Title of Rule and Other Identifying Information: WAC 181-79A-140 Types of certificates.

Hearing Location(s): Red Lion Hotel, 18220 International Boulevard, Seattle, WA 98188, on March 19, 2008, at 8:30 a.m.

Date of Intended Adoption: March 19, 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 March 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by March 10, 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.

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 [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.

February 3, 2008

Nasue Nishida

Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-04-003, filed 1/24/07, effective 2/24/07)

WAC 181-79A-140 Types of certificates. Six types of certificates shall be issued:

(1) Teacher. The teacher certificate, including teacher exchange permits as provided in WAC 181-79A-220, authorizes service as a classroom teacher.

(2) Career and technical. The career and technical education certificate authorizes service in career and technical education programs in accordance with the provisions of chapter 181-77 WAC.

(3) First people's language/culture. The first (~~people's~~) peoples' language(=), culture, and oral tribal traditions teacher certificate authorizes service as defined under WAC 181-78A-700(8).

(4) Administrator.

(a) The administrator certificate for principal authorizes services as a building administrator or assistant principal.

(b) The administrator certificates for superintendent or program administrator will be issued to persons who meet professional educator standards board certification standards for service in the roles of superintendent or program administrator.

(5) Educational staff associate. The educational staff associate certificate authorizes service in the roles of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, and school social workers: Provided, That nothing within chapter 181-79A WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations promulgated by the appropriate licensure board or agency.

(6) Limited certificates. The following limited certificates are issued to individuals under specific circumstances set forth in WAC 181-79A-231:

(a) Conditional certificate.

(b) Substitute certificate.

(c) Emergency certificate.

(d) Emergency substitute certificate.

(e) Nonimmigrant alien exchange teacher.

(f) Intern substitute teacher certificate.

(g) Transitional certificate.

(h) Provisional alternative administrative certificate.

WSR 08-04-093

WITHDRAWAL OF PROPOSED RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed February 5, 2008, 1:59 p.m.]

The professional educator standards board requests the withdrawal of the following proposed rules:

- WSR 07-20-105 filed on October 2, 2007 (WAC 181-82A-204).
- WSR 07-24-077 filed on December 24, 2007 (WAC 181-82-110).

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 08-04-100
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed February 6, 2008, 8:12 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-55-020 What is the intent of the combined fund drive rules?, 357-55-110 What definitions apply to this chapter of the civil service rules?, 357-55-215 What does the CFD committee do?, 357-55-225 When will the CFD committee meet?, 357-55-235 What are the CFD committee's responsibilities for a charity drive?, 357-55-415 When does the annual CFD campaign occur?, 357-55-420 May state employers grant permission for participating organizations to share information during work hours?, 357-55-425 What campaign events may occur during work hours within the campaign calendar?, 357-55-625 May a participating organization be decertified or disqualified from participating in the combined fund drive?, 357-55-635 When is decertification of an organization effective?, and 357-55-640 When will payments of contributions cease for a decertified organization?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on March 13, 2008, at 8:30 a.m.

Date of Intended Adoption: March 13, 2008.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by March 6, 2008. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by March 6, 2008, TTY (360) 753-4107, or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is for the following reasons:

- The CFD committee removed the restriction concerning a charity providing local services to be approved into the CFD campaign.
- The CFD committee approved the concept of a flexible campaign and wants to remove any reference to the terms "annual" or "yearly" campaign and remove any specific dates in the rules.
- Clarification that other officers will be elected annually as needed.
- Eliminate language that is not necessary to understand the meaning of granting permission for charities to give information to state offices.
- Per HB 1599 raffles are now allowed within state agencies to raise funds for the CFD.
- Charities will now be approved anytime during the year rather than just once a year.
- Payments to decertified organizations should stop at the end of the quarter that they are decertified.

Statutory Authority for Adoption: Chapter 41.06 RCW.
 Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

February 6, 2008

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 05-08-132, filed 4/6/05, effective 7/1/05)

WAC 357-55-020 What is the intent of the combined fund drive rules? The intent of the CFD rules is to:

(1) Lessen the burdens of government and of local communities in meeting the needs of human health and welfare;

(2) Provide a convenient channel through which state employees and public agency retirees may contribute to the efforts of the participating organizations and federations providing services in ~~((the community or region where the employees and public agency retirees live and work and overseas))~~ Washington state and around the world;

(3) Minimize both the disruption of the state workplace and the costs to taxpayers caused by multiple charitable fund drives; and

(4) Ensure that participating organizations and federations are fiscally responsible in the uses of the moneys so raised.

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 05-08-132, filed 4/6/05, effective 7/1/05)

WAC 357-55-110 What definitions apply to this chapter of the civil service rules? The following definitions apply to chapter 357-43 WAC:

(1) **CFD:** Washington state combined fund drive.

(2) **CFD campaign:** The ~~((annual))~~ period of organized solicitation of state employees and public agency retirees. This solicitation is conducted to obtain voluntary contributions, donations and charitable commitments to be allocated to approved, not-for-profit participating organizations and federations~~((during the ensuing year of contributions))~~.

(3) **Flexible Campaign:** The ability for a state agency or institution of higher education to conduct a CFD campaign once a year at any time during the year.

~~((4))~~ (4) **CFD committee:** The Washington state combined fund drive (CFD) committee described in WAC 357-55-215.

~~((4))~~ (5) **Federation:** A public or private not-for-profit umbrella organization made up of five or more individual

member organizations approved by the CFD committee to participate in the CFD campaign.

~~((5)) **Local presence:** Demonstration of direct and substantial presence in the local CFD campaign community through:~~

~~(a) The availability of services, such as examinations, treatments, inoculations, preventive care, counseling, training, scholarship assistance, transportation, feeding, institutionalization, shelter, and clothing to persons working or residing in the local CFD campaign community; or~~

~~(b) The presence within the local CFD campaign community, or within reasonable commuting distance thereof, of a facility at which services may be obtained, such as an office, clinic, mobile unit, field agency, or direct provider, or specific demonstrable effects of research, such as personnel or facilities engaged therein or specific local applications thereof; or~~

~~(c) The availability to persons working or residing in the local CFD campaign community of communication with the voluntary charitable agency by means of home visits, transportation, or telephone calls, provided by the voluntary agency at no charge to the recipient or beneficiary of the service.~~

~~(d) When approved by the CFD committee, any not-for-profit federation or charitable organization, whose services are provided exclusively or in substantial preponderance overseas, and which meets all the criteria set forth in these rules except for the requirement of local presence, will be eligible to be a participating federation or participating organization.))~~

~~((6)) **Overseas:** Areas outside of the District of Columbia and the fifty states of the United States of America.))~~

~~((7)) **(6) Participating organization:** A public 170 (c)(1) or private 501 (c)(3) not-for-profit organization whose application is approved by the CFD committee to participate in the CFD campaign.~~

~~((8)) **(7) State employer:** Washington state agencies and higher education institutions and related boards.~~

~~((9)) **(8) Year of contributions:** The annual calendar year for collection of the voluntary payroll deductions for charitable contributions authorized by state employees and public agency retirees pursuant to these rules. The normal, full annual calendar year of contributions will begin with January and end with the ensuing December.~~

AMENDATORY SECTION (Amending WSR 05-08-132, filed 4/6/05, effective 7/1/05)

WAC 357-55-215 What does the CFD committee do? A CFD committee is established to conduct a ~~((single))~~ flexible, annual, consolidated effort to secure funds for distribution to not-for-profit organizations engaged in charitable, public health, public welfare and social services, environmental or arts purposes.

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 05-08-132, filed 4/6/05, effective 7/1/05)

WAC 357-55-225 When will the CFD committee meet? The CFD committee will meet to conduct necessary business, elect a chairperson, and other officers as needed, annually or as vacancies occur. ~~((annually, and elect such other officers as may be needed.))~~

AMENDATORY SECTION (Amending WSR 05-08-132, filed 4/6/05, effective 7/1/05)

WAC 357-55-235 What are the CFD committee's responsibilities for a charity drive? The CFD committee will organize and effect ~~((one))~~ a flexible solicitation effort for charitable donations each year.

AMENDATORY SECTION (Amending WSR 05-08-133, filed 4/6/05, effective 7/1/05)

WAC 357-55-415 When does the annual CFD campaign occur? ~~((The annual CFD campaign begins on September 1 and ends on December 15.))~~ Each year the director of each state agency and president of each higher education institution may determine the time period of the agency's or institution's CFD campaign ~~((within the September 1 to December 15 time frame)).~~

Each annual CFD campaign normally is conducted for a seven-week period. However, in unusual circumstances, the individual state employers may extend the seven-week period as local conditions require. ~~((The CFD campaign will not extend beyond December 15. In extraordinary circumstances, the CFD committee may consider granting approval for solicitations at other times.))~~

AMENDATORY SECTION (Amending WSR 05-08-133, filed 4/6/05, effective 7/1/05)

WAC 357-55-420 May state employers grant permission for participating organizations to share information during work hours? ~~((State employers may grant permission to participating organizations and federations to distribute material related to the CFD campaign during work hours. During the CFD campaign, participating organizations may distribute or orally share bonafide educational materials describing their services or programs. All CFD participating organizations must be given an equal opportunity for communication in a state employer's local CFD campaign.))~~ The local state employer may grant sharing of ~~((oral))~~ information during the CFD campaign, by participating organizations if the agency or institution determines such communication is not disruptive to the local state office or institution. All CFD participating organizations must be given an equal opportunity for communication in a state employer's local CFD campaign.

This section will not be construed to require a state employer to distribute or arrange for oral or written information other than the official CFD campaign and publicity material.

AMENDATORY SECTION (Amending WSR 05-08-133, filed 4/6/05, effective 7/1/05)

WAC 357-55-425 What campaign events may occur during work hours within the campaign calendar? Solicitations of employees will be conducted during work hours using methods that permit true voluntary giving. Solicitations will reserve to the individual the option of disclosing any gift or keeping it confidential to the extent confidentiality is permitted by law. Campaign kick-offs, recognition events, awards, and other nonsolicitation events to build support for the CFD are encouraged.

~~((Special))~~ CFD fundraising events, such as raffles (as permitted by RCW 9.46.0209 and RCW 42.52.805), drawings, auctions, bake sales, carnivals, athletic events, or other activities not specifically provided for in these rules are permitted ~~((30 days prior to and during the annual CFD campaign))~~ when approved, in advance, by the state employer.

At the discretion of each state employer, state employees may be authorized to attend CFD promotional and fundraising events on state work time.

AMENDATORY SECTION (Amending WSR 05-08-133, filed 4/6/05, effective 7/1/05)

WAC 357-55-625 May a participating organization be decertified or disqualified from participating in the combined fund drive? Once approved for participation, any participating organization or federation may be decertified and disqualified from participation in the combined fund drive campaign by majority vote of the CFD committee for one or more of the following reasons:

- (1) Failing to comply with the rules contained in this chapter;
- (2) Filing an application to participate in the state combined fund drive campaign which contains false or intentionally misleading information; or
- (3) Receiving ~~((an annual contribution pledge from an annual CFD campaign of two hundred fifty dollars or less))~~ less than two-hundred dollars in total CFD contributions in a calendar year.

AMENDATORY SECTION (Amending WSR 05-08-133, filed 4/6/05, effective 7/1/05)

WAC 357-55-635 When is decertification of an organization effective? Decertification is effective on the first day of ~~((the following year's CFD campaign))~~ the quarter following notice of decertification under WAC 357-55-630. Quarters begin on the first day of January, April, July, or October of each year. A decertified organization or federation is disqualified from participating in the CFD campaign as of that effective date.

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 05-08-133, filed 4/6/05, effective 7/1/05)

WAC 357-55-640 When will payments of contributions cease for a decertified organization? Payments of

contributions to a decertified organization or federation will cease on the last day of ~~((the current year's CFD campaign))~~ a quarterly distribution. ((Payments)) Contributions received after that date, ~~((but))~~ originally pledged to an organization or federation that is decertified, will be disbursed as directed by the CFD committee consistent with WAC 357-55-275.

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.

WSR 08-04-101

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed February 6, 2008, 8:15 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-19-470 What reemployment services does the employer provide to a former employer seeking reemployment under the provisions of WAC 357-19-465?, 357-19-480 Will employees returning from separation under WAC 357-19-465 serve a probationary period?, 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth?, 357-58-275 May a permanent WMS employee accept an acting WMS appointment and what are the employee's return rights at the conclusion of the acting appointment?, 357-19-183 Must DEL conduct background checks on all employees in covered positions and individuals being considered for a covered position?, 357-19-187 For purposes of WAC 357-19-183, must an employee and/or individual being considered for a covered position authorize the director of the DEL or designee to conduct a background check and what happens if the employee or individual being considered for a covered position does not provide authorization?, 357-31-150 Can an employee be paid for accrued sick leave?, 357-07-065 How is the department of personnel organized?, 357-13-025 What criteria must be met in order for the director to adopt revisions or salary adjustments to the classification plan?, 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination?, and 357-58-300 Does time spent of leave without pay or shared leave count towards completion of an employee's review period?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on March 13, 2008, at 8:30 a.m.

Date of Intended Adoption: March 13, 2008.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by March 6, 2008. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by March 6, 2008, TTY (360) 753-4107, or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes are housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

February 6, 2008

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-470 What reemployment services does the employer provide to a former (~~(employer)~~) employee seeking reemployment under the provisions of WAC 357-19-465? The employer will provide assistance, such as the following, to an eligible former employee seeking reemployment under the provisions of WAC 357-19-465:

- (1) Determination of job classes and/or positions for which the former employee is qualified;
- (2) Assistance regarding the employment/application process;
- (3) Reemployment consideration in accordance with the employer's certification procedure for positions for which the individual meets the competency and other position requirements; and
- (4) Access to training programs relevant to the job classes for which the former employee may become qualified.

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-480 Will employees returning from separation under WAC 357-19-465 serve a probationary period? Former permanent status employees returning from separation due to disability as set forth in (~~(WAC 356-19-465 [357-19-465])~~) WAC 357-19-465 must serve a probationary period unless the employer determines otherwise. Upon successful completion of the probationary period, the time between separation and reemployment will be treated as leave without pay and must not be considered a break in service.

AMENDATORY SECTION (Amending WSR 07-17-124, filed 8/20/07, effective 9/20/07)

WAC 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth? Under RCW 49.78.390, the family leave required by (~~((U.S.C. 29.2612 (a)(1)(A) and (B) ☐))~~) the Federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) must be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth as provided in WAC 357-31-500.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-275 May a permanent WMS employee accept an acting WMS appointment and what are the employee's return rights at the conclusion of the acting appointment? Permanent WMS employees may accept acting appointments to WMS positions.

(1) When a permanent WMS employee has accepted an acting appointment within the **same** agency and the acting appointment ends, the agency must at a minimum provide the employee the layoff rights of his/her permanent WMS position. If returning to a permanent WMS position the employee's salary must not be less than the salary of the previously held permanent WMS position.

(2) When a permanent WMS employee has accepted an acting appointment within a **different** agency, the original agency must provide layoff rights as specified in subsection (1) of this section for six months from the time the employee is appointed. Any return right after six months is negotiable between the employee and agency and must be agreed to prior to the employee accepting the nonpermanent appointment. If the employee does not return on the agreed upon date, the employee can request placement in the general government transition pool per WAC 357-46-095.

(3) In lieu of the rights provided in subsection (1) and (2) of this section, the agency and the employee may agree to other terms.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-183 Must DEL conduct background checks on all employees in covered positions and individuals being considered for a covered position? (1) The director of the department of early learning (DEL) or designee must conduct background checks on all employees in covered positions and individuals being considered for a covered position.

(2) The requirement for background checks must include the following:

- (a) Current employees in covered positions.
- (b) Any employee considered for a covered position because of a layoff, reallocation, transfer, promotion, (~~((☐))~~) demotion, or other actions that result in the employee being in a covered position.
- (~~((b))~~) (c) Any individual being considered for positions which are covered positions.

(3) Considered for positions includes decisions about:

(a) Initial hiring, layoffs, reallocations, transfers, promotions, demotions, or

(b) Other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-187 For purposes of WAC 357-19-183, must an employee and/or individual being considered for a covered position authorize ~~((authorize))~~ the director of the DEL or designee to conduct a background check and what happens if the employee or individual being considered for a covered position does not provide authorization? An employee and/or individual applying for or being considered to remain in a covered position must authorize the director of the DEL or designee to conduct a background check.

Failure to authorize the director of the DEL or designee to conduct a background check disqualifies an employee or individual from consideration for any covered position including their current covered position.

AMENDATORY SECTION (Amending WSR 07-11-095, filed 5/16/07, effective 7/1/07)

WAC 357-31-150 Can an employee be paid for accrued sick leave? In accordance with the attendance incentive program established by RCW 41.04.340, employees are eligible to be paid for accrued sick leave as follows:

(1) In January of each year, an employee whose sick leave balance at the end of the previous year exceeds four hundred eighty hours may elect to convert the sick leave hours earned in the previous calendar year, minus those hours used during the year, to monetary compensation.

(a) No sick leave hours may be converted which would reduce the calendar year-end balance below four hundred eighty hours.

(b) Monetary compensation for converted hours is paid at the rate of twenty-five percent and is based on the employee's current salary.

(c) All converted hours are deducted from the employee's sick leave balance.

(d) Hours which are accrued, donated, and returned from the shared leave program in the same calendar year may be included in the converted hours for monetary compensation.

(e) For the purpose of this section, hours which are contributed to a sick leave pool per WAC 357-31-570 are considered hours used.

(2) Employees who separate from state service because of retirement or death must be compensated for their total unused sick leave accumulation at the rate of twenty-five percent. ~~((or the))~~ The employer may deposit equivalent funds for a retiring employee in a medical expense plan as provided in WAC 357-31-375. Compensation must be based on the employee's salary at the time of separation. For the purpose of this subsection, retirement does not include "vested out-of-service" employees who leave funds on deposit with the department of retirement systems (DRS).

(3) No contributions are to be made to the department of retirement systems (DRS) for payments under subsection (1) or (2) of this section, nor are such payments reported to DRS as compensation.

AMENDATORY SECTION (Amending WSR 07-23-007, filed 11/8/07, effective 12/11/07)

WAC 357-07-065 How is the department of personnel organized? The staff is organized in six general areas:

(1) Personnel services: Provides consultation and services related to recruitment, assessment, affirmative action, human resources, salary surveys, compensation plan administration, and classification to state agencies, institutions of higher education, and related higher education boards.

(2) Organizational and employee development services (located at 600 South Franklin Street, Olympia, Washington): Provides organizational, management, and employee development services to all state agencies.

(3) Administrative services: Provides support services for facilities and supplies, financial services including payroll and travel, duplicating and mailroom services, combined fund drive, forms and records management, administration of agency and statewide master contracts, and administers the statewide employee survey. Within the administrative division, the employee assistance program (EAP) helps with personal or work related problems affecting work performance. EAP offices are at the following locations: 1222 State Ave. N.E., Suite 201, Olympia, Washington; 701 Dexter Ave. N. #108, Seattle, Washington; and at ~~((Suite 604, Northtown Office Building))~~ 4407 N. Division, Suite 210, Spokane, Washington.

(4) Legal affairs: Provides affirmative action consultation, rule interpretation, labor/employment discrimination guidance, legislative services and responds to requests for public records. Provides director's review and appeal services (located at 2828 Capitol Blvd., Olympia, Washington), processes and adjudicates requests for director's reviews and provides administrative support for personnel resources board appeals.

(5) Director's office: Provides agency leadership, internal human resources, planning and performance, communication services, and operational support.

(6) Information services (located at Building #1, Rowesix, ~~((4224) 4424))~~ 4224 6th Avenue, Lacey, Washington): Administers all central statewide technology systems supporting human resources activities.

AMENDATORY SECTION (Amending WSR 07-17-127, filed 8/20/07, effective 9/20/07)

WAC 357-13-025 What criteria must be met in order for the director to adopt revisions or salary adjustments to the classification plan? (1) The following three criteria must be met for the director to adopt revisions or salary adjustments to the classification plan:

(a) Implementation of the proposed revision or salary adjustment will result in net cost savings, increased efficiencies, or improved management of personnel or services;

(b) The office of financial management has reviewed the fiscal impact statement of the affected employer and concurs

that the biennial cost of the revision or salary adjustment is absorbable within the employer's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia; and

(c) The revision or salary adjustment is due to one of the following causes, as defined by the director in the classification and pay guidelines:

~~((and))~~

- (i) Documented recruitment or retention difficulties;
- (ii) Salary compression or inversion;
- (iii) Classification plan maintenance;
- (iv) Higher level duties and responsibilities; or
- (v) Inequities.

~~((iv))~~

(2) The provisions of subsection (1)(b) and (1)(c) of this section do not apply to the higher education hospital special pay plan or to any adjustments to the classification plan that are due to emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare.

AMENDATORY SECTION (Amending WSR 05-21-055, filed 10/13/05, effective 11/15/05)

WAC 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination? (1) Leave with pay **must** be granted to an employee:

(a) To allow an employee to receive assessment from the employee (~~(advisory service))~~ assistance program; or

(b) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(i) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(ii) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(2) An employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including but not limited to fire fighting, search and rescue efforts, or donating blood.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift may be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-300 Does time spent (~~(of))~~ on leave without pay or shared leave count towards completion of an employee's review period? Time spent (~~(of))~~ on leave without pay or shared leave counts towards completion of the employee's review period if the total time does not exceed one hundred seventy-four hours. If the total time on leave without pay or shared leave exceeds one hundred seventy-four the employer determines whether or not the time in

excess of one hundred seventy-four hours will count towards completion of the review period. The granting of leave shall be in compliance with chapter 357-31 WAC and the Fair Labor Standards Act.

WSR 08-04-102

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed February 6, 2008, 8:16 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-380 What is the purpose of the state leave sharing program?, 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?, and 356-31-435 Must employees use their own leave before using shared leave?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on March 13, 2008, at 8:30 a.m.

Date of Intended Adoption: March 13, 2008.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by March 6, 2008. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by March 6, 2008, TTY (360) 753-4107, or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the state leave sharing program is to permit state employees to come to the aid of fellow state employees who may be facing a situation which will cause them to take leave without pay or terminate employment. The modification to WAC 357-31-380 adds volunteering during a state of emergency as a reason an employee can qualify for shared leave. This was added to WAC 357-31-390 in September 2007 but was inadvertently not added to WAC 357-31-380. The modification to WAC 357-31-390(4) adds compensatory time and recognition leave as forms of paid leave that must be used before an employee will qualify to receive shared leave. The change to WAC 357-31-435 clarifies what is in WAC 357-31-390(4).

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, Olympia, WA, (360) 664-6408; Implementation and Enforcement: Department of personnel.

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

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

February 6, 2008

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

WAC 357-31-380 What is the purpose of the state leave sharing program? The purpose of the state leave sharing program is to permit state employees, at no significantly increased cost to the state for providing leave, to come to the aid of another state employee who has been called to service in the uniformed services or who is volunteering with a governmental agency or a nonprofit organization when a state of emergency has been declared within the United States, or who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition which has caused or is likely to cause the employee to take leave without pay or terminate his or her employment.

AMENDATORY SECTION (Amending WSR 07-17-126, filed 8/20/07, effective 9/20/07)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature; or

(b) The employee has been called to service in the uniformed services; or

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers his/her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services.

(2) The illness, injury, impairment, condition, call to service, or emergency volunteer service has caused, or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete his or her:

(a) Compensatory time, recognition leave as described in WAC 357-31-565, ((P)) personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Compensatory time, recognition leave as described in WAC 357-31-565, ((P)) personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

(c) Compensatory time, recognition leave as described in WAC 357-31-565, ((P)) personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

WAC 357-31-435 Must employees use their own leave before using shared leave? Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, and vacation leave that they have accrued before using shared leave. Employees who qualify under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 before using shared leave. Employees who qualify under WAC 357-31-390 (1)(c) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and vacation leave that they have accrued before using shared leave.

WSR 08-04-104

PROPOSED RULES

SUPERINTENDENT OF

PUBLIC INSTRUCTION

[Filed February 6, 2008, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-098.

Title of Rule and Other Identifying Information: Chapter 392-144 WAC, School bus driver qualifications.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), 2nd Floor Conference Room, 600 South Washington Street, Olympia, WA 98504-7200, on March 12, 2008, at 9:00 a.m.

Date of Intended Adoption: March 14, 2008.

Submit Written Comments to: Allan J. Jones, Director, Pupil Transportation, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by March 5, 2008.

Assistance for Persons with Disabilities: Contact Penny Coker by March 5, 2008, TTY (360) 664-3631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The medical examination requirements for school bus drivers have been revised to allow a diabetic treated with insulin to possess an authorization based upon successfully meeting the criteria listed in the WAC. The criteria are patterned after the federal commercial driver license diabetes exemption program. Oversight of the individuals involved will be school district responsibility, resulting in minimal impact on OSPI workload.

Statutory Authority for Adoption: RCW 28A.160.20 [28A.160.210].

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Charles Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Martin Mueller, Office of Superintendent of Public Instruction, (360) 725-5175; and Enforcement: Allan J. Jones, Office of Superintendent of Public Instruction, (360) 725-6120.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This revision is only applicable to public school bus drivers.

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

February 4, 2008
Terry Bergeson
Superintendent

AMENDATORY SECTION (Amending WSR 06-15-010, filed 7/6/06, effective 8/6/06)

WAC 392-144-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "School bus driver" means a person, who is employed by a school district including contracted drivers under WAC 392-144-040 (1) and (2) and as part of that employment or contract, operates a school bus as defined in WAC 392-143-010, or other motor vehicles for the regularly scheduled transportation of students between home and school. School buses shall be operated by authorized school bus drivers when transporting students. An authorized school bus driver may also transport students on field trips and other school related activities.

(2) "A school bus driver's authorization" means an authorization issued by the superintendent of public instruction indicating that the person has met the requirements to operate a school bus or other motor vehicle for the purpose of transporting students to and from school routinely on scheduled routes and/or school activities. A school bus driver must be authorized prior to transporting students and such authorization shall continue in effect as long as the person continues to meet the requirements of this chapter. A school bus driver authorization is not valid if suspended, revoked or lapsed.

(3) "School bus driver instructor's authorization" means an authorization issued by the superintendent of public instruction to a person successfully completing the superintendent of public instruction approved school bus driver instructor course. This authorization qualifies a person to train and verify the training of school bus drivers. This authorization shall lapse unless the holder successfully completes an annual school bus driver instructor's in-service course.

(4) "School bus driver training course" means a course established by the superintendent of public instruction and taught by an authorized school bus driver instructor. This course shall be successfully completed by all applicants for a school bus driver's authorization.

(5) "School bus driver annual in-service training course" means an annual course taught by an authorized school bus driver instructor. The content and minimum time requirements of such course shall be annually determined by the superintendent of public instruction and shall be required to be completed no earlier than August 1st and no later than November 1st by all authorized school bus drivers.

(6) "School bus driver instructor's course" means a training program authorized by the superintendent of public instruction to qualify a person as a school bus driver instructor.

(7) "School bus driver instructor's annual in-service course" means an annual required course, the content of which shall be determined by the superintendent of public instruction. Successful completion of this course prevents the instructor's authorization from lapsing.

(8) "Serious behavioral problem" includes, but is not limited to, conduct which indicates unfitness to carry out the responsibilities related to the occupation or job performance of transporting children, such as: Dishonesty; immorality; or misuse of alcohol, a controlled substance, or a prescription drug; or furnishing alcohol or controlled substances to a minor or student. It does not include the orderly exercise during off-duty hours of any rights guaranteed under the law to citizens generally, except where such conduct indicates a safety risk for the transportation of students.

(9) "Medical examiner's certificate" means a written verification of passing a medical examination in accordance with the standards established in 49 CFR 391.41 through 391.49, of the Federal Motor Carrier Safety Regulations. ~~((School bus drivers must provide verification of passing a medical examination at a minimum of every twenty-four months. School bus drivers must continue to meet these medical requirements during the time between examinations. This requirement does not prevent a school district from requesting a more frequent examination.))~~

(a) School bus drivers must provide verification of passing a medical examination at a minimum of every twenty-four months.

(b) School bus drivers must continue to meet these medical requirements during the time between examinations.

(c) A school district may require more frequent examinations of any school bus driver.

(d) An individual who is an insulin dependent diabetic may hold a school bus driver authorization if they meet the following requirements:

(i) Possess a valid commercial driver license intrastate medical waiver for diabetes from the Washington state department of licensing or a valid interstate exemption certificate for diabetes issued by the Federal Motor Carrier Safety Administration;

(ii) Provide at a minimum of every twenty-four months to the authorizing school district or employer a completed, signed copy of Form SPI 1643, Application Section, and a completed, signed copy of Form SPI 1643, Endocrinologist Evaluation Section indicating the driver's medical condition allows them to safely operate a school bus while using insulin. The Endocrinologist Evaluation Section must indicate that within the past three years, the driver has completed instruction including diabetes management and driving safety; the signs and symptoms of hypoglycemia and hyperglycemia, and what procedures must be followed if complications arise. Physician verification of participation in a diabetes education program covering these topics is required at least every three years in order to remain qualified for a school bus driver authorization;

(iii) Provide at a minimum of every twelve months to the authorizing school district or employer a completed, signed copy of Form SPI 1643, Vision Evaluation Section indicating the driver does not have any vision problems that might impair safe driving;

(iv) Provide at a minimum of every six months to the authorizing school district or employer a completed, signed copy of Form SPI 1643, HbA1c Report Section indicating values more than 5.9 and less than 9.6 (unless accompanied by the signed medical opinion that the event was incidental and not an indication of failure to control glucose levels);

(v) Self-monitor blood glucose using an FDA approved device and demonstrate conformance with requirements (more than 100 mg/dl and less than 300 mg/dl):

(A) Within one hour before driving vehicles transporting students; and

(B) Approximately every four hours while on duty;

(vi) Maintain a daily log of all glucose test results for the previous six-month period and provide copies to the authorizing school district(s) or employer, and the medical examiner or physician upon request;

(vii) Carry a source of readily absorbable/fast-acting glucose while on duty;

(viii) Report immediately to their employer, any failure to comply with specific glucose level requirements as listed in (d)(iv) or (v) of this subsection, or loss of consciousness or control;

(ix) Individuals who have had a loss of consciousness or loss of control (cognitive function) due to a diabetic event do not qualify for a school bus driver authorization for one year, provided there has not been a recurrent hypoglycemic reaction requiring assistance of another person within the previous five years;

(x) A school bus driver is no longer authorized to operate a school bus and must be immediately removed from driving duties for any of the following:

(A) Results of the most recent HbA1c test indicating values less than 6.0 or greater than 9.5 unless accompanied by the signed medical opinion that the event was incidental and not an indication of failure to control glucose levels;

(B) Results of self-monitoring indicate glucose levels less than 100 mg/dl or greater than 300 mg/dl, until self-monitoring indicates compliance with specifications;

(C) Experiencing a loss of consciousness or control relating to diabetic condition;

(D) Failing to maintain or falsifying the required records, including self-monitoring records and any section of Form SPI 1643;

(xi) The authorizing school district or employer may request medical review of any or all signed, completed sections of Form SPI 1643, Washington State Authorized School Bus Driver Diabetes Exemption Program, and the driver's daily glucose test logs by a medical examiner or physician of their choice. The cost of this review shall be paid by the school district or employer.

WSR 08-04-107

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed February 6, 2008, 9:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-160.

Title of Rule and Other Identifying Information: New sections WAC 246-16-200, 246-16-210, 246-16-220, 246-16-230, 246-16-235, 246-16-240, 246-16-245, 246-16-250, 246-16-255, 246-16-260 and 246-16-265, Mandatory reporting—Intent, definitions, how and when to report, license holder self reports, license holder reporting other license holders, reports by professional liability insurance carriers, reports by health care institutions, reports by health service contractors and disability insurers, reports by professional review organizations, reports by courts, and reports by state and federal agencies.

Hearing Location(s): Department of Health, Point Plaza East Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on March 12, 2008, at 9:00 a.m.

Date of Intended Adoption: March 31, 2008.

Submit Written Comments to: Margaret Gilbert, Department of Health, P.O. Box 47873, Olympia, WA 98504-7873, margaret.gilbert@doh.wa.gov, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4930, by March 4, 2008.

Assistance for Persons with Disabilities: Contact Margaret Gilbert by March 4, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement revisions to RCW 18.130.070 that SHB 2974 made in 2006. They will require individual license holders to self report and license holders to report other license holders who have committed unprofessional conduct or are unable to practice with reasonable skill and safety. They will also require certain other entities to report patient harm or risk of harm and actual knowledge that a license holder is unable to practice safely.

Reasons Supporting Proposal: The proposed rules would protect the public by assuring information of unprofessional conduct and inability to practice safely reaches the dis-

ciplining authorities so appropriate action can be taken. SHB 2974 shifted authority for rule making on mandatory reporting from the various disciplining authorities to the department. RCW 18.130.070 now requires rules requiring license holder self reporting and reporting of other license holders. It permits the department to adopt rules requiring other entities to report. The rules focuses [focus] on patient safety and what the reporter knows, not rumor.

Statutory Authority for Adoption: RCW 18.130.070 and 18.130.060.

Statute Being Implemented: RCW 18.130.070.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Gilbert, Department of Health, (360) 236-4913; Implementation and Enforcement: Bonnie King, Department of Health, (360) 236-4995.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute. A preliminary cost-benefit analysis may be obtained by contacting Margaret Gilbert, Department of Health, P.O. Box 47873, Olympia, WA 98504-7873, phone (360) 236-4913, fax (360) 236-4930, e-mail margaret.gilbert@doh.wa.gov.

February 6, 2008

Mary C. Selecky
Secretary

MANDATORY REPORTING

NEW SECTION

WAC 246-16-200 Mandatory reporting—Intent.

These mandatory reporting rules require certain reports about license holders and are intended to address patient safety. These rules are not intended to limit reports from any person who has a concern about a license holder's conduct or ability to practice safely.

NEW SECTION

WAC 246-16-210 Mandatory reporting—Definitions. (1) "Approved impaired practitioner or voluntary substance abuse program" means a program authorized by RCW 18.130.175 and approved by a disciplining authority listed in RCW 18.130.040.

(2) "Conviction" means a court has decided a person is guilty of any gross misdemeanor or felony. It includes any guilty or no contest plea and all decisions with a deferred or suspended sentence.

(3) "Determination or finding" means a final decision that a license holder has harmed a patient or has caused an unreasonable risk of harm to a patient. This applies even if no adverse action or sanction has been imposed or if the license holder is appealing the decision.

(4) "License holder" means a person holding a credential in a profession regulated by a disciplining authority listed in RCW 18.130.040(2).

(5) "Unable to practice with reasonable skill and safety due to a mental or physical condition" means a license holder who:

(a) A court has declared to be incompetent or mentally ill; or

(b) Is not successfully managing a mental or physical condition and as a result poses a risk to patient safety.

(6) "Unprofessional conduct" means the acts, conduct, or conditions described in RCW 18.130.180.

NEW SECTION

WAC 246-16-220 Mandatory reporting—How and when to report. (1) Reports are submitted to the department of health. The department will give the report to the appropriate disciplining authority for review, possible investigation, and further action.

(a) When a patient has been harmed, a report to the department is required. A report to one of the approved impaired practitioner or voluntary substance abuse programs is not a substitute for reporting to the department.

(b) When there is no patient harm, reports of inability to practice with reasonable skill and safety due to a mental or physical condition may be submitted to one of the approved impaired practitioner or voluntary substance abuse programs or to the department. Reports of unprofessional conduct are submitted to the department.

(c) Reports to a national practitioner data bank do not meet the requirement of this section.

(2) The report must include enough information to enable the disciplining authority to assess the report. If these details are known, the report should include:

(a) The name, address, and telephone number of the person making the report.

(b) The name, address, and telephone number(s) of the license holder being reported.

(c) Identification of any patient or client who was harmed or placed at risk.

(d) A brief description or summary of the facts that caused the report, including dates.

(e) If court action is involved, the name of the court, the date of filing, and the docket number.

(f) Any other information that helps explain the situation.

(3) Reports must be submitted no later than thirty calendar days after the reporting person has actual knowledge of the situation.

NEW SECTION

WAC 246-16-230 Mandatory reporting—License holder self reports. Each license holder must self report:

(1) Any conviction, determination, or finding that he or she has committed unprofessional conduct; or

(2) Information that he or she is unable to practice with reasonable skill and safety due to a mental or physical condition; or

(3) Any disqualification from participation in the federal Medicare or Medicaid program.

NEW SECTION

WAC 246-16-235 Mandatory reporting—License holder reporting other license holders. A license holder must report another license holder in some circumstances.

(1) The reporting license holder must submit a report when he or she has actual knowledge of:

(a) Any conviction, determination, or finding that another license holder has committed an act that constitutes unprofessional conduct; or

(b) That another license holder may not be able to practice his or her profession with reasonable skill and safety due to a mental or physical condition.

(2) The license holder does not have to report when he or she is:

(a) A member of a professional review organization as provided in WAC 246-16-255;

(b) Providing health care to the other license holder and the other license holder does not pose a clear and present danger to patients or clients; or

(c) Part of a federally funded substance abuse program or approved impaired practitioner or voluntary substance abuse program and the other license holder is participating in treatment and does not pose a clear and present danger to patients or clients.

NEW SECTION

WAC 246-16-240 Mandatory reporting—Reports by professional liability insurance carriers. Every institution, corporation or organization providing professional liability insurance to a license holder must report:

(1) Any malpractice settlement, award, or payment in excess of twenty thousand dollars that results from a claim or action for damages allegedly caused by a license holder's incompetence or negligence in the practice of the profession.

(2) Award, settlement, or payment of three or more claims during a twelve-month period that result from claims or actions for damages allegedly caused by the license holder's incompetence or negligence in the practice of the profession.

(3) Reports made according to RCW 18.57.245 or 18.71.350 meet the requirement.

NEW SECTION

WAC 246-16-245 Mandatory reporting—Reports by health care institutions. (1) This section applies to:

(a) Hospitals and specialty hospital defined in chapter 70.41 RCW;

(b) Ambulatory surgery centers defined in chapter 70.230 RCW;

(c) Childbirth centers defined in chapter 18.46 RCW;

(d) Nursing homes defined in chapter 18.51 RCW;

(e) Chemical dependency treatment programs defined in chapter 70.96A RCW;

(f) Drug treatment agencies defined in chapter 69.54 RCW; and

(g) Public and private mental health treatment agencies defined in RCW 71.05.020 and 71.24.025.

(2) The chief administrator or executive officer or designee of these institutions must report when:

(a) A license holder's services are terminated or restricted because a license holder has harmed or placed at unreasonable risk of harm a patient or client; or

(b) A license holder poses an unreasonable risk of harm to patients or clients due to a mental or physical condition.

(3) Reports made by a hospital according to RCW 70.41.210 meet the requirement.

(4) Commencing July 1, 2009, reports made by an ambulatory surgical center according to RCW 70.230.110 meet the requirement.

NEW SECTION

WAC 246-16-250 Mandatory reporting—Reports by health service contractors and disability insurers. The executive officer of health care service contractors and disability insurers licensed under chapters 48.20, 48.21, 48.21A, and 48.44 RCW must report when the entity has made a determination or finding that a license holder has engaged in billing fraud.

NEW SECTION

WAC 246-16-255 Mandatory reporting—Reports by professional review organizations. (1) This section applies to every peer review committee, quality improvement committee, or other similarly designated professional review organization operating in the state of Washington.

(2) Unless prohibited by state or federal law, the professional review organization must report:

(a) When it makes a determination or finding that a license holder has caused harm to a patient or placed a patient at unreasonable risk of harm; and

(b) When it has actual knowledge that the license holder poses an unreasonable risk of harm due to a mental or physical condition.

(3) Professional review organizations and individual license holders participating in a professional review organization do not need to report during the investigative phase of the professional review organization's operation if the organization completes the investigation in a timely manner.

NEW SECTION

WAC 246-16-260 Mandatory reporting—Reports by courts. The department requests that the clerks of trial courts in Washington report professional malpractice judgments and all convictions against a license holder.

NEW SECTION

WAC 246-16-265 Mandatory reporting—Reports by state and federal agencies. The department requests that any state or federal program employing a license holder in Washington reports:

- (1) When it determines a license holder has harmed or placed at unreasonable risk of harm a patient or client; and
- (2) When it has actual knowledge that the license holder poses an unreasonable risk of harm due to a mental or physical condition.

WSR 08-04-111
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed February 6, 2008, 11:08 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amending sections of chapter 170-151 WAC, School-age child care minimum licensing requirements; chapter 170-295 WAC, Minimum licensing requirements for child care centers; and chapter 170-295 WAC, Child care business regulations for family home child care.

Hearing Location(s): Department of Early Learning, 649 Woodland Square Loop, Room 230, Lacey, WA 98503 (above Harborstone Credit Union off College Street), on March 12, 2008, at 1:00 p.m.

Date of Intended Adoption: Not earlier than March 13, 2008.

Submit Written Comments to: DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-40970, e-mail andres.fernando@del.wa.gov, fax (360) 413-3482, by 5:00 p.m., March 12, 2008.

Assistance for Persons with Disabilities: Contact Millie Jaeger by March 7, 2008, (360) 725-4926.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending sections of chapters 170-151, 170-295, and 170-296 WAC to correct outdated references to the department of social and services (DSHS), DSHS laws and rules, and related references to clarify the rules without changing their intended effect. These WAC chapters, previously located in DSHS Title 388 WAC, were transferred to DEL Title 170 WAC when the department of early learning was established as an independent agency under chapter 265, Laws of 2006.

Reasons Supporting Proposal: Correcting these outdated references will help the parents, child care providers and others find more current and accurate information about child care licensing requirements.

Statutory Authority for Adoption: RCW 43.215.200.

Statute Being Implemented: Chapter 43.215 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-

cal Matters: Chapter 265, Laws of 2006, transferred the powers, duties, functions and rules pertaining to child care licensing (among other powers, duties and functions) from DSHS to the department of early learning. The act created a new chapter of the Revised Code of Washington, codified as chapter 43.215 RCW. As a result, references in current rules to DSHS and related laws and rules must be corrected.

A preproposal statement of inquiry was not filed and is not required for these proposed rules under RCW 34.05.310 (4)(e).

Name of Proponent: Department of early learning, governmental.

Name of Agency Personnel Responsible for Drafting: Andy Fernando, P.O. Box 40970, Olympia, WA 98504-0970, (360) 725-4397; Implementation: Larry Horne, P.O. Box 40970, Olympia, WA 98504-0970, (360) 725-4695; and Enforcement: Amie Lapp-Payne, P.O. Box 40970, Olympia, WA 98504-0970, (360) 725-4932.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(e), a small business economic impact statement is not required for "rules that only correct typographical errors, make address or name changes, or clarify the language of the rule without changing its effect."

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared. Under RCW 34.05.328 (5)(a)(i), the department is not listed among the agencies to which RCW 34.05.328 applies.

February 6, 2008

Jone M. Bosworth, JD

Director

AMENDATORY SECTION (Amending WSR06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-010 What definitions are important for the school-age child care center program? The following definitions are important under this chapter:

"Capacity" means the maximum number of children the licensee is authorized to have on the premises at a given time.

"Child abuse or neglect" means the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child as defined in RCW 26.44.020 and chapter 388-15 WAC.

"Department" means the state department of early learning (DEL), or its predecessor the department of social and health services (DSHS), the state agency with the legal authority to regulate and certify school-age child care centers.

"Department of health" means the state department of health.

"I," "you," and "your" refer to and mean the licensee or applicant for child care license.

"License" means a permit issued by the department to a person or organization to operate a school-age child care center and affirming the licensee meets requirements under licensure.

"Licensee" means the person, organization, or legal entity named on the facility license and responsible for operating the center.

"**Licensor**" means the person employed by the department to regulate and license a school-age child care center.

"**Premises**" means the building where the center is located and the adjoining grounds over which the licensee has control.

"**School-age child**" means a child five years of age through twelve years of age enrolled in a public or private school.

"**School-age child care center**" means a program operating in a facility other than a private residence, accountable for school-age children when school is not in session. The program must meet department licensing requirements, provide adult-supervised care, and a variety of developmentally appropriate activities.

"**Staff**" means a person or persons employed by the licensee to provide child care and to supervise children served at the center.

"**The Washington state training and registry system (STARS)**" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy the department's training requirements.

"**We**" or "**our**" refer to and mean the department of ~~((social and health services))~~ early learning (DEL), including ~~((division of child care and early learning))~~ DEL licensors.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-020 Who needs to be licensed? (1) The person or organization operating a school-age child care center must receive a license from the department to provide school-age child care, in accordance with chapter ~~((74.15))~~ 43.215 RCW.

(2) The department does not need to license the person or organization operating a school-age child care center if chapter ~~((74.15))~~ 43.215 RCW exempts the person or organization from the licensing requirements. The person or organization claiming an exemption from the licensing requirements must provide the department proof of entitlement to the exemption at the licenser's request.

(3) You may use the following matrix to determine whether or not you are exempt from licensing:

Child care	Recreational
The child care facility assumes responsibility for the child and his welfare.	Children are free to come and go as they choose.
Children are signed in and can only be released to an authorized adult.	No responsibility is assumed in lieu of parent.
A specific registration procedure and required forms must be completed.	No registration form or procedure.
Must adhere to ((DSHS)) <u>DEL</u> standards; has specific requirements regarding staff-child ratio and group size.	No required staff-child ratio or group size requirements.

Child care	Recreational
Specific ((DSHS)) <u>DEL</u> requirements regarding policies and procedures are in a parent handbook.	No specific detailed policies and procedures. General "house rules" apply at each site.
There are specific program goals and activities; calendars of activities are posted and available.	Activities occur on a daily basis; no long-term goals or activities exist.

(4) The person or organization that serves state-paid children must:

- (a) Be licensed or certified;
- (b) Follow billing policies and procedures in Child Care Subsidies, a brochure for providers, ~~((DSHS 22-877(X);))~~ DEL 22-877; and ~~((;))~~
- (c) Bill the department at the person's or organization's customary rate or the ~~((DSHS))~~ state rate, whichever is less.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-075 How do I get a waiver of the licensing requirements contained in this chapter? (1) In an individual case, the department, for good cause, may waive a specific requirement and approve an alternate method for you to achieve the specific requirement's intent if:

- (a) You submit to the department a written waiver request fully explaining the circumstances necessitating the waiver; and
- (b) The department decides the department's approval of the waiver approval will not jeopardize the safety or welfare of the child in care or detract from the quality of licensee-delivered services.

(2) The department may approve a waiver request only for a specific purpose or child and for a specific period of time not exceeding the expiration date of your license.

(3) The department may limit or restrict a license the department issues to you in conjunction with a waiver.

(4) You must maintain a copy of the department's written waiver approval on the premises.

(5) You may not appeal the department's denial of your request for waiver under chapter 34.05 RCW or 170-03 WAC.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-092 Under what conditions does the department impose civil penalties against me? (1) Before imposing a civil penalty, the department must provide written notification to you by personal service, by the licenser or another person, or certified mail that includes:

- (a) A description of the violation and citation of the applicable requirement or law;
- (b) A statement of what you must do to achieve compliance;
- (c) The date by which the department requires compliance;

(d) The maximum allowable penalty if you do not achieve timely compliance;

(e) The means to contact any technical assistance services provided by the department or others; and

(f) Notice of when, where, and to whom you may file a request with the department to extend the time to achieve compliance for good cause.

(2) The length of time you have to comply depends on:

(a) The seriousness of the violation;

(b) The potential threat to the health, safety and welfare of children in care; or

(c) Previous opportunities to correct the deficiency.

(3) The department may impose a civil penalty based on but not limited to these reasons:

(a) The department previously has imposed an enforcement action for the same or similar type of violation of the same statute or rule on your child care center; or

(b) The department has previously given your child care center notice of the same or similar type of violation of the same statute or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) The department may impose a civil penalty in addition to or in conjunction with other disciplinary actions against a child care license including probation, suspension, or other action.

(5) You must pay the civil fine within twenty-eight days after receipt of the notice or later as specified by the department.

(6) The department may forgive the fine if ~~(the)~~ you come into compliance during the notification period.

(7) You, as the center or person against whom the department assesses a civil fine, have a right to an adjudicative proceeding under RCW ~~((43-20A-215))~~ 43.215.307 and chapter 170-03 WAC.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-095 May the department assess civil penalties on unlicensed programs? If the department receives information that a school-age program is operating without a license, the department will investigate. The department may contact the program, send a letter, or make an on-site visit to determine that the agency is operating without a license. Where the department has determined that an agency is operating without a license, the department must send written notification to the unlicensed program by certified mail or other means showing proof of service. This notification must contain the following:

(1) Notice to the agency of the basis for the department's determination that the agency is providing child care without a license and the need for the department to license the agency;

(2) The citation of the applicable law;

(3) The assessment of seventy-five dollars per day penalty for each day the agency provides unlicensed care. The department makes the fine effective and payable within thirty days of the agency's receipt of the notification;

(4) How to contact the ~~((office of child care policy))~~ department;

(5) The unlicensed agency's need to submit an application to the ~~((office of child care policy))~~ department within thirty days of receipt of the department's notification;

(6) That the department may forgive the penalty if the agency submits an application within thirty days of the notification; and

(7) The unlicensed agency's right to an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-200 What requirements must I meet for center staff development and training? (1) You must have an orientation system making employees, volunteers, and trainees aware of program policies and practices. You must provide staff an orientation including, but not limited to:

(a) Licensing rules required under this chapter;

(b) Goals and philosophy of the center;

(c) Planned daily activities and routines;

(d) Age-appropriate child guidance and behavior management methods;

(e) Child abuse and neglect prevention, detection, and reporting policies and procedures;

(f) Special health and developmental needs of the individual child;

(g) Fire prevention and safety procedures; and

(h) Personnel policies.

(2) You must provide or arrange regular training opportunities for the child care staff to:

(a) Promote ongoing employee education;

(b) Enhance practice skills;

(c) Increase cultural awareness; and

(d) Accommodate special health and developmental needs of the individual child.

(3) You must conduct periodic staff meetings for planning and coordination purposes.

(4) You must ensure that:

(a) A staff person with basic, standard, current first-aid and cardiopulmonary resuscitation (CPR) training, or department of health approved training is present at all times while the child is in care; and

(b) Staff's CPR training includes methods appropriate for school-age children in care.

(5) You must provide or arrange appropriate education and training for child care staff on the prevention and transmission of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS).

(6) You must ensure that the person preparing full meals for the center has a valid food handler permit.

(7) You must ensure that the director, site coordinator and, where the program serves more than one group of children, at least one staff person for every group of children, complete:

(a) Ten clock hours or one college quarter credit of training annually, approved by Washington state training and reg-

istry ((and training)) system (STARS), beginning one year after licensure or employment in your licensed child care facility; and

(b) For the director and the site coordinator, five of the ten hours of training must be in program management and administration.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-420 What are my responsibilities regarding child abuse, neglect, and exploitation? You and your staff must protect the children in care from child abuse, neglect, or exploitation, as required under chapter 26.44 RCW. If you or your staff have reasonable cause to believe that a child has suffered abuse or neglect, you or your staff must report the alleged incident to law enforcement or the department((~~s~~) of social and health services) child protective services (CPS) section in accordance with RCW 26.44.030.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-460 What program records must I maintain? You must maintain the following documentation on the premises:

- (1) The daily attendance record:
 - (a) The parent, or other person authorized by the parent to take the child to or from the center, must sign in the child on arrival and must sign out the child at departure, using a full, legal signature;
 - (b) When the child leaves the center to attend school or other off-site activity as authorized by the parent, your staff person must sign out the child and sign in the child on return to the center; and
 - (c) Signed agreements between a program director and a parent where school-age child is allowed to leave the center on his own, must be verified by signature and dated by the director and parent. Staff may sign a child in/out whose parent has agreed in writing to let the child leave the center.
- (2) A copy of the report sent to the department about any illness or injury to the child in care requiring medical treatment or hospitalization;
- (3) The twelve-month record indicating the date and time you conducted the required monthly fire evacuation drills;
- (4) A written plan for staff development specifying the content, frequency, and manner of planned training;
- (5) Activity program plan records;
- (6) A list of each child's allergies and dietary restrictions, if any;
- (7) Any incident involving the use of physical restraint;
- (8) A record of medication your staff gives to any child; and
- (9) A record of accidents and injuries.
- (10) Personnel records as described in WAC ((388-151-470)) 170-151-470(4).

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-991 Waiver of fees. Any person or agency subject to license fees under chapter ((440-44 WAC)) 43.215 RCW and this chapter, and organizations in the person's or agency's behalf, may submit a sworn, notarized petition seeking waiver of fees for a licensee or distinguishable class of licensee.

The petition shall be mailed or delivered to the office of the ((secretary)) DEL director. Following receipt of the petition, the ((secretary)) director may require submission of additional information considered relevant.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-992 Fee payment and refunds. (1) Fees are due with applications for initial license or renewal. The department will not proceed on applications until required fees are paid.

Except as otherwise provided in these rules, fees shall be paid for a minimum of one year.

(2) Fees for licenses issued for other than yearly periods shall be prorated based on the stated annual fee.

(3) When the department issues a license for more than one year:

(a) Fees may be paid for the entire licensing period by paying at the rate established at the time the application was submitted, or

(b) If the licensee does not pay the fee for the entire license period, annual fees shall be due thirty days prior to each annual anniversary date of the license, at the annual fee rate established by these rules at the time such fee is paid.

(4) Except as otherwise provided in these rules, if an application is withdrawn prior to issuance or denial, one-half of the fee shall be refunded.

(5) If there is a change of or by the licensee requiring a new license, the fee paid for a period beyond the next license anniversary date shall be refunded. Changes requiring a new license shall require a new application and payment of fee as provided herein.

(6) If there is a change by the applicant or licensee that requires an amendment placing the licensee in a higher fee category, the additional fee shall be prorated for the remainder of the license period.

(7) Fees becoming due on or after the effective date of this chapter shall be at the rates provided herein.

(8) To the extent fees are reduced through regular rule adoption of this chapter on or before December 31, 1982, fees shall be refunded.

(9) Fee payments shall be by mail. Payment shall be by check, draft, or money order ((made payable to the department of social and health services)).

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0001 What gives the authority to the department ((of social and health services (DSHS))) to license child care and charge licensing fees? (1) The rules

for child care centers are governed under chapter ~~((s 74.12 and 74.15))~~ 43.215 RCW.

(2) The rules establishing licensing fees are adopted under authority of RCW ~~((43.20B.110))~~ 43.215.255.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0020 Who needs to become licensed?

(1) Individuals, entities and agencies that provide care for children must be licensed unless specifically exempt under RCW ~~((74.15.020))~~ 43.215.010(2).

(2) The person or organization claiming an exemption must provide us with proof of right to the exemption if we request it.

(3) We do not license a center that is legally exempt from licensing per RCW ~~((74.15.020))~~ 43.215.010(2). However, if the applicant requests it, we follow all licensing regulations to investigate and may certify the center as meeting licensing and other pertinent requirements. In such a case, all our licensing requirements and procedures apply equally to certification.

(4) We may certify a child care center for payment without further investigation if the center is:

- (a) Licensed by an Indian tribe;
- (b) Certified by the Federal Department of Defense; or
- (c) Approved by the superintendent of public instruction's office.

(5) The center listed in subsection (4)(a), (b), or (c) of this section must be licensed, certified, or approved in accordance with national or state standards, or standards approved by us. It must be operated on the premises where the entity operating the center has jurisdiction.

(6) We must not license a department employee or a member of their household when the employee is involved directly, or in an administrative or supervisory capacity, in the:

- (a) Licensing or certification process;
- (b) Placement of a child in a licensed or certified center;

or

- (c) Authorization of payment for the child in care.

(7) We may license a center located in a private family residence when the portion of the residence accessible to the child is:

- (a) Used exclusively for the child during the center's operating hours or while the child is in care; or
- (b) Separate from the family living quarters.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0030 What must I do to be eligible to receive state child care subsidies? To be eligible to receive state child care subsidies for children in your care you must:

- (1) Be licensed or certified;
- (2) Be a seasonal camp that has a contract with us and is certified by the American Camping Association;
- (3) Follow billing policies and procedure in *Child Care Subsidies: A Booklet for Licensed and Certified Child Care Providers*, ~~((DSSH 22-877(X)))~~ DEL 22-877;

(4) Bill us at your customary rate or the ~~((DSSH))~~ state rate, whichever is less; and

(5) Keep the attendance records as described in WAC ~~((388-295-7030))~~ 170-295-7030 and the invoices for state-paid children on-site for at least five years.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0050 Can I get a waiver (exception) to the minimum licensing requirements or to licensing fees?

(1) In an individual case we can, if we decide you have a good reason, waive a specific requirement and can approve an alternate method for you to achieve the specific requirement if you:

- (a) Submit the request in writing to us;
- (b) Explain in detail the reason you need the waiver; and
- (c) Can demonstrate that you have an alternative method of meeting the intent of the requirement.

(2) If the waiver is approved, you must retain a copy of the written waiver approval on the child care premises.

(3) We approve a waiver request if:

- (a) You have a good reason;
- (b) We determine that approval of the waiver request will not endanger the safety or welfare of the child or take away from the quality of your service;
- (c) The request and approval is for a specific purpose or child; and
- (d) The waiver request is for a specific period of time, which must not go beyond the date the license expires.

(4) We can limit or restrict a license issued to you in combination with a waiver.

(5) Any person or agency can submit a request for a waiver of licensing fees. We may waive fees when collection of the fee would:

- (a) Not be in the best interest of public health and safety;
- (b) Be to the financial disadvantage of the state.

(6) To request a waiver to the requirements to pay a licensing fees, you must:

- (a) Submit a sworn, notarized petition requesting a waiver of fees;
- (b) Mail or deliver the petition to your local child care licensing office; and
- (c) Submit any additional documentation that we may consider relevant to your request for a waiver.

(7) You have no appeal rights to the denial of a waiver request under chapters 34.05 RCW and 170-03 WAC.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0090 When does the department issue initial and full licenses, and when are licensing fees due?

We may issue an initial license to centers that have not yet begun providing care, but are accepting application for potential clients.

(1) We may issue an initial license when you can show that you are following the rules regarding the child's health and safety.

(2) We may issue an initial license if you have not yet opened for business, and so are not yet able to show that you are complying with the rules pertaining to:

- (a) Staff to child interactions;
- (b) Group size and staff to child ratios;
- (c) Behavior management and discipline;
- (d) Activity programs;
- (e) Child records and information; and
- (f) Other rules that require us to observe your facility's ability to comply with rules.

(3) You must provide us with a plan to comply with the rules listed in subsection (2)(a) through (f) of this section. We must approve of that plan.

(4) We may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(5) When you have an initial license we:

(a) Evaluate your ability to comply with all rules contained in this chapter prior to issuing a full license;

(b) May issue a full license to you when you have demonstrated compliance with chapter ~~((388-295))~~ 170-295 WAC; and

(c) Do not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in chapter ~~((388-295))~~ 170-295 WAC.

(6) You must pay licensing fees at the time you apply for an initial license and when your license is being renewed.

(7) We do not process your application until you have paid the required fee.

(8) You can pay licensing fees for:

- (a) A minimum of one year; or
- (b) The entire length of your license.

(9) You pay your fee by mailing a check or money order for the required amount to the department of social and health services, according to instructions on the licensing application.

(10) If you pay your fee one time per year, you pay the annual rate each time. The annual fee is due thirty days before each annual anniversary date of the license.

(11) If you pay for more than one year, the total fee you pay is based on the annual fee rate. For example, if you are licensed for three years and want to pay the licensing fee for the entire period at once, you multiply the annual fee by three years, and pay that amount at the time of your license application or renewal.

(12) If there is a change in your facility that places your facility in a higher fee category, we prorate the additional fee amount over the remainder of the license period.

(13) If you withdraw your application before we deny or issue a license, we refund one-half of the fee.

(14) If there is a change that requires a new license, we refund any fee that remains after your next licensing date. A new license requires a new application and fee.

(15) If we deny, revoke, or suspend your license, we do not refund your licensing fee.

(16) If you reapply for a license after we revoke or suspend your license, you must pay a new license fee.

(17) If you do not pay licensing fees when they are due, we suspend or deny your license.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0110 When can I be fined for not following the minimum licensing requirements? (1) We notify you in writing of our intention to impose a civil fine. We may use personal service, including by our licenser, or certified mail. The letter will include:

(a) A description of the violation and a quote of the law or rule that you have failed to meet;

(b) A statement of what you must do to come into compliance;

(c) The date by which we require compliance;

(d) Information about the maximum allowable penalty we can impose if you do not come into compliance by the given date;

(e) How you can get technical assistance services provided by us or by others; and

(f) Information about how you can request an extension to the date you must be in compliance, if we decide you have a good reason.

(2) The length of time we establish for you to come into compliance depends on:

(a) The seriousness of the violation;

(b) The potential threat to the health, safety and welfare of children in your care; or

(c) If you have had previous opportunities to correct the deficiency and have not done so.

(3) We use the following criteria to determine if we impose a civil fine based on, but not limited to, these reasons:

(a) The child care center has previously been subject to an enforcement action for the same or similar type of violation for the same statute or rule; or

(b) The child care center has previously been given notice of the same or similar type of violation of the same law or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) We can impose a civil fine in addition to or at the same time as other disciplinary actions against a child care center. These include probation, suspension, or other action.

(5) You must pay any civil fines no more than twenty-eight days after you receive the notice that you have a fine. We may specify a later date.

(6) We can waive the fine if your center comes into compliance during the notification period.

(7) You must post the final notice of a civil fine in a noticeable place in your center. The notice must remain posted until we notify you that we have received your payment.

(8) Each violation of a law or rule is a separate violation. We can penalize each violation. We can impose a penalty for each day the violation continues or as a flat amount of the maximum allowable penalty.

(9) If you fail to pay your fine within ten days after the assessment becomes final, we can suspend, revoke, or not renew your license.

(10) You have the right to a hearing when we assess a civil fine under RCW ~~((43-20A-215))~~ 43.215.307 and chapter 170-03 WAC.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0120 How much can I be fined? We can impose a civil fine for the following:

(1) If we determine that an agency or child care center is operating without a license we may assess a fine of two hundred fifty dollars per day for each day you provide unlicensed child care. A fine is effective and payable within thirty days of receipt of the notification.

(2) We may impose a civil monetary fine of two hundred fifty dollars per violation per day for violation of any rules in chapter ~~((388-295))~~ 170-295 WAC. We can assess and collect the fine with interest for each day that you fail to come into compliance.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0130 When can I be fined for operating an unlicensed program? (1) If we receive information that you are operating a child care center without a license, we investigate the allegation.

(2) We contact you, send you a letter, or make an on-site visit to your center to determine whether you are operating without a license.

(3) If we determine that you personally or on behalf of another person are operating a child care center without a license, we send written notification by certified mail or other method showing proof of service to the owner of the unlicensed center. This notification must contain the following:

(a) Notice to the center owner of our basis for determination that the owner is providing child care without a license and the need for us to license the center;

(b) Citation of the applicable law;

(c) The fine is effective and payable within thirty days of the agency's receipt of the notification;

(d) Information about how to contact the ~~((division of child care and early learning))~~ department;

(e) The requirement that the unlicensed center owner submit an application for a license to the ~~((division of child care and early learning))~~ department within thirty days of receipt of our notification;

(f) That we can forgive the fine if the center submits an application within thirty days of the notification; and

(g) The unlicensed center owner's right to an adjudicative proceeding (fair hearing) as a result of the assessment of a monetary fine and how to request an adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-1020 What if the director does not meet the minimum qualifications? (1) If the director does not meet the requirements in WAC ~~((388-295-1010))~~ 170-295-1010, you must have a program supervisor who:

(a) Meets all the qualifications of WAC ~~((388-295-1010))~~ 170-295-1010;

(b) Oversees the planning and supervising of the center's learning and activity program to ensure that practices meet the WAC, are varied and developmentally appropriate; and

(c) Performs on-site program supervisory duties twenty hours or more a week and is not included in the staff to child ratio. If we request it, you must provide documentation of the twenty hours or more a week on site supervisory duties for the program supervisor.

(2) If the director does not meet the minimum requirements in WAC ~~((388-295-1010))~~ 170-295-1010 the director must have had at least one three credit college class in early childhood education or development.

(3) One person may be both the director and the program supervisor when qualified for both positions. The director or program supervisor must be on the premises for the majority of the hours that care is provided. If temporarily absent from the center, the director or program supervisor must leave a competent, designated staff person in charge who meets the qualifications of a lead staff person.

(4) The director or program supervisor may also serve as child care staff when that role does not interfere with management and supervisory responsibilities.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-1070 What continuing state training and registry system (STARS) training is required for child care center staff? (1) The director, program supervisor and lead teachers must complete ten clock hours or one college credit of continuing education yearly after completing the initial training required in WAC ~~((388-295-1010))~~ 170-295-1010.

(2) The director and program supervisor must have five of the ten hours in program management and administration for the first two years in their respective positions. Each additional year, three of the ten hours required must be in program management and administration.

(3) Agencies or organizations that have been approved by the Washington state training and registry system (STARS) may offer up to six clock hours of continuing education each year to their employees. The remaining four hours must be obtained from other training offered in the community.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-2060 What are the requirements for evening and nighttime care? In addition to meeting the other requirements of chapter ~~((388-295))~~ 170-295 WAC, if you offer child care during evening and nighttime hours, you must:

(1) Adapt the program, equipment, and staffing pattern to meet the physical and emotional needs of the child away from home at night such as:

(a) In centers operating past midnight, you must provide for each child a crib, mat or cot, or mattress pad, that is easily sanitized;

(b) Make arrangements for bathing as needed;

(c) Make arrangements for personal hygiene including tooth brushing;

(d) Have individual bedding appropriate for overnight sleeping; and

(e) Have separate dressing and sleeping areas for boys and girls ages six years and older or younger children demonstrating a need for privacy.

(2) Maintain the same staff-to-child ratio that is in effect during daytime care;

(3) Keep the child within continuous visual and auditory range at all times;

(4) Ensure that the staff in charge during evening and nighttime hours meets the requirements of a lead teacher; and

(5) Ensure all staff attending to children in care are awake.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-2070 What do I need to transport the children on off-site trips? (1) You may transport a child or permit the child to travel off-site only with written parental consent. The purpose may be to attend school, participate in supervised field trips, or engage in other supervised off-site activities.

(2) The parent's consent may be:

(a) For a specific date or trip; or

(b) A blanket authorization describing the full range of trips the child may take. If you use a blanket authorization, you must notify the parent in writing at least twenty-four hours in advance about any specific trip.

(3) When transportation is provided by the center for children in care:

(a) The driver must have a valid Washington state driver's license to operate the type of vehicle being driven;

(b) The number of passengers cannot exceed the seating capacity of the vehicle;

(c) Either the center owner or the driver must have liability and medical insurance; and

(d) The driver, parent volunteer, or staff supervising the children being transported in each vehicle must have written documentation on file of current CPR and first-aid training.

(4) When you transport children, the vehicle used must:

(a) Have a current license and registration according to Washington state transportation laws;

(b) Be maintained in good repair and safe operating condition; and

(c) Be equipped with:

(i) At least one first-aid kit that meets the requirements of WAC (~~(388-295-5010)~~) 170-295-5010;

(ii) Vehicle emergency reflective triangles or other devices to alert other drivers of an emergency;

(iii) The health history and emergency information for each child in the vehicle; and

(iv) A method to call for emergency help.

(5) You must meet the child passenger restraint system requirements in RCW 46.61.687 when transporting children. Contact your local state patrol office for more information.

(6) When you transport children, you must maintain the staff-to-child ratio established for the youngest child in the group; and

(7) Staff or driver must not leave the children unattended in the motor vehicle.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3100 When can children take their own medication? (1) Children can take their own medication if they:

(a) Have a written statement from the parent requesting the child take their own medication;

(b) Have a written statement from a health care provider with prescriptive authority stating that the child is physically and mentally capable of taking their own medication; and

(c) Meet all other criteria in ~~((this))~~ chapter ~~((388-295))~~ 170-295 WAC including storage of medications.

(2) A staff member must observe and document that the child took the medication.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3190 How can ~~((we))~~ I be sure that the food ~~((we))~~ I serve is safe? (1) You need to develop and implement a system to monitor the temperature of potentially hazardous foods during cooking, reheating, cooling, storing, and hot and cold holding temperatures to be sure that:

(a) Food will be cooked to at least the minimum correct internal temperature:

(i) Ground beef and pork sausage 155 degrees Fahrenheit;

(ii) Pork 150 degrees Fahrenheit;

(iii) Fish and seafood 140 degrees Fahrenheit;

(iv) Poultry and stuffing 165 degrees Fahrenheit;

(v) Eggs 140 degrees Fahrenheit;

(vi) Beef (not ground) and lamb 140 degrees Fahrenheit.

(b) Previously prepared food is reheated one time only to an internal temperature of 165 degrees Fahrenheit within sixty minutes;

(c) Hot food is kept at a temperature of 140 degrees Fahrenheit or above until served;

(d) Cold food is kept at a temperature of 45 degrees Fahrenheit or less;

(e) Refrigerators have a thermometer in or near the door and are kept at 45 degrees Fahrenheit or less; and

(f) Freezers have a thermometer in or near the door and are kept at 10 degrees Fahrenheit or less.

(2) You must develop a system to record the temperature of each perishable food once it arrives from a satellite kitchen or a catering service. The system must include keeping records on site for six months with the following information:

(a) The name and the temperature of the food;

(b) The date and time the temperature was checked; and

(c) The name and signature or recognized initials of the person who is checking and recording the food temperatures.

(3) You may serve previously prepared food that has not been previously served if it was stored at the proper temperature for less than forty-eight hours after preparation. Leftover

foods or open foods in the refrigerator must be labeled with the date that they were opened or cooked.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3200 How do ((we)) I safely store food? You must store food:

- (1) In the original containers or in clean, labeled containers that are airtight and off the floor;
- (2) In a manner that prevents contamination from other sources;
- (3) In an area separate from toxic materials such as cleaning supplies, paint, or pesticides;
- (4) That is not past the manufacturer's expiration or freshness date;
- (5) In a refrigerator or freezer if cooling is required;
- (6) Raw meat, poultry or fish in the refrigerator, below cooked or ready to eat foods;
- (7) Foods not requiring refrigeration at least six inches above the floor in a clean, dry, ventilated storeroom or other areas; and
- (8) Dry bulk foods not in their original containers, in containers with tight fitting covers. Containers must be labeled and dated.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-3210 How do ((we)) I safely thaw foods? You must thaw food by one of the following methods:

- (1) In a refrigerator;
- (2) Under cool running water, in a pan placed in a sink with the stopper removed;
- (3) In a microwave, if the food is to be cooked immediately; or
- (4) As part of the continuous cooking process.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-4010 At what age can ((we)) I accept infants into care? You must not accept into care an infant who is less than one month of age.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-4020 How do ((we)) I meet the nutritional needs of the infants in ((our)) my care? You must:

- (1) Have written policies on providing, preparing, storing and sanitizing infant formula, food and utensils; and
- (2) Work with the infant's parent to develop a plan for the infant's feedings that is acceptable to the parent and incorporates the following guidelines:

Developmental Stage/Age of Infant	Type of Feeding
(a) Under 4 months of age	Serve only formula or breast milk unless you have a written order from the child's health care provider.

Developmental Stage/Age of Infant	Type of Feeding
(b) When baby can: (At about 4-6 months of age) Sit with support Hold head steady Close lips over the spoon Keep food in mouth and swallow it.	Serve only formula or breast milk unless you have a written order from the child's health care provider. Begin iron fortified baby cereal and plain pureed fruits and vegetables upon consultation with parents.
(c) When baby can: (At about 6-8 months) Sit without support Begin to chew Sip from a cup with help Grasp and hold onto things	Serve only formula or breast milk unless you have a written order from the child's health care provider. Start small amounts of juice, or water in a cup. Let baby begin to feed self. Start semisolid foods such as cottage cheese, mashed tofu, mashed soft vegetables or fruits.
(d) When baby can: (At about 8-10 months) Take a bite of food Pick up finger foods and get them into the mouth Begin to hold a cup while sipping from it	Serve only formula or breast milk unless you have a written order from the child's health care provider. Small pieces of cheese, tofu, chicken, turkey, fish or ground meat. Small pieces of soft cooked vegetables, peeled soft fruits. Toasted bread squares, unsalted crackers or pieces of soft tortilla. Cooked plain rice or noodles. Only formula, breast milk, juice or water in the cup.
(e) When a baby can: (10-12 months) Finger Feed Chew and swallow soft, mashed and chopped foods Start to hold and use a spoon Drink from a cup	Serve only formula or breast milk unless you have a written order from the child's health care provider. Begin offering small sized, cooked foods. Variety of whole grain cereals, bread and crackers, tortillas. Cooked soft meats, mashed legumes (lentils, pinto beans, kidney beans, etc.), cooked egg yolks, soft casseroles.
(f) When a baby can eat a variety of foods from all food groups without signs of an allergic reaction	Fruit pieces and cooked vegetables. Yogurt, cheese slices. Offer small amounts of formula, breast milk or water in the cup during meals.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-4030 What is a safe way to prepare bottles? (1) Parents may bring from home filled bottles labeled with the infant's name for daily use (see WAC ((~~388-295-4040~~)) 170-295-4040).

(2) To prepare bottles you must:

(a) Prepare and fill bottles by washing hands prior to bottle preparation;

(b) Use a sink that is only for bottle preparation, other food preparation or other approved source of water. Water from a handwashing sink may not be used for bottle preparation;

(c) Do not heat a bottle in a microwave or allow bottles to warm at room temperature for more than an hour, to limit bacterial growth; and

(d) Bottles must be warmed under running warm water or placed in a container of water that is not warmer than 120 degrees Fahrenheit.

(3) The bottle preparation area including the sink must:

(a) Be located at least eight feet from the outermost edge of diaper changing tables or counters and sinks used for diaper changing; or

(b) Have a barrier to prevent cross-contamination that is placed between the sink used for food or bottle preparation and the diaper changing table, counter or sink. If a barrier is used, it must be:

(i) Solid (without cracks or breaks);

(ii) Sealed;

(iii) Moisture-resistant; and

(iv) At least twenty-four inches in height from the counter surface.

(4) If the infant room does not have a sink that is dedicated to bottle and food preparation, you must provide a clean source of water for preparing bottles such as getting water from the kitchen and keeping it in a container with an airtight cover that:

(a) Is located at least eight feet from the outermost edge of diaper changing tables or counters and sinks used for diaper changing; or

(b) Has a barrier that meets the requirements in WAC ((388-295-4030)) 170-295-4030 (3)(b) to prevent cross-contamination that is placed between the sink used for food or bottle preparation and the diaper changing table, counter or sink.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-4090 Can ((we)) I use potty-chairs for toilet training? You may use potty-chairs that are:

(1) Located in the toilet room or similar area that meets the requirements of WAC ((388-295-5100)) 170-295-5100 designed for toileting;

(2) On a floor that is moisture resistant and washable;

(3) Immediately emptied into a toilet; and

(4) Cleaned in a designated sink or utility sink separate from classrooms and sanitized after each use. The sink must also be cleaned and sanitized after cleaning potty-chairs.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-5080 How do I safely get rid of sewage and liquid wastes? (1) You must dispose of sewage and liquid waste into a public sewer system or approved on-site sewage disposal system (septic system) designed, constructed and maintained as required in chapters ((246-272)) 246-272A and 173-240 WAC and local ordinances.

(2) If you have an on-site sewage system, you must:

(a) Have written verification that the system has been approved by the department of health or local health jurisdiction; and

(b) Locate your drain field and venting to be sure that:

(i) Playgrounds are not on and do not interfere with the access to or operation of the on-site sewage system including the drain field; and

(ii) That drain field venting does not vent onto the playground.

AMENDATORY SECTION (Amending WSR 07-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7020 Am I required to track immunizations? (1) You are required to track each child's immunization status. To be sure that the children have the required immunizations for their age, you or your staff must:

(a) See that each child has a completed certificate of immunization status form submitted or on file before the first day of child care;

(b) Develop a system to audit and update as scheduled the information on the certificate of immunization status forms;

(c) Meet any requirement of ((the department)) state board of health WAC 246-100-166; and

(d) Have available on the premises the certificate of immunization status forms for review by the health specialist, licenser, the department of health, and nurse consultant.

(2) You may accept a child whose immunizations are started but not up to date on a "conditional" basis if:

(a) For children whose records are difficult to obtain (such as foster children), there is written proof that the case worker or health care provider is in the process of obtaining the child's immunization status prior to the child starting child care; or

(b) The required immunizations are started prior to children starting child care; and

(c) The immunizations are completed as rapidly as medically possible. You must work with the parent, health care provider, or local health department to obtain an immunization plan.

(3) If a parent or health care provider chooses not to immunize a child, they must sign the exempt portion of the certificate of immunization status form.

(4) You may have a policy that states you do not accept children who have been exempted from immunizations by their parent or guardian, unless that exemption is due to an illness protected by the American With Disabilities Act (ADA).

(5) The certificate of immunization status forms for children who are currently enrolled must be accessible and maintained on the premises in a confidential manner.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7060 What injuries and illnesses or child abuse and neglect must I report? You or your staff must report immediately:

(1) A death or a serious injury or illness that requires medical treatment or hospitalization of a child in care must be reported by telephone and in writing to the parent, licenser, and child's social worker, if the child has a social worker;

(2) Any instance when you or your staff have reason to suspect the occurrence of any physical, sexual, or emotional child abuse or child neglect, child endangerment, or child exploitation as required under described in chapter 26.44 RCW. You may make a report by calling the statewide num-

ber at 1-800-562-5624 or ((~~1-866-Endharm~~)) 1-866-END-HARM; and

(3) An occurrence of food poisoning or reportable communicable disease, as required by the state board of health to the local public health department and to the licenser, by telephone.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0010 What is the purpose of this chapter? This chapter defines general and specific licensing requirements for family home child care. Unless noted otherwise, these requirements apply to people who want to be licensed or relicensed to provide family home-based child care ((~~the~~) under chapter ((~~74.15~~)) 43.215 RCW((~~)).~~ We issue or deny a license based on your ability to meet and follow the licensing requirements.

We are committed to ensuring that children who receive family home child care experience health, safety, and well-being. We want these children's experiences to benefit them not only in the short term, but also in the long term. Our licensing requirements reflect our commitment to children.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0110 Who needs to become licensed? (1) Individuals and agencies that provide care for children under this chapter must be licensed, unless specifically exempt under RCW ((~~74.15-020~~)) 43.215.010(2).

(2) The person claiming an exemption must provide the department proof of the right to the exemption if we request it.

(3) We must not license a home that is legally exempt from licensing. However, at the applicant's request, we must investigate and may certify the home as meeting licensing and other requirements. We must apply the same requirements and procedures for certification that we apply for licensure.

(4) We may certify a family home child care for payment without further investigation if the home is:

(a) Licensed by an Indian tribe; or

(b) Certified by the federal Department of Defense. The home must be licensed or certified in accordance with national or state standards or standards approved by us and be operated on the premises over which the entity licensing or certifying the home has jurisdiction.

(5) The individuals and agencies wanting to care for children whose child care is paid for by the state child care subsidy program must:

(a) Be licensed or certified;

(b) Follow billing policies and procedures in *Child Care Subsidies, A Booklet for Licensed and Certified Providers*, ((~~DSHS 22-877(X)~~)) DEL 22-877; and

(c) Bill the department at the person's or organization's customary rate or the ((~~DSHS~~)) state rate, whichever is less. (See WAC 388-290-0190 (2) and (3) for exceptions.)

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0160 How do I apply for a license? (1) To apply for a license, you must:

(a) Attend an orientation provided by ((~~DCCEL~~)) the department;

(b) Complete and submit a signed application form((~~; DSHS 10-204 to DCCEL~~)) to the department, including the following attachments:

(i) A copy of your picture identification issued by a government entity (could include but is not limited to: Driver's license, passport, state identification);

(ii) A photocopy of your Social Security card that is valid for employment or verification of your employer identification number (EIN);

(iii) An employment and education resume for you, primary staff, assistants and volunteers; and

(iv) Three references for you from people unrelated to you.

(2) You must submit ((~~to DCCEL~~)) these additional documents to the department either with your application or within sixty days of submitting your application:

(a) Documentation of current infant, child and adult CPR and standard first aid training for you, any staff, or volunteer who will be counted in staff/child ratios;

(b) Documentation of a negative Mantoux tuberculin (TB) test in the twelve months prior to starting work for you, staff, volunteers and members of the household sixteen years or older;

(c) Documentation of HIV/AIDS training and the availability of bloodborne pathogens information for you, staff and volunteers who have child care responsibility;

(d) Documentation of the local health authority or state department of health approval of your private water supply and independent sewage system, if applicable;

(e) A copy of your policies and procedures you give to parents; and

(f) Any additional reports or information pertaining to your ability to follow the WACs regarding you, staff, volunteers, members of your household or any other person having access to the child in care if your licenser requests it.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0170 Am I required to pay a fee when applying for a family home child care license? You must pay ((~~the financial services administration~~)) a nonrefundable license fee of twenty-four dollars. This must be in the form of a check or money order. You must pay the license fee each year before or on your anniversary date.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0270 Am I required to submit an application if I move to a new address while my license is current? (1) If you move, have an acceptable history of child care, and plan to continue to operate your family home child

care business you must submit an application with all supporting documentation for the new address, before you move.

(2) If you have submitted an application for the new address prior to moving, we allow you to operate at your new address for up to two weeks. If you are unable to meet the health and safety requirements at your new address within the two week period, you must stop operating the child care business until you become licensed at the new address (per RCW ((~~74.15.100~~) 43.215.260)).

(3) If you move and do not tell us, your license becomes invalid on the date of your move.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0290 What hours may a family home child care be open? (1) You may operate your family home child care business twenty-four hours a day.

(2) If you provide nighttime care you or a qualified primary staff person must be awake when children are dropped off and picked up at your home.

(3) A child may remain in care a maximum of ten hours each day. If needed, you may extend the time based on the parent's typical work schedule and travel from and to the child care.

(4) If you provide nighttime care you must adapt the activities, routines and equipment to meet the physical and emotional needs of the child away from home at night. These must include:

- (a) Arrangements made for bathing as needed;
- (b) Standard night wear and individual toiletry items for each child;
- (c) The required beds and bedding (WAC ((~~388-296-1070~~) 170-296-1070));
- (d) Separate dressing and sleeping areas for boys and girls ages four years and older and for other children demonstrating a need for privacy;
- (e) Maintain staff to child ratios during sleeping hours;
- (f) A plan approved by the licenser describing how you will ensure the physical safety and emotional well-being of children during sleeping hours.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0330 Is there more than one category of license? We issue three types of licenses:

- (1) Initial (see WAC ((~~388-296-0340~~) 170-296-0340));
- (2) Full (see WAC ((~~388-296-0350~~) 170-296-0350)); and
- (3) Probationary (see WAC ((~~388-296-0440~~) 170-296-0440)).

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0360 What happens if I fail to follow the rules? (1) If you fail to follow the rules, we notify you of the violation in writing and unless the health, safety or welfare of children in care is threatened, we provide you with an

opportunity to come into compliance before we take adverse licensing action. The notice provides:

- (a) A description of the violation and rule that was broken;
- (b) A statement of what is required to comply with the rules;
- (c) The date by which we require compliance; and
- (d) The maximum financial penalty (civil fine) that you must pay if you do not comply with the rules by the required date.

(2) We may fine you seventy-five dollars a day for each violation of the licensing rules.

(3) We may assess and collect the penalty with interest for each day you fail to follow the rules.

(4) We may impose a civil penalty in addition to other adverse actions against your license including probation, suspension and revocation.

(5) We may, but are not required to, withdraw the fine if you come into compliance during the notification period.

(6) If we assess a civil penalty you have the right to an adjudicative proceeding as governed by RCW ((~~43-20A-215~~) 43.215.305) and chapter ((~~388-02~~) 170-03) WAC.

(7) If you do not request an adjudicative proceeding you must pay the civil fine within twenty-eight days after you receive the notice.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0390 What does the department base a fine on? Fines are determined based on any violation of a licensing rule and according to the following conditions:

- (1) You have allowed the existence of any condition that creates a serious safety or health risk;
- (2) You or any person uses corporal punishment, or humiliating methods of control or discipline;
- (3) You or any primary staff person fail to provide the required supervision;
- (4) You fail to provide required light, ventilation, sanitation, food, water or heating;
- (5) You provide care for more than the highest number of children permitted by the license; or
- (6) You repeatedly fail to follow the rules. (Any repeat violation that has been the subject of a corrective action notification under WAC ((~~388-296-0360~~) 170-296-0360)).

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0430 What will happen if the department believes I am providing unlicensed child care? We send written notice to you if we think you are providing unlicensed child care. The notice explains:

- (1) Why we think you are providing unlicensed child care;
- (2) The law that prohibits unlicensed child care;
- (3) That you must stop providing child care until you get a license;
- (4) How to contact ((~~DCCEL~~) the department);
- (5) How to apply for a license;
- (6) That the fine may be lifted if you apply for a license;

- (7) Your right to an adjudicated proceeding if we assess a monetary penalty; and
- (8) How you can ask for an adjudicative proceeding.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0460 Are there any other reasons that could potentially cause me to lose my license? (1) We may suspend or revoke your license if you go beyond the conditions of your license by caring for children with ages different than your license allows.

(2) Repeatedly fail to comply with the licensing requirements set forth in this chapter or any provision of chapter ~~((74.15))~~ 43.215 RCW.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0480 What may I do if I disagree with the department's decision to deny, suspend, revoke, or modify my license? (1) You have the right to appeal any decision we make to deny, suspend, revoke or modify your license.

(2) Your right to appeal and the procedures for that process are outlined in RCW ~~((43.20A.205 and 74.15.130))~~ 43.215.305, chapters 34.05 RCW, and ~~((chapter 388-02))~~ 170-03 WAC.

AMENDATORY SECTION (Amending WSR 07-24-028, filed 11/28/07, effective 12/29/07)

WAC 170-296-0520 How long must I keep child records and what am I required to document while operating my business? (1) A child's presence in the child care must be documented, on a daily basis, by the child's parent or guardian or an authorized person by using the sign-in and sign-out procedure for each child in attendance. The parent, guardian or authorized person must use their full signature when signing the child in and out of the child care.

(2) When the school age child arrives at or leaves the child care home due to school or off-site activities as authorized by the parent, you or your staff must sign out the child, and sign in the child on return to the home.

(3) Daily attendance records, listing the dates and hours of attendance of each child must be kept up-to-date and maintained in the licensed space of the family home child care for five years.

(4) When a child is no longer enrolled, the date of the child's withdrawal must be recorded in the child's file. You must maintain the child's file for at least five years from the child's last date of attendance. After five years the file may be destroyed or returned to the parent. The child's file must be made available for review by the child's parents and us during this period.

(5) You must call and report, within twenty-four hours to your department licensor:

(a) And the department of social and health services children's administration intake ~~((an))~~ any incident or injury that required the services of a medical professional, including a dentist, that occurred while the child was in attendance.

(b) ~~((DCCEL))~~ And to animal control any incident where a child is bitten by an animal while in attendance.

(c) ~~((DCCEL))~~ Any fire on your premises that required the use of a fire extinguisher or the services of a fire department.

(6) You must submit a written incident report to the child's parent and to your licensor within two working days of the same incident or injury as described in subsection (3) of this section.

(7) You must acquire written parental permission for field trips. You must notify parents in advance when you plan to use vehicles to transport children. Parents may grant general authorization for walking field trips.

(8) You must maintain all records and reports required by these regulations in an up-to-date manner in the licensed space of the facility. The records and reports are subject to inspection and you must allow us access to them during all hours in which licensed activities are conducted.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0850 Must all children in my care have current immunizations? (1) You are required to track each child's immunization status. To be sure children have the required immunizations for their age, you must:

(a) Ensure the child has a completed, current, certificate of immunization status form (CIS) submitted on or before the first day of child care;

(b) Develop a system to audit and update, as scheduled, the information on the CIS form;

(c) Meet any requirement of the ~~((department of))~~ state board of health WAC 246-100-166; and

(d) Have available in your licensed space the CIS forms for review by the licensor.

(2) You may accept a child who is not current with immunizations on a conditional basis if immunizations are:

(a) Initiated before or on enrollment; and

(b) Completed as rapidly as medically possible.

(3) You may exempt the immunization requirement for the child if the parent or guardian:

(a) Signs a statement expressing a religious, philosophical or personal objection; or

(b) Furnishes a physician's statement of a valid medical reason for the exemption.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-1250 What are the requirements I must follow when I transport children? When you transport children under your care, you must follow these requirements.

(1) You must keep the vehicle in a safe operating condition;

(2) The driver must have a valid driver's license;

(3) There must be at least one staff person other than the driver in a vehicle when:

(a) Staff-to-child ratio guidelines require a second staff person (see WAC ~~((388-296-1350))~~ 170-296-1350(3)); or

(b) The child's specific needs require a second staff person.

(4) The driver or owner of the vehicle must be covered under an automobile liability insurance policy;

(5) The number of passengers must not exceed the vehicle's seat belts;

(6) All persons in the vehicle must use seat belts or approved child passenger restraint systems, as required by law, whenever the vehicle is in motion;

(7) You must have a first-aid kit and a copy of the child's completed enrollment form in the vehicle; and

(8) You must perform an attendance count of children when getting in and out of the vehicle to prevent accidentally leaving a child in the vehicle.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-1370 What types of play materials, equipment and activities must I provide for the children in my care? (1) You must provide developmentally appropriate and culturally relevant activities and materials in the required quantity and variety to meet the needs and interests of children being served. The daily schedule must promote:

(a) Social skills (for example: Opportunities for sharing, caring and helping);

(b) Positive self-concepts (for example: Encouraging children to draw pictures and tell stories about themselves and their families);

(c) Language and literacy (for example: Reading books, songs, conversation, story telling, scribbling and drawing);

(d) Physical development in both indoor and outdoor settings, strengthening large and small muscles and encouraging eye-hand coordination, body awareness, rhythm and movement (for example: Finger plays, obstacle courses and puzzles); and

(e) Creative expression and appreciation for the arts (for example: Creating art work as process rather than product, dance, movement, dramatic play, music and materials that represent a variety of cultures).

(2) The daily schedule must provide:

(a) Individual, small group and large group activities;

(b) Many opportunities for success through open-ended activities (for example: Blocks, play dough and sand/water and praising effort, not just results);

(c) An environment of respect for individual and cultural diversity (for example: Acknowledging and respecting each child's unique qualities and integrating positive culturally relevant experiences into daily activities);

(d) Opportunities for children to solve problems, initiate activities, experiment and gain mastery through learning by doing;

(e) Opportunities to explore science, dramatic play, music, language arts and mathematical concepts;

(f) A balance between staff-directed and child-initiated activities. Staff voices must not dominate the overall sound of the group; and

(g) Infants and toddlers with ample opportunities to move about freely in a safe area.

(3) If television/video viewing occurs it must not be in place of planned activities and must be:

(a) Educational;

(b) Designed for children; and

(c) Age-appropriate alternatives to television must be available for children during TV or video watching and appropriate for the number and ages of the children in care.

(4) You must have the required outdoor play equipment for the number and ages of the children that you serve (see WAC ((388-296-1240)) 170-296-1240).

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-1440 Am I required to offer training to my staff? You must:

(1) Discuss with the staff your policies and procedures as well as the rules contained in this chapter;

(2) Provide or arrange for your staff to have training for the services that you provide to children under your care;

(3) Include in your training monthly practice of fire drills and disaster training for each staff;

(4) Update bloodborne pathogen information on an annual basis;

(5) Ensure that staff and volunteers keep CPR and first aid training current if they are required to have it;

(6) Record the amount of time and type of training provided to staff; and

(7) Keep this information in staff files or in a separate training file and make this information available to ((DECEL)) the department upon request.

WSR 08-04-113

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed February 6, 2008, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-067.

Title of Rule and Other Identifying Information: New section dental hygiene, WAC 246-815-260 Off-site supervision.

Hearing Location(s): Department of Health, Town Center Two Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on April 4, 2008, at 2:00 p.m.

Date of Intended Adoption: April 25, 2008.

Submit Written Comments to: Jennifer Bressi, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by March 31, 2008.

Assistance for Persons with Disabilities: Contact Jennifer Bressi by March 31, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to provide a definition of off-site supervision for dental hygienists to provide services in senior centers. SHB 1298, passed in 2007, allows dental hygienists to remove deposits and stains from the surfaces of the teeth,

apply topical preventive or prophylactic agents, polish and smooth restorations and perform root planing and soft tissue curettage in senior centers with off-site supervision by a dentist licensed in Washington.

Reasons Supporting Proposal: SHB 1298 requires dentists to provide off-site supervision to dental hygienists providing services in senior centers. Dental and dental hygiene rules do not currently define off-site supervision. A definition is needed to define off-site supervision, which is authorized by SHB 1298.

Statutory Authority for Adoption: RCW 18.29.130.

Statute Being Implemented: RCW 18.29.130 and 18.29.056.

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jennifer Bressi, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Bressi, P.O. Box 47867, Olympia, WA 98504, phone (360) 236-4893, fax (360) 664-9077, e-mail jennifer.bressi@doh.wa.gov. No SBEIS is required because the rule can be categorized under RCW 35.05.328 [34.05.328] (5)(b)(v) a rule with content explicitly dictated by statute.

February 6, 2008
Mary C. Selecky
Secretary

NEW SECTION

WAC 246-815-260 Off-site supervision. Off-site supervision means that a licensed dental hygienist has entered into a written practice plan under RCW 18.29.056 with a dentist licensed in Washington. The dentist must agree to be available for contact as documented in the practice plan. The dental hygienist must submit the practice plan to the department for approval. Off-site supervision does not require the physical presence of the supervising dentist at the treatment site.

WSR 08-04-114
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed February 6, 2008, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-037.

Title of Rule and Other Identifying Information: Chapter 246-254 WAC, Radiation protection—Fees.

Hearing Location(s): Department of Health, Town Center 2, Room 530, 111 Israel Road S.E., Tumwater, WA 98501, on March 26, 2008, at 10:00 a.m.

Date of Intended Adoption: March 27, 2008.

Submit Written Comments to: Arden C. Scroggs, Supervisor, Radioactive Materials Section, P.O. Box 47827, Olympia, WA 98504-7827, Arden.Scroggs@doh.wa.gov, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2255, by March 26, 2008.

Assistance for Persons with Disabilities: Contact Joy Redman by March 19, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will revise the medical license fee terminology to reflect current terminology and regulatory references, and combine the current two health physics service provider fee categories into a single fee category.

Reasons Supporting Proposal: This is necessary because the medical fee regulations were recently revised to include new references and language. In addition, staff analysis indicates there is little difference in the work effort required to license and inspect the two categories of health physics service provider and assessing significantly different fees is not warranted. The proposed change represents a fee reduction for one category and no change for the other.

Statutory Authority for Adoption: RCW 43.70.110 and 43.70.250.

Statute Being Implemented: RCW 43.70.110 and 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: C. DeMaris, 111 Israel Road S.E., Tumwater, WA, (360) 236-3223; Implementation and Enforcement: A. Scroggs, 111 Israel Road S.E., Tumwater, WA, (360) 236-3221.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3) and 34.05.310 (4)(d), a small business economic impact statement (SBEIS) is not required for rules that clarify language of a rule without changing its effect; and under RCW 19.85.025(3) and 34.05.310 (4)(f), an SBEIS is not required for rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared. Under RCW 34.05.328 (5)(b)(iv), a cost-benefit analysis is not required for rules that clarify language of a rule without changing its effect; and under RCW 34.05.328 (5)(b)(vi), a cost-benefit analysis is not required for rules that set or adjust fees or rates pursuant to legislative standards.

February 6, 2008
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

WAC 246-254-070 Fees for specialized radioactive material licenses. (1) Persons licensed or authorized to possess or use radioactive material in the following special categories shall forward annual fees to the department as follows:

- (a) \$7,050 for operation of a single nuclear pharmacy.
- (b) \$12,025 for operation of a single nuclear laundry.
- (c) \$12,025 for a license authorizing a single facility to use more than one curie of unsealed radioactive material in the manufacture and distribution of radioactive products or devices containing radioactive material.
- (d) \$4,215 for a license authorizing a single facility to use less than or equal to one curie of unsealed radioactive material or any quantity of previously sealed sources in the manufacture and distribution of products or devices containing radioactive material.
- (e) \$1,085 for a license authorizing the receipt and redistribution from a single facility of manufactured products or devices containing radioactive material.
- (f) \$8,065 for a license authorizing decontamination services operating from a single facility.
- (g) \$3,815 for a license authorizing waste brokerage including the possession, temporary storage at a single facility, and over-packing only of radioactive waste.
- (h) ~~(\$1,700 for a license authorizing equipment servicing involving:~~
 - ~~(i) Incidental use of calibration sources;~~
 - ~~(ii) Maintenance of equipment containing radioactive material; or~~
 - ~~(iii) Possession of sealed sources for purpose of sales demonstration only.~~
- ~~(i) \$3,175)~~ \$1,700 for a license authorizing health physics services, leak testing, ~~(or)~~ calibration services, equipment servicing, or possession of sealed sources for purpose of sales demonstration only.
- ~~((j))~~ (i) \$1,995 for a civil defense license.
- ~~((k))~~ (j) \$600 for a license authorizing possession of special nuclear material as pacemakers or depleted uranium as shielding.

(2) Persons licensed or authorized to possess and use radioactive material in the following broad scope categories shall forward annual fees to the department as follows:

- (a) \$23,860 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than one curie.
- (b) \$11,030 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than 0.1 curie but less than or equal to one curie.
- (c) \$8,865 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession less than or equal to 0.1 curie.
- (3) Persons licensed or authorized to possess or use radioactive material which are not covered by any of the annual license fees described in WAC 246-254-070 through 246-254-100, shall pay fees as follows:

- (a) An initial application fee of one thousand dollars;

(b) Billing at the rate of \$125 for each hour of direct staff time associated with issuing and maintaining the license and for the inspection of the license; and

(c) Any fees for additional services as described in WAC 246-254-120.

(d) The initial application fee will be considered a credit against billings for direct staff charges but is otherwise non-refundable.

(4) Persons licensed or authorized to possess or use radioactive material in a facility for radioactive waste processing, including resource recovery, volume reduction, decontamination activities, or other waste treatment, but not permitting commercial on-site disposal, shall pay fees as follows:

(a) A nonrefundable initial application fee for a new license of sixteen thousand dollars which shall be credited to the applicant's quarterly billing described in (b) of this subsection; and

(b) Quarterly billings for actual direct and indirect costs incurred by the department including, but not limited to, license renewal, license amendments, compliance inspections, a resident inspector for time spent on the licensee's premises as deemed necessary by the department, laboratory and other support services, and travel costs associated with staff involved in the foregoing.

AMENDATORY SECTION (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

WAC 246-254-080 Fees for medical and veterinary radioactive material ~~(licenses)~~ use. (1) ~~(Persons licensed or)~~ Licenseses authorized ~~((to possess))~~ possession or use of radioactive material in the following medical or veterinary categories shall forward annual fees to the department as follows:

(a) \$5,960 for operation of a mobile nuclear medicine program from a single base of operation~~((-))~~;

(b) \$4,345 for ~~((a license authorizing groups II and III of WAC 246-235-120 for diagnostic nuclear medicine at a single facility.))~~ the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, at a single facility (diagnostic imaging and localization nuclear medicine);

(c) \$3,765 for ~~((a license authorizing groups IV and V of WAC 246-235-120 for medical therapy at a single facility.))~~ the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201 at a single facility (radiopharmaceutical therapy);

(d) \$6,000 for ~~((a license authorizing groups II or III and groups IV or V of WAC 246-235-120 for full diagnostic and therapy services at a single facility.))~~ the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201, and/or the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (combination diagnostic nuclear medicine and/or radiophar-

maceutical therapy), and/or sealed source (manual or machine) therapy;

~~(e) \$3,225 for ((a license authorizing group VI of WAC 246-235-120 for brachytherapy at a single facility.))~~ the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (manual brachytherapy);

~~(f) \$1,995 for ((a license authorizing brachytherapy or gamma stereotactic therapy or teletherapy at a single facility.))~~ the use of sealed sources in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit, as defined in WAC 246-240-351, at a single facility (machine brachytherapy);

(g) \$3,030 for a license authorizing medical or veterinary possession of greater than two hundred millicuries total possession of radioactive material at a single facility((-);

(h) \$2,410 for a license authorizing medical or veterinary possession of greater than thirty millicuries but less than or equal to two hundred millicuries total possession of radioactive material at a single facility((-);

(i) \$1,765 for a license authorizing medical or veterinary possession of less than or equal to thirty millicuries total possession of radioactive material at a single facility((-);

~~(j) \$1,555 for ((a license authorizing group I as defined in WAC 246-235-120 or in vitro uses of radioactive material at a single facility.))~~ the use of unsealed radioactive material for uptake, dilution and/or excretion studies for which a written directive is not required, as defined in WAC 246-240-151, at a single facility (diagnostic uptake, dilution, and excretion nuclear medicine);

(k) \$970 for a license authorizing medical or veterinary possession of a sealed source for diagnostic use at a single facility.

~~(2) ((Persons with licenses authorizing multiple locations of use shall increase the annual fee by fifty percent for each additional location or base of operation.))~~ The fee for a license authorizing multiple locations shall be increased by fifty percent of the annual fee for each additional location.