

WSR 08-12-007
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed May 27, 2008, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-04-066.

Title of Rule and Other Identifying Information: WAC 139-05-210 Basic law enforcement certificate of equivalency, this rule sets the standards for admission to the equivalency academy and defines the status an officer has as a result of attending and successfully completing the equivalency academy. The completion of the equivalency is required by RCW as a condition of continuing employment as a peace officer if the officer has had a break of law enforcement service in excess of twenty-four consecutive months, or has received a conditional offer of employment as a peace officer and has completed a basic law enforcement academy in another state.

Hearing Location(s): 19010 1st Avenue South, Commission Hearings Room, Burien, WA 98148, on September 10, 2008, at 10:00 a.m.

Date of Intended Adoption: September 10, 2008.

Submit Written Comments to: Doug Blair, Certification Manager, 19010 1st Avenue South, Burien, WA 98148, e-mail [dblair@cjtc.state.wa.us](mailto:d Blair@cjtc.state.wa.us), fax (206) 835-7928, by August 22, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to make changes to bring it into compliance with the requirements for peace officer certification.

Changes to subsection (1), persons are allowed to attend the equivalency academy for the purpose of receiving the training it offers. Other persons are required to attend as a condition of being certified as a peace officer, a condition of continued employment as a law enforcement officer in Washington state. Therefore completion of the equivalency academy is not necessarily recognized in the same manner as [as] completion of the Basic Law Enforcement Academy.

Changes to subsection (2), different states have different standards under which an officer's training is recognized. The commission offers a two-week equivalency academy that is intended for [an] officer who has attended basic training, and served as a commissioned law enforcement officer in this or another state, or has completed a basic law enforcement academy that is recognized as an equivalent to the Washington basic law enforcement academy but has not been commissioned and receives an offer of employment from a Washington law enforcement agency within twelve months of completion of such academy.

Changes to subsection (3), at the present time, there is no limit on the break in service that a law enforcement officer can have and still return to the equivalency academy. The majority of the states have set the limit at five years. This change will establish a maximum break in service at five years. A break in excess of five years will require the officer to repeat the basic training academy.

Change to new subsection (4), criminal justice training commission (CJTC) has traditionally allowed officers who

are not eligible for certification to attend the equivalency academy for the purpose of receiving the training that is offered. These changes recognize these persons and set a standard of allowing attendance to such persons. Many of the officers who attend the equivalency know at least sixty days in advance that they are going to attend. The prerequisites are currently required "in a timely manner."

Changes to old subsection (7), this paragraph was removed. The CJTC does not set a state performance standard for emergency vehicle operation.

Statutory Authority for Adoption: RCW 43.101.080 and [43.101].085.

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

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

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.

May 22, 2008

Cheryl A. Price

Public Records Officer

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

WAC 139-05-210 Basic law enforcement certificate of equivalency. (1) A certificate of completion of equivalent basic law enforcement training is issued to applicants who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection (6) of this section and successful completion of all knowledge and skills requirements within the equivalency academy. ~~((A certificate of completion of equivalent basic law enforcement training is recognized in the same manner as the certificate of completion of the basic law enforcement academy.))~~

(2) Participation in the equivalency process is limited to:

(a) Fully commissioned ((law enforcement)) peace officers of a city, county, or political subdivision of the state of Washington, who otherwise are eligible to attend the basic law enforcement academy ~~((and)); or~~

(b) Fully commissioned peace officers who have attained commissioned law enforcement status by completing a basic training program in this or another state. For this purpose, the term "basic training program" does not include any military or reserve training program or any federal training program not otherwise approved by the commission; or

(c) Persons who have not attained commissioned peace officer status but have successfully completed a basic law enforcement academy recognized as a full equivalent to the Washington state basic law enforcement academy by the commission and within twelve months of the date of comple-

tion been made a conditional offer of employment as a fully commissioned peace officer in Washington state; or

(d) Persons whose Washington peace officer certification has lapsed because of a break in service as a fully commissioned peace officer for more than twenty-four months but less than sixty months and who are required to attend the equivalency.

(3) Applicants who are ~~((approved))~~ required to participate in the equivalency academy for the purpose of becoming a certified peace officer must attend the first available session of the equivalency academy following such applicant's date of hire~~((Applicants are not required to attend a session of the equivalency academy conducted within the initial sixty days of employment))~~ unless the equivalency academy occurs within the first sixty days of the peace officer's initial date of employment in which case the peace officer must attend the next available academy as a condition of certification as a peace officer. Applicants approved to participate in the equivalency academy for training purposes only, will be admitted on a space available basis.

It is the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner, and as necessary, to ensure that the participation provided by this section is ~~((effected))~~ affected.

(4) In those instances where an applicant has attended more than one basic training program, eligibility for participation in the equivalency process will be based upon successful completion of the most recent of such programs attended.

(5) The decision to request an officer's participation in the equivalency process discretionary with the head of the officer's employing agency, who must advise the commission of that decision by appropriate notation upon the hiring notification form. Upon receipt of such notification, the commission will provide all necessary forms and information.

(6) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing agency must submit to the commission the following documentation as a precondition of participation within such process:

(a) ~~((A copy))~~ Proof of the applicant's current and valid driver's license;

(b) ~~((A copy))~~ Proof of the applicant's current and valid basic first-aid card;

(c) A statement of the applicant's health and physical condition by an examining physician;

(d) A record of the applicant's firearms qualification;

(e) A liability release agreement by the applicant; and

(f) A criminal records check regarding such applicant.

(7) If comparable emergency vehicle operations training has not been completed previously, the applicant will be required to complete the commission's current emergency vehicle operation course, as scheduled by the commission.

(8) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission will:

(a) Issue a certificate of completion of equivalent basic law enforcement training; or

(b) Issue a certificate of completion of equivalent basic law enforcement training upon the applicant's successful

completion of additional training as the commission may require; or

(c) Require completion of the commission's basic law enforcement academy.

WSR 08-12-028

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed May 29, 2008, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-07-094.

Title of Rule and Other Identifying Information: Chapter 468-06 WAC, Public access to information and records.

Hearing Location(s): Transportation Commission Board Room, Transportation Building, 310 Maple Park Avenue S.E., Olympia, WA 98501-3261, on July 28, 2008, at 1:30 p.m.

Date of Intended Adoption: July 28, 2008.

Submit Written Comments to: Cathy Downs, P.O. Box 47410, Olympia, WA 98504-7410, e-mail downsc@wsdot.wa.gov, fax (360) 705-6808, by July 28, 2008.

Assistance for Persons with Disabilities: Contact Washington state department of transportation by July 28, 2008, TTY (360) 705-7000 or (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rewrite rule in plain talk and bring WAC into compliance with chapter 42.56 RCW.

Reasons Supporting Proposal: RCW was recodified from chapter 42.17 RCW to chapter 42.56 RCW and the WAC will be in compliance with new RCW.

Statutory Authority for Adoption: Chapters 42.17, 42.56 RCW.

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

Name of Proponent: Washington state department of transportation records and information management office, governmental.

Name of Agency Personnel Responsible for Drafting: Grant Heap, 310 Maple Park Avenue, Olympia, WA 98501, (360) 705-7760; Implementation: Marta Carlo, 310 Maple Park Avenue, Olympia, WA 98501, (360) 705-7734; and Enforcement: Cathy Downs, 310 Maple Park Avenue, Olympia, WA 98501, (360) 705-7761.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is regarding public information and should not impact any small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. There is no financial impact due to the implication of this rule.

May 20, 2008

Steve T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-010 ((Purpose.)) What is the purpose of this chapter? The purpose of this chapter ((shall be)) is to ((ensure compliance by the Washington state department of transportation with the provisions of chapter 1, Laws of 1973 (Initiative 276), and in particular with sections 25 through 32 of that act, dealing with public records)):

(1) Publish department of transportation organizational information.

(2) Establish the procedures we will follow to provide access to public records prepared, owned, used, or held by the department.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-020 ((Definitions.)) What definitions apply to public records? ((1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristic.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(3) "Department" means the Washington state department of transportation.) Definitions used in the Public Records Act, chapter 42.56 RCW, apply to these rules.

AMENDATORY SECTION (Amending Order 163, filed 7/24/96, effective 8/24/96)

WAC 468-06-030 ((Exempted records.)) What public records are exempt from public inspection and copying? ((The following records shall be exempt from public inspection and copying. For further exemptions, chapter 42.17 RCW and in particular RCW 42.17.310 should be consulted.

(1) Personal information in files maintained for employees, appointees or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(2) Specific intelligence information and specific investigative files compiled by investigative, law enforcement and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(3) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time the complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or

candidate for public office must be made in writing and signed by the complainant under oath.

(4) Test questions, scoring keys, and other examination data used to administer a license, employment or academic examination.

(5) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired, or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(6) Valuable formulae, designs, drawings and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(7) Preliminary drafts, notes, recommendations, and intraagency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(8) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(9) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(10) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(11) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070.

(12) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(13) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers.

(14) Information that identifies a person who, while an agency employee:

(a) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and

(b) Requests his or her identity or any identifying information not be disclosed.

(15) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interest, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.) (1) The exemptions that will apply are those set out in chapter 42.56 RCW and any other applicable law.

(2) The department does not disclose lists of individuals requested for commercial purposes.

AMENDATORY SECTION (Amending WSR 03-09-103, filed 4/22/03, effective 5/23/03)

WAC 468-06-040 (~~Description of central and field organization of~~) How is the ((Washington state)) department of transportation((:)) organized? ((+)) The department of transportation is a statutorily created agency of the state of Washington. ((The central office of the department of transportation is located in the Transportation Building, Olympia, WA 98504.

(2) ~~The department of transportation is headed by a secretary who is the executive head of the department and is appointed by the Washington state transportation commission.~~

(a) ~~Serving directly under the secretary are the chief of staff, audit office, equal opportunity office, engineering and regional operations division, Washington state ferries division and the finance and administration division. There are also assistant attorney generals assigned to the department who provide legal services in department matters.~~

(b) ~~Reporting directly to the chief of staff are the following offices: Communications, governmental liaison office, ombudsman, freight strategy and policy, highways and local programs, public transportation and rail, aviation and transportation economic partnerships.~~

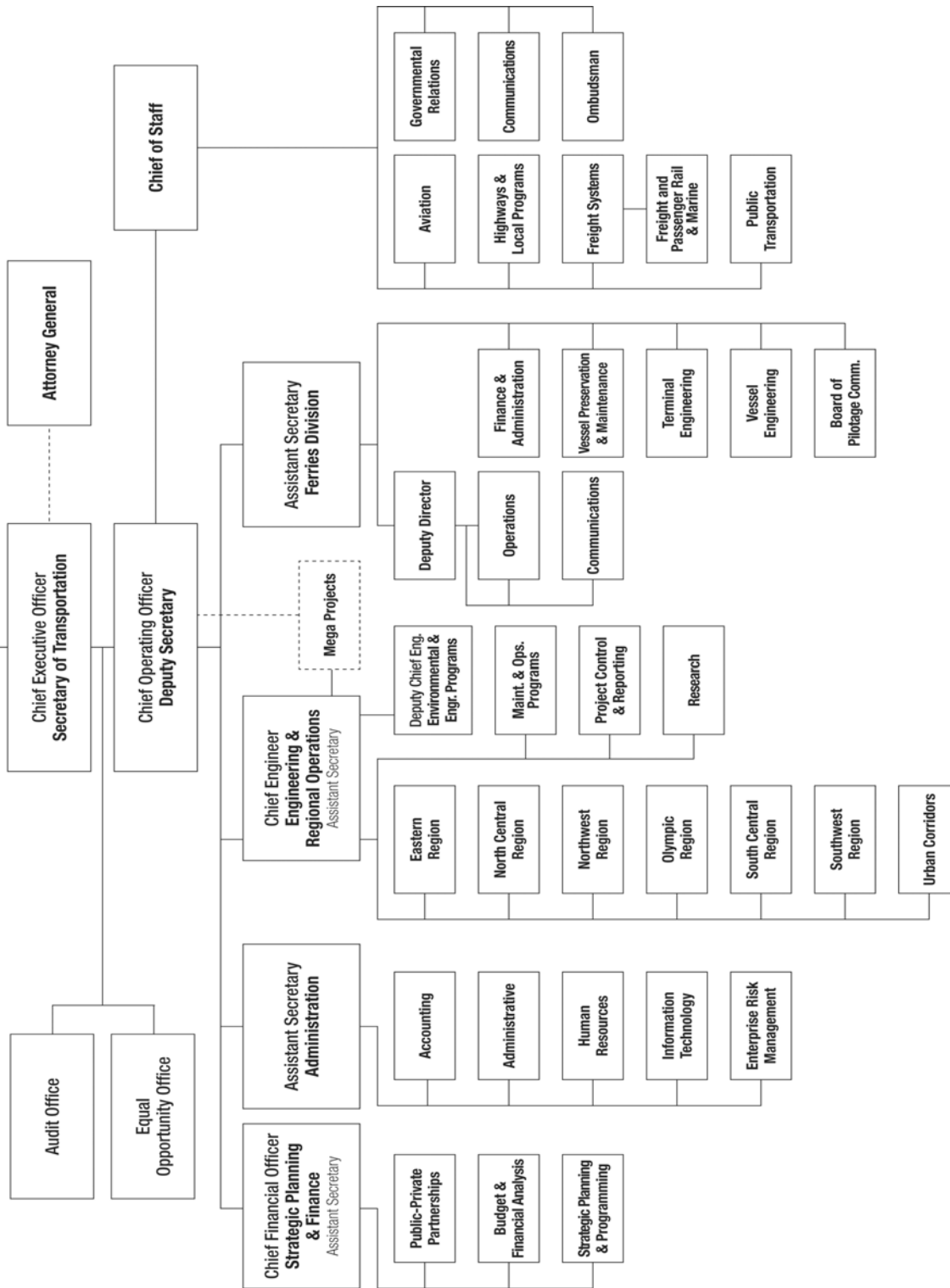
(c) ~~The following programs report to the assistant secretary for engineering and regional operations, depending upon their needs. Environmental and engineering programs, urban corridors and northwest coordination, maintenance and operations programs and planning and capital program management.~~

(d) ~~The department field functions are carried out by six regions which are each headed by a region administrator. The central regional office locations are: Seattle, Wenatchee, Tumwater, Vancouver, Yakima, and Spokane. The regions have various project and maintenance area offices which are headed by a supervisor. Region administrators report directly to the assistant secretary for the engineering and regional operations division.)~~ We have headquarters, division, and regional offices.

The department of transportation organization chart:



Citizens of Washington State Governor



AMENDATORY SECTION (Amending Order 120, filed 8/14/89, effective 9/14/89)

WAC 468-06-050 Who is the department's public records officer((s))? ((The department's public records shall be in the charge of the manager, administrative services, who shall be the public records officer for the department. In the absence of the manager, administrative services, the records manager shall serve as the public records officer. The persons so designated shall be located in the transportation building, Olympia, Washington. The public records officer shall be responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973-)) (1) The director of administrative services is the department's public records officer. The director is responsible for:

(a) Ensuring employees comply with department processes and procedures and state laws about public disclosure:

(b) Managing headquarters, regional, and division public disclosure coordinators and delegating responsibilities to them:

(c) Approving and signing public record exemption letters; and

(d) Contacting the attorney general's office for legal opinions on public record exemptions, subpoenas, and other legal matters.

(2) You may contact the headquarters public records officer at:

Transportation Building
310 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300

Telephone: 360-705-7000
TTY: 1-800-833-6388

www.wsdot.wa.gov

(3) In the absence of the public records officer, the records manager performs the duties of the public records officer.

(4) A public disclosure coordinator is available in each region or division. Region and division contact information is available at www.wsdot.wa.gov.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-060 How do I request a copy of a public record((s available))? ((All public records of the department, as defined in WAC 468-06-020, are deemed to be available for public inspection and copying pursuant to these rules, except as provided in WAC 468-06-030-)) (1) You may obtain a copy of a public record by submitting a written request to the department's public disclosure coordinator. See WAC 468-06-050. Coordinators will accept a letter, e-mail, fax, or department's request for public records form (722-023 EF).

You may obtain a copy of the form by calling or contacting a public disclosure coordinator or at www.wsdot.wa.gov.

(2) If you do not use the department's form, requests should:

(a) Provide the name, address, telephone number, and e-mail address of the person requesting the record.

(b) Provide the date and time of the request.

(c) Provide a clear description of the record. You should be as specific as possible. Public disclosure coordinators may ask you to explain or clarify your request because it is not specific enough.

(d) Indicate in the request that this is a "request for public records."

AMENDATORY SECTION (Amending Order 163, filed 7/24/96, effective 8/24/96)

WAC 468-06-070 ~~((Requests for))~~ When are public records((s)) available for inspection and copying? ((Subject to the provisions of subsection (3) of this section, and in accordance with the requirements of chapter 1, Laws of 1973, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records are only obtainable by members of the public when those members of the public comply with the following procedures:

(1)(a) A public record may ordinarily be disclosed upon an oral or written request. Requests will be referred to the public records officer or public disclosure coordinator. All requests shall contain the following information:

(i) The name of the requester.

(ii) The date the request was made.

(iii) Public records or information requested.

(iv) Requester's signature (if written request).

(b) The person handling the oral request shall require the requester to submit a written request in the following instances:

(i) Whenever the record requested clearly falls within the statutory exemptions of WAC 468-06-030 or when the exempt status of the record is unclear.

(ii) Whenever an entire file is requested or all records of a general category are requested unless the number of documents involved is less than ten.

(iii) Records pertaining to condemnation actions or other pending litigation to which the department is a party or pertaining to any controversy to which the department is party.

(iv) When the document requested has a notation "legal work product" or "privileged attorney-client communication" or similar notice of privileged material.

(v) Where the oral request is too complicated or too extensive and inconvenient to the department to handle the matter on an oral basis.

(2) Responses to requests for public records shall be made promptly. Within five business days of receiving a public record request, the department will respond by either:

(a) Providing the record;

(b) Acknowledging that the department has received the request and providing a reasonable estimate of the time the department will require to respond to the request; or

(c) Denying the public record request.

Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or offices affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the department may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request, the department need not respond to it.

(3) The public records officer or person handling the request shall inform the member of the public making the request whether or not the requested record is available for inspection or copying at a region office or at the transportation building in Olympia, Washington.

(4) The records requested are not to be used to compile a commercial sales list.

(5) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the department is also a party (or when such a request is made by or on behalf of an attorney for such a party) the request shall be referred to the assistant attorney general assigned to the department for appropriate response.) (1) Nonexempt public records are generally available for inspection and copying during normal business hours. Normal business hours are Monday through Friday from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., excluding legal holidays.

(2) You must make an appointment with the appropriate office before inspecting the records. Appointments are limited to two hours.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-080 ((Availability for public inspection and copying of)) ~~How will the department respond to my public records((—Office hours—)) request?~~ ((Public records shall be available for inspection and copying during the customary office hours of the department of transportation. For the purposes of this chapter, the customary office hours shall be from 8 a.m. to noon and from 1 p.m. to 5 p.m., Monday through Friday, excluding legal holidays.)) (1) A public disclosure coordinator will provide you with a written response within five business days of receiving your request for public records. An initial written response may:

(a) Acknowledge we have received the request and provide a reasonable estimate of the time it will take to respond and briefly explain the time estimate.

(i) Time estimates are based on many issues including the complexity of the request, clarity of the request, number of documents, location of documents, redaction, legal issues, court decision, third-party involvement, or determining if records are exempt. In any case, coordinators will provide you a brief written explanation for the time necessary to respond to your request.

(ii) We may extend reasonable estimates when warranted. A public disclosure coordinator will contact you if this happens.

(b) Provide the requestor the records.

(c) Ask for a better description of an unclear request.

(d) Provide part of the records and deny another part.

(e) Deny the request.

(2) We will take timely action on requests and make the records "promptly available."

AMENDATORY SECTION (Amending Order 163, filed 7/24/96, effective 8/24/96)

WAC 468-06-090 ((~~Inspection and copying cost.~~) ~~What is the fee for obtaining a copy of a public record?~~) (1) ((No fee shall be charged for inspection of public records.

(2) The department of transportation shall impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy records; such charges shall not exceed the amount necessary to reimburse the department for its actual costs incident to such copying.)) The department will not charge you for any standard request of less than twenty-five copies. A standard request is a black and white copy on 8 1/2" x 11" plain white paper.

(2) You will be charged fifteen cents per page for all standard requests of twenty-five copies or more and the actual cost of all nonstandard requests. You may obtain a list of nonstandard costs from a public disclosure coordinator.

(3) A public disclosure coordinator will notify you by mail if there is a copying charge.

(4) The department will require full payment for all copying requests before providing the records.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-100 ((~~Protection of~~) ~~What are the rules for inspecting nonexempt public records((:))?~~ ((In order to implement the provisions of section 29, chapter 1, Laws of 1973, requiring agencies to enact reasonable rules to protect public records from damage or disorganization, the following rules have been adopted:

(1) Copying of public documents shall be done by department personnel and under the supervision of said personnel, upon the request of members of the public under the procedures set down in WAC 468-06-070.

(2) No document shall be physically removed by a member of the public from the area designated by the department for the public inspection of documents for any reason whatever.

(3) When a member of the public requests to examine an entire file or group of documents, as distinguished from a request to examine certain individual documents which can be identified and supplied by themselves, the department shall be allowed a reasonable time to inspect the file to determine whether information protected from disclosure by section 31, chapter 1, Laws of 1973, is contained therein, and the department shall not be deemed in violation of its obligation to reply promptly to requests for public documents by reason of causing such an inspection to be performed.)) (1) You should give a reasonable notice of your public records request to the public disclosure coordinator where the records are stored. Coordinators will assist you in the timeliest man-

ner possible but are not required to excessively interfere with other essential functions.

(2) Coordinators will:

(a) Notify you in writing when public records are ready for inspection.

(b) Schedule an appointment for you to inspect the requested public records.

(i) Coordinators may ask you to complete the department's request for public records form before making an appointment.

(ii) A staff person will remain with all public records you are inspecting. Reviewing time is limited to two hours.

(iii) Coordinators will provide a space to inspect public records. You may not remove any public record from the viewing area or disassemble or alter any document.

(iv) If you fail to inspect the public records as scheduled or make a required payment we may close the request.

(c) Notify you in writing when the inspection is complete or your request has been withdrawn or abandoned. Coordinators may provide large volumes of public records in installments.

(3) The headquarters public disclosure coordinator, or delegee, will notify you in writing if the records you requested are exempt from public disclosure.

(4) Coordinators will provide you copies of any public documents after your inspection is complete. The department may charge you for copies but there is no charge for inspection of public records. See WAC 468-06-090.

AMENDATORY SECTION (Amending Order 97, filed 11/18/85)

WAC 468-06-110 ((Denial of request.)) What happens if the department decides that all or part of a requested public record is exempt from disclosure?

((Each denial of a request for a public record shall be accompanied by a written statement to the requestor clearly specifying the reasons for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. Such statement shall be sufficiently clear and complete to permit the secretary of transportation or designee to review the denial in accordance with WAC 468-06-120.)) (1) When we determine that an entire record is exempt from disclosure, the headquarters public disclosure coordinator, or delegee, will notify you in writing. The notification will list each exempt record, the law that allows the exemption, and a brief explanation for the exemption.

(2) If your request requires a partial exemption, the headquarters public disclosure coordinator, or delegee, will notify you in writing. The notification will list each exempt record, the law allowing the exemption, and a brief explanation of the exemption. Coordinators will redact or blackout the exempt information and provide you the nonexempt portion of the records.

AMENDATORY SECTION (Amending DOT Order 10 and Comm. Order 1, Resolution No. 13, filed 12/20/78)

WAC 468-06-120 ((Review of denials of)) How do I request that the department reconsider its decision to

deny my request for public records ((requests.))? (1) ((Any person who objects to the denial of a request for a public record may petition the public records officer for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) After receiving a written request for review of a decision denying a public record, if the public records officer determines to affirm the denial, then the written request shall immediately be referred to the assistant attorney general assigned to the department. The assistant attorney general shall promptly consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the public records officer has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever first occurs.)) If you object to the complete or partial denial of a public records request you may make a written petition for review. Your petition should identify the written statement denying your request. Send your written petition to the public disclosure coordinator. Coordinators will promptly forward the petition to the headquarters public disclosure coordinator for review.

(2) The department's headquarters public disclosure coordinator will promptly:

(a) Review the petition.

(b) Consult with the office denying the record.

(c) Contact the attorney general's office for advice as appropriate.

(3) We will provide you a written decision within ten business days following the department's receipt of the petition. If the requestor and department agree, a longer period of review may be allowed.

(4) If you do not agree with the department's review, you may request a review of the department's claim of exemption by the attorney general's office. You can initiate this type of review by sending a written request for review to:

Public Records Review
Office of the Attorney General
P.O. Box 40100
Olympia, WA 98504-0100
publicrecords@atg.wa.gov

NEW SECTION

WAC 468-06-125 Will the department notify a person or business when a public records request may affect their rights and be potentially exempt? Public disclosure coordinators may provide written notification to a department employee, person or business named in a requested record or to whom a record specifically pertains and whose rights may be affected by the release of the record. The coordinator's written notification will:

(1) Include the name and location of the requestor and the record(s) requested.

(2) Advise the employee, person or business that they may seek a court injunction in superior court within ten days to prevent release of the record in accordance with RCW 42.56.540.

(3) Inform the employee, person or business that the department will disclose the record to the requestor unless the employee, person or business provides the coordinator with a court order enjoining such disclosure.

AMENDATORY SECTION (Amending Order 62, filed 5/19/81)

WAC 468-06-130 ((Records index)) How do I request an electronic public record? (1) ~~((The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of records as specified in RCW 42.17.260(3) because of the complexity and diversity of its operations and the resulting volume of manuals, correspondence, reports, surveys, staff studies and other materials.~~

~~(2) The department will make available for public disclosure all indices which may at a future time be developed for agency use-)) You request an electronic record the same way as a paper record. You should advise the coordinator in writing that you are seeking the record in an electronic form.~~

~~An electronic record is any record generated, communicated, received, or stored by electronic means for use in an informational system or for transmission from one information system to another.~~

~~(2) Your request for an electronic record must include an identifiable record. An identifiable record is one that a coordinator or another staff person can reasonably locate.~~

~~A reasonably locatable electronic record is a record that can be located with typical search features and organizing methods contained in the department's current software.~~

~~(3) The department may charge actual costs of providing electronic records in advance.~~

NEW SECTION

WAC 468-06-135 Will the department provide an electronic copy of a printed public record? (1) You request an electronic copy of a public record the same way as a paper copy. You should advise the coordinator in writing of this specific request.

(2) If a public record (kept on paper) is reasonably translatable into an agency used electronic format, coordinators will provide you an electronic copy of that record.

A reasonably translatable record is one we can easily copy from paper to an electronic format.

(3) The department may charge actual costs of providing electronic records in advance.

AMENDATORY SECTION (Amending WSR 90-23-007, filed 11/9/90, effective 12/10/90)

WAC 468-06-140 ((Indexes)) Does the department maintain a public records index? (1) ~~((A system of indexing for identification and location of the following records is hereby established by the department. Such records shall include the following:~~

~~(a) Final orders entered after June 30, 1990, issued in adjudicative proceedings as defined in RCW 34.05.010(1) that contain an analysis or decision of substantial importance to the agency in carrying out its duties.~~

~~(b) Declaratory orders entered after June 30, 1990, that contain an analysis or decision of substantial importance to the agency in carrying out its duties.~~

~~(c) Interpretive statements as defined in RCW 34.05.010(8).~~

~~(d) Policy statements entered after June 30, 1990, as defined in RCW 34.05.010(14).~~

~~(2) A system of indexing shall be as follows:~~

~~(a) The indexing system will be administered by the department's rules coordinator and located in the transportation building in Olympia, Washington.~~

~~(b) Copies of all indexes shall be available for public inspection and copying in the manner provided for the inspection and copying of public records.~~

~~(c) The rules coordinator shall establish and maintain a separate index for each item contained in subsections (1)(a) through (d) of this section as follows:~~

~~(i) The index shall list all final orders and declaratory orders selected by the department that contain decisions of substantial importance to the agency which orders shall be listed alphabetically by the titles of the hearing or controversy and shall contain a phrase describing the issue or issues and relevant citations of law.~~

~~(ii) Interpretative statements and policy statements shall be indexed by the applicable program administered by the department.~~

~~(d) The rules coordinator shall update all indexes at least once a year and shall revise such indexes when deemed necessary by the department.)) The department's records indexes are located in the records and information services office, transportation building, Olympia, Washington.~~

~~(2) The records officer is responsible for:~~

~~(a) Managing the index system.~~

~~(b) Coordinating all aspects of the index.~~

~~(c) Revising indexes when necessary.~~

NEW SECTION

WAC 468-06-150 How long does the department keep requests for public records? The department keeps all documents according to the state general retention schedule. We keep a request for public records for six years from the date of disclosure, final response, or denied appeal (whichever is later).

WSR 08-12-057

WITHDRAWAL OF PROPOSED RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed June 2, 2008, 11:44 a.m.]

The professional educator standards board requests the withdrawal of proposed rule making filed as WSR 08-08-103 on April 2, 2008, for proposed changes to WAC 181-77-005 and 181-77-068.

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
Legislative and
Policy Coordinator

WSR 08-12-058
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed June 2, 2008, 12:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-109.

Title of Rule and Other Identifying Information: WAC 181-77-005 Types of career and technical education certificates, 181-77-014 Requirements for limited certification, 181-77-025 Personnel assignment, 181-77-031 Requirements for candidates seeking career and technical education certification who have completed approved college/university programs in a career and technical education endorsement area, 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience, and 181-77-068 Requirements for coordinator of work-based learning initial or continuing certificates.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, on July 16, 2008, at 8:30 a.m.

Date of Intended Adoption: July 16, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by July 10, 2008.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes, updates and adds specific CTE names of certificates and CTE categories. Specifically, the proposed language does the following:

- Changes name of "work-based" to "worksite,"
- Changes name of "diversified occupations" to "career choices,"
- Combines the business endorsement and marketing endorsement into one,
- Adds applied mathematics and applied science as new categories for CTE certificates, and
- Specifies the assignment of teachers with applied math and science categories for teaching general ed math and science classes.

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, 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 42736, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

June 2, 2008

Nasue Nishida

Legislative and

Policy Coordinator

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

WAC 181-77-005 Types of career and technical education certificates. The following types of certificates shall be issued:

(1) Teacher. The teacher certificate authorizes service as a teacher in the school district(s) or skills center(s) and shall be issued in one of the following categories and/or in a specific subcategory of the major category as approved by the professional educator standards board and/or its designee:

- (a) Agriculture education;
- (b) Business and marketing education;
- (c) ~~((Marketing education;~~
- ~~((d)))~~ Family and consumer sciences education;
- ~~((e)))~~ (d) Technology education;
- ~~((f)))~~ (e) Trade and industrial;
- ~~((g)))~~ (f) Health occupations;
- ~~((h) Diversified occupations;))~~ (g) Career choices;
- ~~((i)))~~ (h) Coordinator for ~~((work-based))~~ worksite learning; or

~~((j)))~~ (i) New and emerging fields;

(j) Categories which may be added to a continuing career and technical education certificate are:

(i) Mathematics applied. To add this category, the candidate shall:

(A) Have completed a state approved career and technical education preparation program based on business and industry under chapter 181-77A WAC;

(B) Hold an approved baccalaureate degree from a regionally accredited college or university pursuant to WAC 181-79A-030(5);

(C) Hold a continuing career and technical education certificate with a technology education or trade and industrial category under this section: Provided, That trade and industrial candidates hold a math-related degree in mathematics or engineering;

(D) Be fully contracted as a teacher or long-term substitute teacher by a Washington public school;

(E) Pass the secondary mathematics subject knowledge test approved by the professional educator standards board;

(F) Document a minimum of one year teaching experience in technology education or trade and industrial courses; and

(G) Obtain a letter of support from immediate supervisor who conducts teaching evaluation.

(ii) Science applied. To add this category, the candidate shall:

(A) Have completed a state approved career and technical education teacher preparation program based on business and industry under chapter 181-77A WAC;

(B) Hold an approved baccalaureate degree from a regionally accredited college or university pursuant to WAC 181-79A-030(5);

(C) Hold a continuing career and technical education certificate with an agriculture education, health occupations, or trade and industrial category under this section: Provided, That trade and industrial candidates hold a science-related degree in science, engineering, or a medical practice field;

(D) Be fully contracted as a teacher or long-term substitute by a Washington public school;

(E) Pass the secondary science subject knowledge test approved by the professional educator standards board;

(F) Document a minimum of one year teaching experience in agriculture education, health occupations, or trade and industrial courses; and

(G) Obtain a letter of support from immediate supervisor who conducts teaching evaluation.

(iii) CTE teachers who have earned a mathematics applied or science applied category are eligible for teaching assignments in general education mathematics or science courses, dependent upon the category on the continuing career and technical education certificate, under WAC 181-77-025.

(2) Director. The director certificate authorizes service as a career and technical education director, as an assistant director, or as a career and technical education supervisor in the school district(s) or skills center(s);

(3) Counselor. The career and technical education counselor certificate authorizes service in the role of career and technical education guidance and counseling;

(4) Occupational information specialist. The occupational information specialist certificate authorizes service in the role as an occupational information specialist.

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

WAC 181-77-025 Personnel assignment. Career and technical education teachers teaching other secondary school subjects and career and technical education counselors serving in addition as general counselors need to hold a valid certificate as provided for in chapter 181-79A WAC (~~Standards for teacher, administrator, and educational staff associate certification~~). Career and technical education teachers who hold a mathematics applied category are eligible to teach general education mathematics, and career and technical education teachers who hold a science applied category are eligible to teach general education science under WAC 181-77-005.

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

WAC 181-77-014 Requirements for limited certification. (1) Probationary certificate. The probationary certificate is valid for two years and is renewable one time for two additional years upon recommendation of the employing district if the individual has completed the procedures outlined for the first year in the professional growth plan and has made additional progress in meeting the requirements for the initial career and technical education certificate.

The candidate for a probationary certificate must have substantially completed requirements for the initial career and technical education certificate as set forth in WAC 181-77-031 or 181-77-041.

(a) Such a certificate may be issued upon recommendation by the employing school district.

(b) The candidate shall have developed a professional growth plan in cooperation with the career and technical education administrator. The plan must be approved by the local school district career and technical education program advisory committee, to which the candidate is assigned. The plan shall provide for orientation, prior to the commencement of the teaching assignment, in the following:

(i) Issues related to legal liability;

(ii) The responsibilities of professional career and technical education educators; and

(iii) The lines of authority in the employing school district and/or building.

Within the first sixty working days, the plan shall establish procedures for the career and technical education instructor to develop competencies in the following:

(iv) Career and technical education methods; and

(v) General and specific safety.

If the candidate does not have access to the required course work within the first ninety working days, the local school district career and technical education advisory committee responsible may authorize the completion of the course work at a later date. The required course work shall be completed prior to the second year of employment.

(vi) The plan shall develop procedures and timelines for the career and technical education instructor to meet the requirements for the initial career and technical education certificate.

(vii) Provided, That candidates for probationary certificates as a coordinator of (~~work-based~~) worksite learning shall successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program and hold a valid probationary career and technical education teacher certificate.

(2) Conditional career and technical education certificate. Notwithstanding other requirements prescribed in this chapter for eligibility for career and technical education certification in the state of Washington, the one-year conditional career and technical education certificate may be issued under specific circumstances set forth below for limited service:

(a) The issuance of the conditional career and technical education certificate may be issued only under unique and special circumstances where no regularly certificated career

and technical education instructor is available and is limited to:

(i) Persons highly qualified and experienced in the knowledge and occupational skills of the career and technical education program to be certified; or

(ii) Persons who meet the occupational experience requirements for career and technical education certification; or

(iii) Persons who will be employed in new and emerging occupations as identified by the professional educator standards board and/or its designee.

(b) The certificate is issued to individuals who are screened by the local career and technical education administrator and school district superintendent or designee. The local career and technical education administrator or superintendent will verify that the following criteria have been met when requesting the conditional career and technical education certificate:

(i) No person with career and technical education certification in the field is available as verified by the local career and technical education administrator or superintendent;

(ii) The individual is being certified for a limited assignment and responsibility in a specified career and technical education program area;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment and will be apprised of any legal liability, the lines of authority and the duration of the assignment;

(iv) The career and technical education administrator and local program advisory committee will indicate the basis on which he/she has determined that the individual is competent for the assignment;

(v) A written work and/or educational experience training plan as specified in WAC 181-77-014 (1)(b) is on file with the employing district.

(c) The certificate is valid for one year and only for the teaching area specified on the certificate. The certificate may be reissued on application and evidence that requirements continue to be met.

(3) Substitute career and technical education certificates. Substitute career and technical education certificates may be issued to candidates who meet the requirements in WAC 181-79A-231 (2) or (4).

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

WAC 181-77-031 Requirements for candidates seeking career and technical education certification who have completed approved college/university programs in a career and technical education endorsement area. Candidates shall complete the following requirements in addition to those set forth in WAC 181-79A-150, 181-79A-155, 181-82-322, and chapter 181-78A WAC.

(1) Initial.

(a) Candidates for the initial certificate shall hold a baccalaureate degree from a regionally accredited college or university which includes a minimum of forty-five quarter hours of study in the specific career and technical education subject area for which certification is sought.

(b) Candidates for the initial certificate shall demonstrate competency in one or more of the specific endorsement areas of WAC 181-82-322.

(c) Candidates for the initial certificate shall complete a state approved career and technical education teacher training program through a regionally accredited college or university which shall include completion of student teaching in the relevant career and technical education subject area.

(d) Candidates for the initial certificate shall provide documentation of one year of paid occupational experience (two thousand hours) in the specific career and technical education field for which certification is sought. If all or part of the two thousand hours is more than six years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience.

(e) In addition, candidates for initial certification in ~~((diversified occupations))~~ career choices or coordinator of ~~((work-based))~~ worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject area certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject area to be certified completed subsequent to the conferral of the baccalaureate degree.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject area certified to teach with an authorized employer—i.e., school district(s) or skills center(s).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(i) Six quarter hours or sixty clock hours of career and technical education educator training;

(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.

AMENDATORY SECTION (Amending WSR 07-12-001, filed 5/23/07, effective 6/23/07)

WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience. Candidates for certification who have not completed approved programs set forth in WAC 181-82-322 shall complete the fol-

lowing requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation of paid occupational experience in the specific career and technical education subcategory for which certification is sought.

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

(i) General and specific safety;

(ii) Career and technical education teaching methods;

(iii) Occupational analysis;

(iv) Course organization and curriculum design;

(v) Philosophy of vocational education;

(vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

(i) School law;

(ii) Issues related to abuse as specified in WAC 181-77A-165(7).

(d) In addition, candidates for initial certification in ~~((diversified occupations))~~ career choices or coordinator of ~~((work-based))~~ worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer—i.e., school district(s) or skills center(s).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(i) Six quarter hours or sixty clock hours of career and technical education educator training;

(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.

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

WAC 181-77-068 Requirements for coordinator of ~~((work-based))~~ worksite learning initial or continuing certificates. To obtain a coordinator of ~~((work-based))~~ worksite learning certificate, a candidate must:

(1) Possess a valid initial or continuing career and technical education teaching certificate; and

(2) Successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program.

WSR 08-12-059

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed June 2, 2008, 12:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-114.

Title of Rule and Other Identifying Information: WAC 181-78A-100 Existing approved programs.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, on July 16, 2008, at 8:30 a.m.

Date of Intended Adoption: July 16, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by July 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by July 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 proposed language to add the word "minimally" would allow a site visit team to consist of more team members. This provides more flexibility for additional team members when site reviews are conducted at large institutions.

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, 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.

June 2, 2008
Nasue Nishida
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-24-082, filed 12/5/06, effective 1/5/07)

WAC 181-78A-100 Existing approved programs. Chapter 181-78A WAC rules shall govern all policies related to programs upon adoption by the professional educator standards board, which shall provide assistance to colleges and universities in the revision of their existing programs.

(1) All professional education programs shall be reviewed for approval under the 1997 program approval standards of chapter 181-78A WAC by August 31, 2000. Colleges and universities may permit individuals accepted into teacher preparation programs on or before August 31, 2000, to obtain certification by meeting requirements of programs approved under approval standards described in chapter 181-78 WAC if the individuals complete the program on or before August 31, 2003, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2003: Provided, That the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

(2) All principal/program administrator programs shall be reviewed for approval under the 2002 program approval standards of chapter 181-78A WAC by August 31, 2004. Colleges and universities may permit individuals accepted into principal/program administrator programs on or before August 31, 2004, to obtain a residency certificate by meeting requirements of programs approved under 1997 approval standards described in chapter 181-78A WAC if the individuals complete the program on or before August 31, 2006, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2006. Provided, That the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

(3) All school counselor, school psychologist, or school social worker programs shall be approved under the 2004 program approval standards of chapter 181-78A WAC by August 31, 2005. Colleges and universities may permit individuals accepted into the school counselor, school psychologist, or school social worker programs on or before August 31, 2005, to obtain a residency certificate by meeting requirements of programs approved under the 1997 approval standards described in chapter 181-78A WAC if the individuals complete the program on or before August 31, 2007, and the

college or university verifies program completion to the superintendent of public instruction on or before December 31, 2007. Provided that the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

(4) Individuals who completed a principal/program administrator program on or before August 31, 2004, shall be granted an initial certificate if the preparing college or university verifies completion by December 31, 2004. Individuals who complete an educational staff associate program on or before August 31, 2005, shall be granted an initial certificate if the preparing college or university verifies completion by December 31, 2005.

(5) Institutions shall be given at least one year notification prior to a professional educator standards board review for compliance with these standards: Provided, That if an institution requests a visit with less than a year's notice, the professional educator standards board shall consider that request.

(6) The professional educator standards board shall determine the schedule for such approval reviews and whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under the 1997 program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and the National Council for the Accreditation of Teacher Education (NCATE) as such agreement relates to the NCATE accreditation cycle and allow NCATE accredited colleges/universities to follow the NCATE schedule for their state site visit. Non-NCATE accredited colleges/universities shall have a state approval site visit every five years. The professional educator standards board may require more frequent site visits at their discretion pursuant to WAC 181-78A-110(2).

(7) Each institution shall submit its program for review when requested by the professional educator standards board to ensure that the program meets the state's program approval standards and to provide assessment data relative to the performance standards to the professional educator standards board for the year prior to the site visit.

(a) Thirty days prior to the visit, institutions will submit a previsit report that shall:

(i) Describe how the program approval standards are met for each educator preparation program scheduled for review (NCATE reports may fulfill this requirement);

(ii) Describe how "unmet" standards or program weaknesses, identified during the previous site visit, have been corrected;

(iii) Describe major program(s) changes implemented since the last site visit;

(iv) Summarize all WEST-E data since the last site visit;

(v) Summarize all program completer survey data compiled since the last site visit;

(vi) Include all professional education advisory board reports submitted since the last site visit;

(vii) Summarize complaints related to the program(s) and actions taken to remedy the complaints; and

(viii) Describe the criteria used by the program(s) to assess, in multiple ways over time, its candidates' knowledge

and skills, including evidence of positive impact on student learning.

(b) The site visit shall be conducted by a team whose membership is minimally one member of the professional educator standards board, one peer institution representative, one individual with assessment expertise, two K-12 practitioners with expertise related to the programs scheduled for review, the office of the superintendent of public instruction liaison, the director of professional education and certification, and the professional certificate program specialist if a professional certificate program will be reviewed. Substitutes may be assigned when individuals in specific role assignments are not available. All members, including substitutes, shall be trained.

(c) The site visit shall be conducted in compliance with the protocol and process adopted and published by the professional educator standards board.

(d) The final site visit report and other appropriate documentation will be submitted to the professional educator standards board.

(e) Institutions may submit a rejoinder to the report within two weeks following the public posting of the report.

(f) In considering the report, the professional educator standards board may grant approval according to WAC 181-78A-110 and 181-78A-100(6).

(g) Institutions may request a hearing in instances where it disagrees with the professional educator standards board's decision. The hearing will be conducted by an appeal team whose members shall include three individuals selected from a cadre of trained site visit team members, including at least one higher education representative and one K-12 practitioner.

(8) Institutions seeking National Council for the Accreditation of Teacher Education, Council for Accreditation of Counseling and Related Education Programs, and National Association of School Psychologist accreditation may request from the professional educator standards board approval for concurrent site visits which would utilize the same documentation with the exception of material submitted by the institution to the state for the professional education advisory boards and the accountability standards.

WSR 08-12-060
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed June 2, 2008, 12:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-106.

Title of Rule and Other Identifying Information: WAC 181-79A-206 Academic and experience requirements for certification—Teachers.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, on July 16, 2008, at 8:30 a.m.

Date of Intended Adoption: July 16, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by July 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by July 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 proposed language outlines a timeline by which the professional educator standards board will transition and implement the professional certificate assessment requirement. Candidates will have two options to attain the professional certificate until January 1, 2010. After this date they must meet the passing standards of the portfolio of evidence assessment.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

June 2, 2008

Nasue Nishida

Legislative and

Policy Coordinator

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

WAC 181-79A-206 Academic and experience requirements for certification—Teachers. Candidates for teachers' certificates shall complete the following requirements in addition to those set forth in WAC 181-79A-150.

(1) Initial/residency.

Candidates for the initial or residency certificate shall hold an approved baccalaureate degree from a regionally accredited college or university pursuant to WAC 181-79A-030(5).

(2) Continuing.

(a) Candidates who apply for a continuing certificate shall have at least forty-five quarter hours (thirty semester hours) of upper division and/or graduate work completed from a regionally accredited institution of higher education subsequent to the conferral of the baccalaureate degree: Provided, That if the individual is pursuing study in a new subject matter area or specialization, lower division (freshmen or sophomore level) credit hours in that subject area or specialization shall be accepted toward continuing certification upon

completion of the requirements for an endorsement in that subject area or specialization.

(b) Candidates applying for a continuing certificate prior to September 1, 2000, shall have been granted at least two subject area endorsements.

(c) Candidates who apply for a continuing certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(d) Candidates for continuing teachers' certificates shall provide documentation of one hundred eighty days or full-time equivalent or more satisfactory teaching experience with an authorized employer—i.e., school 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) Professional.

(a) Candidates for the professional certificate shall have successfully completed a professional educator standards board-approved, professional certificate program, pursuant to WAC 181-78A-500 through 181-78A-540: Provided, That an individual who holds a teaching certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirement for completion of a professional certificate program, in recognition that NBPTS certification is issued only to individuals who have demonstrated highly advanced skills as a teacher.

(b) Candidates who apply for a professional certificate who have not successfully completed course work or an in-service program on issues of abuse, must complete the abuse course work requirement as defined in WAC 181-79A-030(6).

(c) Teacher professional certificate candidates completing a preassessment seminar prior to August 31, 2009, shall have two options for submitting a portfolio.

(i) Submit a portfolio for evaluation to the professional certificate program until August 31, 2010. The college or university has until December 31, 2010, to verify completion; or

(ii) Submit a portfolio for evaluation to the uniform and external professional certificate portfolio of evidence assessment. Teacher professional certificate candidates completing the preassessment seminar after January 1, 2010, will submit portfolios to the professional certificate portfolio of evidence assessment.

WSR 08-12-061
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed June 2, 2008, 1:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-106.

Title of Rule and Other Identifying Information: WAC 181-79A-211 Academic and experience requirements for

certification—Administrators and 181-79A-250 Initial/residency and continuing/professional certificates—Renewal, reinstatement, and continuing education requirements.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, on July 16, 2008, at 8:30 a.m.

Date of Intended Adoption: July 16, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by July 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by July 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 proposed language changes delete a satisfactory performance evaluation as a requirement for principal and administrator professional certificates. The language also makes technical corrections from a "professional educator standards board-approved private school" to "state board of education-approved private school."

Statutory Authority for Adoption: RCW 28A.410.210 and 28A.410.010.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nasue Nishida, P.O. Box 47236, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

June 2, 2008

Nasue Nishida

Legislative and

Policy Coordinator

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

WAC 181-79A-211 Academic and experience requirements for certification—Administrators. Candidates for the respective administrative certificate shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-213.

(1) Superintendent.

(a) Initial.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least forty-five quarter credit hours (thirty semester credit hours) of graduate level course work in education.

(ii) The candidate must meet requirements for a superintendent's certificate pursuant to WAC 181-79A-150(4).

(b) Continuing.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least sixty quarter credit hours (forty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) The candidate must meet requirements for a superintendent's certificate pursuant to WAC 181-79A-150(4).

(iii) Candidates applying for continuing superintendent's certificate shall provide documentation of one hundred eighty days or 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) Principal.

(a) Initial.

(i) The candidate shall hold an approved master's degree and have completed an approved program for the preparation of principals.

(ii) The candidate shall have documented successful school-based experience in an instructional role with students.

(b) Residency.

(i) The candidate shall hold an approved master's degree and have completed an approved program for the preparation of principals.

(ii) The candidate shall have documented successful school-based experience in an instructional role with students.

(c) Continuing.

(i) The candidate who holds a valid initial principal's certificate issued prior to August 31, 1998, shall hold an approved master's degree and completed subsequent to the baccalaureate degree at least forty-five hours (thirty semester hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) The candidate who applies on or after August 31, 1998, shall hold a valid initial principal's certificate, an approved master's degree and shall have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by a college or university with a state approved principal program or one hundred fifty clock hours of study, which meet the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. Such study shall:

(A) Be based on the principal performance domains included in WAC 181-78A-270 (2)(a) or (b);

(B) Be taken subsequent to the issuance of the initial principal's certificate; and

(C) Be determined in consultation with and approved by the candidate's employer or the administrator of a state approved principal preparation program.

(iii) Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the academic requirement for the continuing certificate described in WAC 181-79A-211 (2)(c)(i), if the candidate meets require-

ments for and applies for the continuing certificate by the expiration date on that initial certificate.

(iv) The candidate must meet requirements for a principal's certificate pursuant to WAC 181-79A-150(4).

(v) Candidates applying for continuing principal's certificate shall provide documentation of one hundred eighty days or 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. Candidates applying for the continuing principal's certificate on or after August 31, 1998, shall provide documentation of three contracted school years of full-time employment as a principal or assistant principal.

(vi) Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the one hundred-eighty day experience requirement described in WAC 181-79A-211 (2)(c)(v), if that candidate meets requirements and applies for the continuing certificate by the expiration date on that initial certificate.

(d) Professional certificate.

(i) The candidate shall have completed an approved professional certificate program.

(ii) ~~((The candidate shall have satisfactory evaluations while serving in the principal or assistant principal role as verified by a school district or a professional educator standards board approved private school.~~

~~(iii))~~ The candidate shall have documentation of three contracted school years of employment as a principal or assistant principal.

(3) Program administrator.

(a) Initial.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least twenty-four quarter credit hours (sixteen semester credit hours) of graduate level course work in education.

(b) Residency certificate.

(i) The candidate shall hold an approved master's degree and have completed an approved program for the preparation of program administrators.

(ii) The candidate shall have documented successful school-based experience in an instructional role with students.

(c) Continuing.

(i) The candidate shall hold a valid initial program administrator's certificate, an approved master's degree and have completed subsequent to the baccalaureate degree at least thirty quarter credit hours (twenty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) Candidates applying for continuing program administrator's certificate shall provide documentation of one hundred eighty days or 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.

(d) Professional certificate.

~~((+))~~ The candidate shall have completed an approved professional certificate program.

~~((ii) The candidate shall have satisfactory evaluations while serving in a program administrator role as verified by a school district or a professional educator standards board-approved private school.))~~

AMENDATORY SECTION (Amending WSR 07-20-047, filed 9/26/07, effective 10/27/07)

WAC 181-79A-250 Initial/residency and continuing/professional certificates—Renewal, reinstatement, and continuing education requirements. The following shall apply to initial/residency and continuing/professional certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply.

(2) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work (normally one hundred level or higher) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(iii) An individual who completes a national board certification assessment but does not earn national board certification, may use that completed assessment to renew the residency certificate for two years.

(iv) Individuals who complete the requirements in their school district professional growth plan may use that completed plan to maintain the continuing certificate or renew the professional certificate.

(b) Principals/program administrators.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(c) School counselors, school psychologists, or school social workers.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal for an additional five-year period requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) completed since the issuance of the most recent residency certificate plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(d) Renewals based on conditions other than those described in WAC 181-79A-250 (2)(a) and (b) may be appealed to the professional educator standards board, or its designated appeals committee. The following conditions apply to such appeals:

(i) Individuals who appeal shall present a rationale and evidence to support their request to have their residency certificates renewed.

(ii) The professional educator standards board, or its designated appeals committee, in making its decision shall determine the length of the renewal and may establish specific conditions (such as course work requirements) as prerequisites for the reissuance of the residency certificate.

(3) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall lapse if the holder does not complete the continuing education requirement, to include the filing requirement specified in chapter 181-85 WAC. To reinstate such a lapsed continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

(4) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued. An expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards outlined in WAC 181-78A-540:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in RCW 28A.415.023.

(I) Is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.320.205, the annual school performance report, for the school in which the individual is assigned;

(II) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(III) Is necessary to obtain an endorsement as prescribed by the professional educator standards board;

(IV) Is specifically required to obtain advanced levels of certification; or

(V) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.

(ii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five year periods for individuals employed as a principal, assistant principal or program administrator in a public school or (~~(professional educator standards board)~~) state board of education-approved private school by:

(A) Completion of a professional growth plan that is developed and approved with the superintendent, superintendent designee, or appointed representative (e.g., educational service district personnel, professional association or organization staff, or peer from another district), and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning;

(III) Relate to the six standards and "career level" benchmarks defined in WAC 181-78A-270 (2)(b);

(IV) Explicitly connect to the evaluation process;

(V) Reflect contributions to the school, district, and greater professional community; and

(VI) Identify areas in which knowledge and skills need to be enhanced.

(B) (~~Verification of satisfactory performance evaluations for the five year periods; and~~

~~(C))~~ Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or (~~(professional educator standards board)~~) state board of education-approved private school may have their professional certificate renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the professional certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved professional certificate program, and taken since the issuance of the last professional certificate.

(c) School counselors, school psychologists, or school social workers.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor, school psychologist, or school social worker in a public school, (~~(professional educator standards board)~~) state

board of education-approved private school, or in a state agency which provides educational services to students by:

(A) Completion of a professional growth plan that is developed and approved with the principal or principal designee, and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning; and

(III) Reflect contributions to the school, district, and greater professional community; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9).

(ii) Individuals not employed as a school counselor, school psychologist, or a school social worker in a public school or (~~(professional educator standards board)~~) state board of education-approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or

(C) Provided that, a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national board certificate, whichever is greater.

WSR 08-12-062

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed June 2, 2008, 1:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-23-148.

Title of Rule and Other Identifying Information: WAC 181-85-200 In-service education approval standards.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, on July 16, 2008, at 8:30 a.m.

Date of Intended Adoption: July 16, 2008.

Submit Written Comments to: Nasue Nishida, P.O. Box 47236, Olympia, 98504, e-mail nasue.nishida@k12.wa.us, fax (360) 586-4548, by July 10, 2008.

Assistance for Persons with Disabilities: Contact Nasue Nishida by July 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 proposed language revises the approval standards for providers of continuing education. The providers must address the following: How the continuing education activities relate to specific state initiatives/priorities such as opportunities for participants to collect/analyze evidence of student learning; professional certificate standards; and participant relevance and quality. Summary evaluation results for each continuing education activity will be posted [on] the provider's web site.

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, 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.

June 2, 2008

Nasue Nishida

Legislative and

Policy Coordinator

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

WAC 181-85-200 In-service education approval standards. In-service education programs provided by approved in-service education agencies shall meet the following program standards:

(1) The objectives of the in-service program—i.e., intended outcomes—shall be written for each in-service education program.

(2) The content of the in-service education program shall be set forth in a program agenda which shall specify the topics to be covered, the days and times of each presentation, and the names and short description of qualifications of each instructor—e.g., degrees and current professional position.

(3) All in-service education instructors shall have academic and/or professional experience which specifically qualifies them to conduct the in-service education program—e.g., a person with expertise in a particular subject, field, or occupation.

(4) Program materials, including the program agenda, prepared, designed, or selected for the in-service education program shall be available to all attendees.

(5) Activities must relate to opportunities for participants to collect and analyze evidence related to student learning; professional certificate standards; school and district improvement efforts; K-12 frameworks and curriculum alignment; research-based instructional strategies and assessment practices; content of current or anticipated assignment; advocacy for students and leadership, supervision, mentoring/coaching; and/or building a collaborative learning community.

(6) The in-service education program shall be evaluated by the participants to determine ((the success of the program, including the following)):

(a) The extent to which the written objectives((—i.e., subsection (1) of this section—))have been met;

(b) ((The quality of the physical facilities in which the program was offered;

(c) The quality of the oral presentation by each instructor;

(d) The quality of the written program materials provided by each instructor; and

(e)) Participant perception of relevance and quality of the offering;

(c) The extent to which activities identified in subsection (5) of this section, addressed by the in-service program, have been met; and

(d) Suggestions for improving the in-service education program if repeated.

((6)) (7) The in-service education agency shall compile the evaluations required in subsection ((5)) (6) of this section in summary form. Summary evaluation results for each in-service education agency offering shall be posted on the in-service education agency web site accessible to prospective participants and to office of superintendent of public instruction staff for review.

((7)) (8) The designated administrator of each in-service education program shall assess the value and success of such program and periodically report his or her findings to the governing or advisory board which authorized the in-service program.

((8)) (9) The standards for recordkeeping as provided in WAC 181-85-205 shall apply.

((9)) (10) The in-service education agency must permit a designated representative of the superintendent of public instruction to attend the in-service education program at no charge and permit such representative to receive a copy of the program materials required by subsection (4) of this section also at no charge.

((10)) (11) The in-service education agency must provide each registrant with appropriate forms for claiming continuing education credit hours.

((11)) (12) Note: The provisions of this section do not apply to credit hours awarded by a college or university or course work continuing education hours awarded by a vocational-technical college.

WSR 08-12-063
PROPOSED RULES
SECRETARY OF STATE
 (Elections Division)
 [Filed June 2, 2008, 2:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-02-073

Title of Rule and Other Identifying Information: The top two primary (Initiative 872), certification of election administrators, administering elections, and voter registration.

Hearing Location(s): Office of the Secretary of State, Elections Division, 520 Union Avenue S.E., Olympia, WA, on July 8, 2008, at 10:00 a.m.

Date of Intended Adoption: July 10, 2008.

Submit Written Comments to: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, e-mail kblinn@secstate.wa.gov, fax (360) 586-5629, by July 8, 2008.

Assistance for Persons with Disabilities: Contact Katie Blinn by June 7, 2008, TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement Initiative 872 (top two primary), for partisan public office, and address elections for political party precinct committee officers and president and vice-president in the context of Initiative 872. The proposed rules also address absentee ballots, certification of election administrators, instructions for correcting a vote, recounts, and notices to voters.

The following existing rules are amended: WAC 434-208-060, 434-215-012, 434-215-020, 434-215-025, 434-230-010, 434-230-060, 434-250-110, 434-250-040, 434-250-050, 434-250-310, 434-253-020, 434-253-025, 434-260-235, 434-261-086, 434-262-031, 434-262-160, 434-324-113, 434-335-040, 434-335-445, and 434-381-120.

The following existing rules are repealed: WAC 434-220-010, 434-220-020, 434-220-030, 434-220-040, 434-220-050, 434-220-060, 434-220-070, 434-220-080, 434-220-090, 434-230-020, 434-230-040, 434-230-050, 434-230-080, 434-230-150, 434-230-160, 434-230-170, 434-230-190, 434-230-200, 434-230-210, and 434-230-220.

Reasons Supporting Proposal: The March 18, 2008, United States Supreme Court opinion upholding Initiative 872; consistency and clarification of the process for absentee ballots, certification of election administrators, determining voter intent, recounts, and sending notices to voters.

Statutory Authority for Adoption: RCW 29A.04.611 and 29A.24.030.

Statute Being Implemented: RCW 29A.04.110, 29A.04.127, 29A.04.206, 29A.04.530, 29A.08.605, 29A.24.030, 29A.24.210, 29A.32.032, 29A.36.010, 29A.36.170, 29A.40.110, 29A.52.010, 29A.52.112, 29A.80.010, and 42.12.040.

Rule is necessary because of federal law, 42 U.S.C. §1973gg-6 (c)(2)(A); and federal court decision, *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. ___, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Many of the proposed rules implementing Initia-

tive 872 have been adopted as emergency rules under WSR 08-10-010, 08-10-055, and 08-12-013.

Name of Proponent: Office of the secretary of state, elections division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, (360) 902-4168.

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

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

June 3 [2], 2008

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-208-060 Electronic filings. In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

(1) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

(2) Any minor party or independent candidate filing material for president and vice-president, except nominating petitions;

(3) Lists of presidential electors selected by political parties or independent candidates;

(4) Voted ballots, provided the voter agrees to waive the secrecy of his or her ballot;

(5) Resolutions from cities, towns, and other districts calling for a special election;

(6) ~~((Filling of vacancies on the ticket by a major political party;~~

~~(7))~~ Voter registration form.

NEW SECTION

WAC 434-208-110 Applicable dates and deadlines. If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-215-012 Declaration of candidacy—Offices subject to a primary. Declarations of candidacy ~~((for all partisan and nonpartisan offices))~~ filed either in person or by mail shall be in substantially the following form:

((STRICKEN GRAPHIC))

FILING DATA . . . FOR OFFICE USE ONLY

Date _____ Fee Paid \$ _____ File No. _____ Office Code _____
[] Check [] Debit/Credit
[] Cash [] Filing Fee Petition Voter Registration # _____ Clerk Initials _____

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

2. (STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) (ZIP CODE)
(MAILING ADDRESS) (CITY) (COUNTY) (ZIP CODE)
(TELEPHONE NUMBER) (EMAIL ADDRESS)

and at the time of filing this declaration I am legally qualified to assume office if elected.

3. I declare myself as a candidate for the office of:
(NAME OF OFFICE)
(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)
(PPOSITION NUMBER IF APPLICABLE) (DIRECTOR OR COMMISSIONER DISTRICT, IF ANY)

4. For the following term of office:
[] A full term or a full term and a short term, or
[] An unexpired term

5. This office is:
[] Nonpartisan, or
[] Partisan, and I am (check one): [] a candidate of the _____ party, or
[] an independent candidate.

6. Filing Fee (check one):
[] There is no filing fee because the office has no fixed annual salary, or
[] I am submitting a filing fee of \$10 because the fixed annual salary of the office is \$1,000 or less, or
[] I am submitting a filing fee of \$_____, an amount equal to 1% of the annual salary, or
[] I am without sufficient assets or income to pay the filing fee required by law and I have attached a filing fee petition in lieu of this fee, pursuant to RCW 29A.24.091.

7. Please print my name on the ballot exactly as follows: _____
(PLEASE PRINT)

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.
Note: Your signature must be personally attested to either by a notary public or by the officer with whom the declaration is filed.
8. Sign Here X _____
(SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)
STATE OF WASHINGTON, COUNTY OF _____
SIGNED OR ATTESTED BEFORE ME ON _____
(DATE)
by _____
(CANDIDATE)
(SIGNATURE OF NOTARY)
(TITLE)
MY APPOINTMENT EXPIRES _____

SSE 84-1 (2006)

Candidate: Return all copies of this declaration to your Elections Dept.
Distribution by Elections Dept: White—County; Yellow—PDC; Pink—Candidate

STRICKEN GRAPHIC))

FOR OFFICE USE ONLY			
Date _____	Fee Paid \$ _____	Filing No. _____	Office Code _____
<input type="checkbox"/> Check	<input type="checkbox"/> Debit/Credit		
<input type="checkbox"/> Cash	<input type="checkbox"/> Filing Fee Petition	Voter Registration # _____	Clerk Initials _____

DECLARATION OF CANDIDACY

1. I, _____ am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)
2. _____
(STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) (ZIP)

and, at the time of filing this declaration, I am legally qualified to assume office if elected.

3. My campaign contact information is:
- _____
(MAILING ADDRESS) (CITY) (STATE) (ZIP)
- _____
(TELEPHONE NUMBER) (EMAIL ADDRESS)

4. I declare myself as a candidate for the office of:

(NAME OF OFFICE including DISTRICT or POSITION NUMBER)
- _____
(CONGRESSIONAL OR LEGISLATIVE DISTRICT, COUNTY, CITY, OR OTHER JURISDICTION)

5. Filing Fee (check one):
- There is no filing fee because the office has no fixed annual salary;
- I am submitting a filing fee of \$10 because the fixed annual salary of the office is \$1,000 or less;
- I am submitting a filing fee of \$ _____, an amount equal to 1% of the annual salary; or
- I am without sufficient assets or income to pay the filing fee and am submitting a filing fee petition in lieu of this fee.

6. Please print my name on the ballot exactly as follows: _____
(PLEASE PRINT)

7. If the office is partisan, your party preference, if any, will be printed on the ballot exactly as follows:

- (Prefers Party) or
- (States No Party Preference)

If you fail to check a box or provide a party name, "(States No Party Preference)" will be printed.

I declare that this information is, to the best of my knowledge, true. I also swear, or affirm, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

Note: Your signature must be personally attested to by a notary public or by the officer with whom the declaration is filed.

8. Sign Here X _____
(SIGNATURE OF CANDIDATE AS REGISTERED TO VOTE)

STATE OF WASHINGTON, COUNTY OF _____
(SEAL OR STAMP)

Signed or Attested before me on _____
(DATE)

by _____
(CANDIDATE)

(SIGNATURE OF NOTARY)

(TITLE)

MY APPOINTMENT EXPIRES: _____

Candidate: Return all copies to your Elections Dept.
Distribution: White—County; Yellow—PDC; Pink—Candidate

((The form shall measure eight and one half inches by eleven inches and be printed on paper stock of good quality. The form shall also contain space for recording the date and time of filing and a sequential filing and receipt number. One copy of the form or an electronic file, in a format approved by the secretary of state and acceptable to the public disclosure commission, containing the information on the form of each properly executed and filed declaration and affidavit of candidacy

shall be forwarded to the public disclosure commission as required by RCW 29A.24.070, and one copy of the form or an electronic file containing the information on the form of each properly executed and filed declaration and affidavit of candidacy shall be returned to the candidate.)) The filing officer must provide a paper or electronic copy of the filed declaration of candidacy to the candidate and to the public disclosure commission.

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

WAC 434-215-020 Declaration of candidacy—Precinct committee officer. Declarations of candidacy for the ((office)) position of precinct committee officer((-)) shall be filed in substantially the following form:

((STRICKEN GRAPHIC _____))

Filing Data For Office Use Only

Date _____	Fee Paid \$ _____	Filing No. _____	Precinct # _____
Paid By (check one)			
<input type="checkbox"/> Check	<input type="checkbox"/> Cash	<input type="checkbox"/> Other	
Clerk/Cashier Initials _____		Voter Registration # _____	

DECLARATION OF CANDIDACY
PRECINCT COMMITTEE OFFICER

I, _____, declare that I am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

(STREET ADDRESS OR RURAL ROUTE) (CITY) (COUNTY) WA (ZIP CODE)

(MAILING ADDRESS) (CITY) (COUNTY) WA (ZIP CODE)

(TELEPHONE NUMBER) (EMAIL ADDRESS)

that, at the time of filing this declaration, I am a registered voter in _____ precinct and that I am legally qualified to assume office if elected; that I hereby declare myself a candidate for the office of Precinct Committee Officer to be elected at the Primary Election, and hereby request that my name be printed upon the official Primary Election ballot as a candidate of the _____ party, and:

I am submitting the sum of one dollar, the fee required by RCW 29A.24.091.

Please print my name on the ballot **exactly** as follows: _____

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

X _____
(SIGNATURE OF CANDIDATE) (DATE)

(STRICKEN GRAPHIC))

<i>Filing Data For Office Use Only</i>			
Date _____	Fee Paid \$ _____	Filing No. _____	Precinct # _____
Paid by: <input type="checkbox"/> Check <input type="checkbox"/> Cash		Staff Initials _____	Voter Registration ID _____

DECLARATION OF CANDIDACY PRECINCT COMMITTEE OFFICER

1. I, _____, declare that I am a registered voter residing at:
(PRINT NAME AS YOU ARE REGISTERED TO VOTE)

(STREET ADDRESS OR RURAL ROUTE) (CITY) WA (ZIP)

that I am a registered voter in _____ precinct, that I declare myself a candidate for the position of Precinct Committee Officer for the _____ Party, (DEMOCRATIC / REPUBLICAN) to be elected at the Primary Election, and I am paying the filing fee of one dollar required by RCW 29A.24.091.

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington.

X _____
(SIGNATURE OF CANDIDATE) (DATE)

Contact Information: _____
(TELEPHONE NUMBER) (EMAIL ADDRESS)

(MAILING ADDRESS, IF DIFFERENT FROM RESIDENTIAL ADDRESS)

2. Please print my name on the ballot exactly as follows:

4/16/08

~~((The forms shall measure eight and one-half inches by eleven inches and be printed on paper stock of good quality. The form may also contain space for recording the date and time of filing, a receipt number, if applicable, and a sequential filing number.))~~ County auditors may design and use a declaration of candidacy different in form and style from that

specified by this rule as long as it contains all of the information required by this rule.

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

WAC 434-215-025 (~~Declaration of candidacy~~)
Filing fee petitions. (1) When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24.091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

(2) The filing fee petition described in RCW 29A.24.101 (3) does not apply. The filing fee petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

"We, the undersigned registered voters of [the jurisdiction of the office], hereby petition that [candidate's] name be printed on the ballot for the office of [office for which candidate is filing a declaration of candidacy]."

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 434-215-120 Political party preference by candidate for partisan office. (1) On a declaration of candidacy, a candidate for partisan congressional, state, or county office may state his or her preference for a political party, or not state a preference. The candidate may use up to sixteen characters for the name of the political party. A candidate's party preference, or the fact that the candidate states no preference, must be printed with the candidate's name on the ballot and in any voters' pamphlets printed by the office of the secretary of state or a county auditor's office.

(2) If a candidate does not indicate a party that he or she prefers, then the candidate has stated no party preference and is listed as such on the ballot and in any voters' pamphlets.

(3) The filing officer may not print on the ballots, in a voters' pamphlet, or other election materials a political party name that is obscene. If the name of the political party provided by the candidate would be considered obscene, the filing officer may petition the superior court pursuant to RCW 29A.68.011 for a judicial determination that the party name be edited to remove the obscenity, or rejected and replaced with "states no party preference."

(4) A candidate's preference may not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. If the name of the political party provided by the candidate implies that the candidate is nominated or endorsed by a political party, or that a political party approves of or associates with that candidate, the filing officer may petition the superior court pursuant to RCW 29A.68.011 for a judicial determination that the party name be edited, or rejected and replaced with "states no party preference."

NEW SECTION

WAC 434-215-130 Minor political party candidates and independent candidates. (1) In the election system enacted as chapter 2, Laws of 2005, there is no distinction between major party candidates, minor party candidates, or

independent candidates filing for partisan congressional, state, or county office. All candidates filing for these partisan offices have the same filing and qualifying requirements. All candidates for partisan office have the option of stating on the ballot their preference for a political party, or stating no party preference. The party preference information plays no role in determining how candidates are elected to public office.

(2) The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates for partisan office to conduct nominating conventions and collect a sufficient number of signatures of registered voters do not apply to candidates filing for partisan congressional, state, or county office. The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates only apply to candidates for president and vice-president of the United States.

NEW SECTION

WAC 434-215-140 Voids in candidacy and vacancies in office. (1) The procedures established in RCW 29A.24.141 through 29A.24.191 for reopening candidate filing due to a void in candidacy or a vacancy in office apply to partisan congressional, state, or county office.

(2) As established in RCW 29A.24.141, a void in candidacy only occurs when no valid declaration of candidacy has been filed, or all persons who filed have either died or been disqualified. There is no void in candidacy as long as there is at least one candidate.

(3) If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.

NEW SECTION

WAC 434-215-150 No major party ticket. The procedures in RCW 29A.28.011 allowing a major party to fill a vacancy on a major party ticket do not apply. The predecessor statute, RCW 29A.28.010, was repealed by chapter 2, Laws of 2005 (Initiative 872). Pursuant to chapter 2, Laws of 2005, there is no "major party ticket."

NEW SECTION

WAC 434-215-160 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 434-220-010

Partisan primaries.

WAC 434-220-020	Definitions.
WAC 434-220-030	Ballot layout and color— Consolidated ballots.
WAC 434-220-040	Ballot layout and color— Physically separate ballots.
WAC 434-220-050	Order of political parties.
WAC 434-220-060	Ballot programming—Con- solidated ballots.
WAC 434-220-070	Polling place procedures— Physically separate ballots.
WAC 434-220-080	No record of political party affiliation.
WAC 434-220-090	Partisan primary recounts.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

WAC 434-230-010 Sample ballots. Sample paper ballots shall be printed in substantially the same form as official ballots, but shall be a different color than the official ballot. Sample ballots (~~(for counties using electronic or mechanical voting systems)~~) shall be printed in a manner that makes them easily distinguishable from the official ballot. Sample ballots shall be available (~~(starting)~~) at least fifteen days prior to an election. Such sample ballots shall be made available through the office of the county auditor and at least one shall be available at all polling places on election day.

~~((Names of the candidates in each office to appear on the primary ballot shall be arranged on the sample ballot in the order provided by RCW 29A.36.121. The names of the candidates in each office to appear on the general election ballot shall be listed on the sample ballot in the order in which their names appear on the official ballot. State measures and local measures shall be in the same order as they appear on the official ballot.))~~

At any primary or election when a local voters' pamphlet is published which contains a full sample ballot, a separate sample ballot need not be printed.

Counties with populations of over five hundred thousand may produce more than one sample ballot for a primary or election, each of which lists a portion of the offices and issues to be voted on at that election. Sample ballots may be printed by region or area (e.g., legislative district, municipal, or other district boundary) of the county, provided that all offices and issues to be voted upon at the election appear~~(s)~~ on at least one of the various sample ballots printed for such county. Each regional sample ballot shall contain all offices and issues to be voted upon within that region. A given office or issue may appear on more than one sample ballot, provided it is to be voted upon within that region. Sample ballots shall be made available and distributed to each polling place and to other locations within the appropriate region or area.

NEW SECTION

WAC 434-230-015 Ballot format. (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes.

(3) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(4)(a) If the ballot includes a partisan office, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice-president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice-president but immediately above the first partisan congressional, state or county office: "READ: Each candidate for president and vice-president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(5) Counties may use varying sizes and colors of ballot cards if such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate absentee ballots, poll ballots, or provisional ballots.

(6) Ballots shall be formatted as provided in RCW 29A.36.170. Ballots shall not be formatted as stated in RCW 29A.04.008 (6) and (7), 29A.36.104, 29A.36.106, 29A.36.121, 29A.36.161(4), and 29A.36.191.

NEW SECTION

WAC 434-230-025 Order of offices. Measures and offices must be listed in the following order, to the extent that they appear on a primary or election ballot:

- (1) Initiatives to the people;
- (2) Referendum measures;
- (3) Referendum bills;
- (4) Initiatives to the legislature and any alternate proposals;
- (5) Proposed constitutional amendments (senate joint resolutions, then house joint resolutions);
- (6) Countywide ballot measures;
- (7) President and vice-president of the United States;
- (8) United States senator;
- (9) United States representative;
- (10) Governor;
- (11) Lieutenant governor;

- (12) Secretary of state;
- (13) State treasurer;
- (14) State auditor;
- (15) Attorney general;
- (16) Commissioner of public lands;
- (17) Superintendent of public instruction;
- (18) Insurance commissioner;
- (19) State senator;
- (20) State representative;
- (21) County officers;
- (22) Justices of the supreme court;
- (23) Judges of the court of appeals;
- (24) Judges of the superior court; and
- (25) Judges of the district court.

For all other jurisdictions, the offices in each jurisdiction shall be grouped together and listed by position number according to county auditor procedures.

NEW SECTION

WAC 434-230-035 Office format. (1) The name of each office must be printed on the ballot.

(2) The description "partisan office" must be printed either for each partisan office or as a heading above a group of partisan offices. The description "nonpartisan office" must be printed either for each office or as a heading above a group of nonpartisan offices.

(3) If the term of office is not a full term, a description of the term (e.g., short/full term, two-year unexpired term) must be printed with the office name.

(4) Following each list of candidates shall be a response position and a space for writing in the name of a candidate.

(5) Each office or position must be separated by a bold line.

(6) On a general election ballot in a year that president and vice-president are elected, each political party's candidates for president and vice-president shall be provided one vote response position for that party.

NEW SECTION

WAC 434-230-045 Candidate format. (1) For each office or position, the names of all candidates shall be listed together. If the office is on the primary election ballot, no candidates skip the primary and advance directly to the general election.

(2)(a) On the primary election ballot, candidates shall be listed in the order determined by lot.

(b) On the general election ballot, the candidate who received the highest number of votes in the primary shall be listed first, and the candidate who received the second highest number of votes in the primary shall be listed second.

(c) The political party that each candidate prefers is irrelevant to the order in which the candidates appear on the ballot.

(3) Candidate names shall be printed in a type style and point size that can be read easily. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include, but are

not limited to, printing a smaller point size or different type style.

(4) For partisan office:

(a) If the candidate stated his or her preference for a political party on the declaration of candidacy, that preference shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith
(Prefers Example Party)

(b) If the candidate did not state his or her preference for a political party, that information shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith
(States No Party Preference)

(c) The party preference line for each candidate may be in smaller point size or indented.

(d) The same party preference information shall be printed on both primary and general election ballots.

(5) If the office is nonpartisan, only the candidate's name shall appear. Neither "nonpartisan" nor "NP" shall be printed with each candidate's name.

(6) The law does not allow nominations or endorsements by interest groups, political action committees, political parties, labor unions, editorial boards, or other private organizations to be printed on the ballot.

NEW SECTION

WAC 434-230-055 Partisan primary. In a primary for partisan congressional, state or county office conducted pursuant to chapter 2, Laws of 2005 (Initiative 872):

(1) Voters are not required to affiliate with a political party in order to vote in the primary election. For each office, voters may vote for any candidate in the race.

(2) Candidates are not required to obtain the approval of a political party in order to file a declaration of candidacy and appear on the primary or general election ballot as a candidate for partisan office. Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate. A candidate's political party preference is not used to determine which candidates advance to the general election.

(3) Based on the results of the primary, the two candidates for each office who receive the most votes and who receive at least one percent of the total votes cast for that office advance to the general election. The primary election does not serve to nominate any political party's candidates, but serves to winnow the number of candidates down to a final list of two for the general election. Voters in the primary are casting votes for candidates, not choosing a political party's nominees. RCW 29A.36.191 does not apply since the predecessor statute, RCW 29A.36.190, was repealed in chapter 2, Laws of 2005.

(4) Chapter 2, Laws of 2005 repealed the prior law governing party nominations. Political parties may nominate candidates by whatever mechanism they choose. The pri-

mary election plays no role in political party nominations, and political party nominations are not displayed on the ballot.

(5) If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-230-060 Primary votes required for appearance on general election ballot. Following any (~~(nonpartisan)~~) primary, (~~(no)~~) a candidate's name shall be entitled to appear on the general election ballot (~~(unless)~~) if he or she receives the greatest or the next greatest number of votes for the office and additionally receives at least one percent of the total votes cast for the office.

~~((Following any partisan primary, no major political party candidate's name shall be entitled to appear on the general election ballot unless he or she receives a plurality of votes cast for the candidates of his or her party for that office. The requirement in RCW 29A.36.191 that a candidate for partisan office receive at least one percent of the votes cast for that office in order to appear on the general election ballot is unenforceable based on *Libertarian Party v. Sam Reed*, Thurston County Superior Court No. 04-2-01974-2 (2004).))~~

NEW SECTION

WAC 434-230-085 Candidate who qualifies for more than one office. In the event a candidate, as a result of write-in votes in the primary, qualifies to appear on the general election ballot for more than one office, the candidate may notify the county auditor in writing within three days of certification of the primary of the single office for which he or she desires to appear on the general election ballot. If the candidate fails to notify the county auditor, the county auditor shall determine the single office for which the candidate shall appear on the general election ballot. Any void in candidacy for other positions thus created will be handled as provided by law.

NEW SECTION

WAC 434-230-095 When a candidate dies or is disqualified. The procedures in RCW 29A.28.021 allowing a political party to appoint a replacement candidate if the party's candidate dies or is disqualified do not apply. The predecessor statute, RCW 29A.28.020, was repealed by chapter 2, Laws of 2005 (Initiative 872).

NEW SECTION

WAC 434-230-100 Political party precinct committee officer. (1) In even-numbered years, the election for the position of political party precinct committee officer must be held on the third Tuesday of August.

(2) Unlike candidates for public partisan office, candidates for precinct committee officer file and appear on the ballot as members of a major political party. The election of

precinct committee officer is an intraparty election. Candidates compete against other candidates from the same political party. The candidate of each political party who receives the most votes is declared elected. Precinct committee officers are not elected according to the top two primary system established by chapter 2, Laws of 2005 (Initiative 872).

(3) Unlike candidates for public office, the order in which candidates for precinct committee officer appear on the ballot is based on each candidate's political party. The political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the other political parties following according to the number of votes cast for their nominees for president at the last presidential election. Within each party, candidates shall be listed in the order determined by lot.

(4) If no candidate files for political party precinct committee officer, the position appears on the ballot with space for a write-in. There is no special filing period, the political party does not appoint a candidate, and the election does not lapse. If no candidate is elected, the party may fill the position by appointment, pursuant to RCW 29A.28.071.

(5)(a) The position of political party precinct committee officer must appear following all measures and public offices.

(b) The heading must state, "election of political party precinct committee officer."

(c) The following explanation must be provided before the list of candidates: "Precinct committee officer is a position in each major political party. For this office only: If you consider yourself a democrat or republican, you may vote for a candidate of that party."

(d)(i) If all candidates are listed under one heading, the applicable major political party affiliation of either "democratic party candidate" or "republican party candidate" must be printed under each candidate's name. The first letter of each word must be capitalized, as shown in the following example:

John Smith
Democratic Party Candidate

The race must explain, "for a write-in candidate, include party."

(ii) If candidates are listed under a major political party heading, the applicable heading of either "democratic party candidates" or "republican party candidates" must be printed above each group of candidates. The first letter of each word must be capitalized. Space for a write-in must be provided for each political party heading.

(6) A voter may vote for only one candidate for precinct committee officer. If a voter votes for more than one candidate, the votes must be treated as overvotes. For the limited purpose of voting in a precinct committee officer election, a voter affiliates with a major political party when he or she votes for a candidate of that party.

NEW SECTION

WAC 434-230-110 President and vice-president of the United States. (1) When the race for president and vice-

president appears on a general election ballot, the candidates for these offices must be paired together.

(2) The full name of the political party, rather than an abbreviation, must be provided for each pair of candidates, with a designation that these candidates are the nominees of the party. The first letter of each word in the political party name must be capitalized. For example:

Example Party Nominees

(3) If candidates are not nominees of a political party and are running as independent candidates, that description must be provided for the pair of candidates. The first letter of each word in the description must be capitalized. For example:

Independent Candidates

(4) The order that candidates appear on the ballot is based on their political party. The political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the candidates of the other political parties following according to the votes cast for their nominees for president at the last presidential election. Candidates of parties that did not have nominees in the last presidential election, and independent candidates, follow in the order of their qualification with the secretary of state.

NEW SECTION

WAC 434-230-120 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-230-020	Placement of state ballot measures.
WAC 434-230-040	Candidate's political party designation—Primary to general.
WAC 434-230-050	Candidate nominated by two or more political parties or for two or more offices.
WAC 434-230-080	Judicial ballots—Form.
WAC 434-230-150	Ballot uniformity.
WAC 434-230-160	Poll-site voting instructions.
WAC 434-230-170	Ballot form.
WAC 434-230-190	Paper ballot uniformity.
WAC 434-230-200	Paper ballot instructions.
WAC 434-230-210	Paper ballots—Ballot form.

WAC 434-230-220

Same party designations used for primary and general elections.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-253-020 Polling place—Election supplies.

Polling places shall be provided, at a minimum, with the following supplies at every election:

- (1) Precinct list of registered voters or a poll book, which shall include suitable means to record the signature and address of the voter;
- (2) Inspector's poll book;
- (3) Required oaths/certificates for inspectors and judges;
- (4) Sufficient number of ballots as determined by election officer;
- (5) Ballot containers;
- (6) United States flag;
- (7) Voting instruction signs;
- (8) Challenge and provisional ballots and envelopes;
- (9) Cancellation cards due to death;
- (10) Voting equipment instructions;
- (11) Procedure guidelines for inspectors and judges and/or precinct election officer guidebooks;
- (12) Keys and/or extra seals;
- (13) Pay voucher;
- (14) Ballots stub envelope;
- (15) Emergency plan of action;
- (16) Either sample ballots or voters' pamphlets;
- (17) HAVA voter information poster;
- (18) A sign listing the date of the election and the hours of voting on election day; and
- (19) Voter registration forms(~~and~~
- ~~(20) For partisan primaries in counties using physically separate ballots, an "unvoted ballots" container with a numbered seal).~~

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-253-025 Polling place—Items to be posted.

The following items must be posted or displayed at each polling place while it is open:

- (1) United States flag;
- (2) HAVA voter information poster;
- (3) A sign listing the date of the election and the hours of voting on election day;
- (4) Voting instructions printed in at least 16 point bold type;
- (5) Either sample ballots or voters' pamphlets;
- (6) Voter registration forms;
- (7) Election materials in alternative languages, if so required by the Voting Rights Act (42 U.S.C. 1973aa et seq.); (~~and~~)
- (8)(a) For a primary election that includes a partisan office, the same notice provided to absentee voters by WAC 434-250-040 (1)(k);
- (b) For a general election that includes a partisan office, the same notice provided to absentee voters by WAC 434-250-040 (1)(l); and

(9) Any other items the county auditor deems necessary.

NEW SECTION

WAC 434-253-330 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-261-086 Statewide standards on what is a vote. (1) Pursuant to 42 U.S.C. § 15481 (a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area. Any marks made in the target area shall be counted as valid votes. Any marks made outside of the target area will only be valid if they fulfill the consistent pattern requirements in (b) of this subsection. Exceptions:

- (i) Obvious stray marks.
- (ii) Hesitation marks.
- (iii) Parts of written notes.

(iv) Corrected votes, according to the instructions printed on the ballot or written instructions provided by the voter, which may include arrows, circles, and written words.

(b) Consistent pattern. Marks made outside of the target area shall only be counted as valid votes if a consistent pattern of marks is used throughout the whole ballot. This means that all races and issues for which the voter has indicated a choice must have the same mark. If some marks are in the target area and some are not, but the same *type* of mark is used throughout the whole ballot, they shall all be counted as valid votes.

(c) Corrected votes.

(i) If ~~((more than one target area is marked, it is not an overvote if))~~ the voter has followed the instructions for correcting a vote ~~((and marked another choice)), the stricken vote shall not be counted.~~ If a second choice is marked, it shall be counted as a valid vote;

(ii) If a second choice is not marked, the race shall be considered undervoted;

(iii) If the voter has marked two target areas and placed an 'X' over one of the marked areas, the choice without the 'X' shall be counted as a valid vote.

(d) Not a correction. If the voter has both marked a choice correctly and *also* placed an 'X' in the same target area, but has not marked a second target area as if attempting to correct the vote, it shall be counted as a valid vote.

(e) Written instructions. If the voter has attempted to correct a vote and provides written instruction on his or her intent, it shall be counted as the voter instructed. Written instruction includes words, circles, or arrows.

(f) Identifying marks. Ballots that have a legible signature, address sticker or address stamp anywhere on the ballot,

other than a write-in line, must be rejected. Initials or illegible signatures do not disqualify a ballot.

(g) Overvotes. Races or issues that have more target areas marked than are allowed are overvotes. No votes for that race or issue shall be counted.

(h) No bubble. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

(i) Already on the ballot. If the name of a candidate who is already printed on the ballot is written in, that vote shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate. This applies even if both target areas are marked or no target areas are marked.

(j) Name variations. If a write-in vote is cast for a *declared* write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.

(k) Mystery write-in. If the write-in target area is marked, but no name is written on the line, it shall not be counted as a valid vote, even though it may be tallied as a write-in vote by the tabulation system.

(l) Mystery write-in with a candidate. If a candidate's target area is marked, *and* the write-in target area is marked but no name is written on the line, it shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate.

(m) Name combinations. If a write-in vote is cast for a candidate with a combination of names already on the ballot, it shall NOT be counted as a vote for either printed candidate, but rather shall be counted as a valid vote for the name as written.

(n) Write-in overvote. If a candidate's target area is marked and something other than that candidate's name is written in the write-in response area, it shall be counted as an overvote and not a valid vote for any candidate. This applies whether or not the target area for the write-in is marked.

(o) Not eligible. A write-in vote for a race that does not appear on the ballot is for a race on which the voter is not eligible to vote, and shall not be counted.

Exception: If a provisional ballot has been cast and the voter has written in an office or measure that is not on the ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in in the wrong place. A write-in vote for a race appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the office, position number and political party, if applicable, are clearly indicated.

(q) Messy marks. When otherwise valid votes marked for a candidate partially extend into the response area of another candidate, it shall be counted as a vote if most of the mark is in the proper area and intent can easily be discerned.

(r) Pattern of partisan voting. Voter intent in any single contest shall not be determined based on a pattern of partisan voting on the ballot.

(s) Anything else. Voter intent on any questionable marks not explicitly falling within the parameters of the rules in this manual must be determined by county canvassing

boards, operating under all applicable laws of the state of Washington and the rules of the canvassing board manual.

(2) The secretary of state shall publish an illustrated version of these standards in each optical scan and digital scan voting system used in the state. The secretary of state shall distribute the illustrated version to each county canvassing board and post it on the web site.

(3) The secretary of state shall periodically review and update the manual as necessary, and seek input from county canvassing boards and other interested parties to ensure that the standards remain current and comprehensive.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-250-040 Instructions to voters. (1) ~~((In addition to the instructions required by chapters 29A.36 and 29A.40 RCW, instructions for properly voting and returning))~~ Instructions that accompany an absentee ballot must ~~((also))~~ include:

(a) How to ~~((correct a ballot by crossing out the incorrect vote and voting the correct choice))~~ cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notice that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an over-vote and no votes for that office or ballot measure will be counted;

(c) Notice that, if a voter has signed or otherwise identified himself or herself on a ballot, the ballot will not be counted;

(d) An explanation of how to complete and sign the affidavit on the return envelope;

(e) An explanation of how to make a mark, witnessed by two other people, if unable to sign the affidavit;

(f) An explanation of how to place the ballot in the security envelope and place the security envelope in the return envelope;

(g) An explanation of how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(h) Notice that postage is required, if applicable; ~~((and))~~

(i) Notice that, in order for the ballot to be counted, it must be either postmarked or deposited at a designated deposit site no later than election day; ~~((and))~~

(j) ~~((How a voter can))~~ An explanation of how to learn about the locations, hours, and services(;) of voting centers and ballot deposit sites, including the availability of accessible voting equipment(-);

County auditors may use existing stock of instructions appearing on absentee ballot ~~((instructions))~~ envelopes until December 1, 2008;

(k) For a primary election that includes a partisan office, a notice on a separate insert printed on colored paper explaining:

"Washington has a new primary. You do not have to pick a party. In each race, you may vote for any candidate listed. The two candidates who receive the most votes in the August primary will advance to the November general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(l)(i) For a general election that includes a partisan office, the following explanation:

"Washington has a new election system. In each race for partisan office, the two candidates who receive the most votes in the August primary advance to the November general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice-president appear on the general election ballot, the following must be added to the statement required by (l)(i) of this subsection:

"The election for president and vice-president is different. Candidates for president and vice-president are the official nominees of their political party."

(m) Any other information the county auditor deems necessary.

(2) Instructions that accompany a special absentee ballot must also include:

(a) A listing of all offices and measures that will appear upon the ballot, together with a listing of all persons who have filed for office or who have indicated their intention to file for office; and

(b) Notice that the voter may request and subsequently vote a regular absentee ballot, and that if the regular absentee ballot is received by the county auditor prior to certification of the election, it will be tabulated and the special absentee ballot will be voided.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

WAC 434-250-050 ((Ballot materials)) Envelopes. ~~((In addition to the instructions and in addition to materials required by chapters 29A.36 and 29A.40 RCW, each))~~ Absentee ballots must be accompanied by the following:

(1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service, the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and the following oath with a place for the voter to sign, date, and write his or her daytime phone number:

I do solemnly swear or affirm under penalty of perjury that:

I am a citizen of the United States;

I am a legal resident of the state of Washington;

I will be at least 18 years old on or before election day;

I am not presently denied my voting rights as a result of being convicted of a felony;

I have not been judicially declared mentally incompetent;

I have not already voted in this election; and

I understand it is illegal to cast a ballot or sign a ballot envelope on behalf of another voter.

Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

The return envelope must include space for witnesses to sign.

The return envelope must conform to postal department regulations.

County auditors may use existing stock of absentee envelopes until December 1, 2008.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-110 Processing of absentee ballots. (1)

Prior to initial processing of ballots, the county auditor shall notify the county chair of each major political party of the time and date on which absentee processing shall begin, and shall request that each major political party appoint official observers to observe the processing and tabulation of absentee ballots. If any major political party has appointed observers, such observers may be present for initial processing, final processing, or tabulation, if they so choose, but failure to appoint or attend shall not preclude the processing or tabulation of absentee ballots.

(2) In counties tabulating absentee ballots on an electronic vote tallying system, the canvassing board or its representatives may perform initial processing of absentee ballots upon their return. ~~((In counties tabulating absentee ballots by hand, the inner security envelope may not be opened until after 8:00 p.m. on election day. Following initial processing.))~~ All absentee ballots must be kept in secure storage until final processing. Secure storage must employ the use of numbered seals and logs, or other security measures which will detect any inappropriate or unauthorized access to the secured ballot materials when they are not being prepared or processed by authorized personnel. The county auditor must ensure that all security envelopes and return envelopes are empty, either by a visual inspection of the punched hole to confirm that no ballots or other materials are still in the envelopes, or by storing the envelopes with a tie, string, or other object through the holes.

(3) Final processing may begin after 7:00 a.m. on the day of the election.

(4) Tabulation may begin after 8:00 p.m. on the day of the election.

(5) In counties tabulating ballots on an optical scan vote tallying system, the vote tallying system must reject all overvotes and blank ballots.

(a) All rejected ballots shall be outstacked for additional manual inspection.

(b) The outstacked ballots shall be inspected in a manner similar to the original inspection with special attention given to stray marks, erasures, and other conditions that may have caused the vote-tallying device to misread and reject the ballot.

(c) If inspection reveals that a ballot must be duplicated in order to be read correctly by the vote tallying system, the ballot must be duplicated.

NEW SECTION

WAC 434-250-150 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-250-310 Notice of elections by mail. (1) A jurisdiction requesting that a special election be conducted entirely by mail, as authorized by RCW 29A.48.020, may include the request in the resolution calling for the special election, or may make the request by a separate resolution. Not less than forty-seven days prior to the date for which a mail ballot special election has been requested, the county auditor shall inform the requesting jurisdiction, in writing, whether the request is granted and, if not granted, the reasons why.

(2) In the event that a primary is to be conducted by mail, the auditor must notify the jurisdiction involved not later than seventy-nine days before the primary date.

(3) ~~((In addition to the information required in the notice of election published pursuant to RCW 29A.52.351 and 29A.52.311.))~~ A county auditor conducting an election by mail, including a county auditor that conducts every election by mail, must ~~((also))~~ state:

(a) The election will be conducted by mail ~~((and regular polling places will not be open));~~

(b) The precincts that are voting by mail if it is only specific precincts rather than the entire county;

(c) The location where voters may obtain replacement ballots;

(d) Whether return postage is required;

(e) The dates, times and locations of designated deposit sites and voting centers; and

(f) If the county auditor does not conduct all elections by mail, the fact that regular polling places will not be open.

AMENDATORY SECTION (Amending WSR 99-12-004, filed 5/19/99, effective 6/19/99)

WAC 434-260-235 Recertification of assistant election administrators as election administrators. Any person who is certified as an assistant election administrator may become certified as an election administrator upon completion of the following:

(1) Two years service in an election (~~((management) administration position~~ (~~(, as defined by the county auditor or the state director of elections)~~); ~~and~~

(2) Minimum of forty hours participation in conferences and workshops sponsored by those organizations listed in WAC 434-260-220(4).

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1) The disposition of provisional ballots is governed by WAC 434-253-047. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(a) Where ~~((two ballots are found folded together, or where))~~ a voter has already voted ~~((more than))~~ one ballot;

(b) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature under the affidavit, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures under the affidavit, both ballots must be counted;

(c) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

(d) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

(e) Where the voter has voted for more candidates for an office than are permissible(~~;~~);

~~((f) In the case of a partisan primary, where the voter has voted for a write-in candidate for partisan office who has not filed a write-in declaration of candidacy, thereby affiliating with a major party.~~

~~((3) For physically separate ballots in a partisan primary:~~

~~((a) If more than one ballot is returned but only one ballot is voted, the voted ballot must be counted.~~

~~((b) When a voted nonpartisan ballot and a voted party ballot are both returned, and the nonpartisan section of the party ballot was not voted, the votes from both ballots must be duplicated onto a blank party ballot and counted.~~

~~((c) When a voted nonpartisan ballot and a voted party ballot are both returned, and nonpartisan races and ballot measures were voted on both ballots, the nonpartisan and ballot measure votes that are the same on each ballot and the partisan votes must be duplicated onto a blank party ballot and counted.~~

~~((d) When more than one voted party ballot is returned, the partisan votes may not be counted but the nonpartisan and ballot measure votes that are the same on both ballots must be duplicated onto a blank nonpartisan ballot and counted)).~~

NEW SECTION

WAC 434-262-075 Election of political party precinct committee officers. (1) The election of political party

precinct committee officers is not conducted according to a top two primary established by chapter 2, Laws of 2005 (Initiative 872). The candidate of each political party who receives the most votes in the August primary election is declared elected.

(2) RCW 29A.80.051 includes a requirement that, to be declared elected, a candidate for precinct committee officer must receive at least ten percent of the number of votes cast for a candidate of the same party who received the most votes in the precinct. This requirement for election is not in effect because candidates for public office do not represent a political party.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-262-160 Write-in-voting—Voter intent.

(1) In all cases of write-in votes the canvassing board shall exercise all reasonable efforts to determine the voter's intent. ~~((Write-in votes are to be counted where abbreviations are used for office, position, or political party.))~~ Write-in votes in the general election are not to be counted for any person who filed for the same office as either a regular or write-in candidate at the preceding primary and failed to qualify for the general election. If a write-in declaration of candidacy has been filed, the voter need only write in that candidate's name in order for the vote to be counted; the candidate's party preference does not impact whether the write-in vote shall be counted. If no declaration of write-in candidacy has been filed, the voter must write in the name of the candidate ~~((, the political party, if applicable.))~~ and, if the office ~~((and/))~~ or position number cannot be determined by the location of the write-in on the ballot, the office and position number, in order for the write-in vote to be counted.

(2)(a) If a write-in candidate for partisan office does not file a write-in declaration of candidacy but does qualify for the general election ballot, the candidate has not stated a preference for a political party and therefore shall have "(states no party preference)" printed on the general election ballot.

(b) If a write-in candidate for partisan office files a write-in declaration of candidacy and qualifies for the general election ballot, the party preference stated on the write-in declaration of candidacy, if any, shall be printed on the general election ballot.

NEW SECTION

WAC 434-262-210 Ranked choice voting. If a charter county elects candidates for county office by ranked choice voting, and if the charter specifically grants political parties the authority to determine which candidates for partisan office may run as candidates of the party, the county auditor may modify the requirements of this chapter in order to accommodate the requirements of a ranked choice voting election.

NEW SECTION

WAC 434-264-055 Machine recount of votes cast on optical scan or digital scan ballots. (1) In a machine recount of votes cast on optical scan or digital scan ballots, the tabu-

lating equipment must be programmed to flag or outstack all ballots that include an undervoted office or ballot measure subject to the recount.

(2) All ballots that include an undervoted office or ballot measure that is subject to a recount must be inspected a second time to confirm that no vote was cast.

(3) If the inspection detects a vote cast that was not correctly counted by the tabulating equipment, the county auditor shall refer the ballot to the county canvassing board to determine voter intent according to the statewide standards on what is a vote. The county canvassing board may delegate duplication of the ballots consistent with RCW 29A.60.140.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-381-120 Deadlines. (1) Candidate statements and photographs shall be submitted to the secretary of state(=

~~(a) For candidates who filed during the regular filing period,))~~ within seven calendar days after filing their declaration of candidacy(=

~~(b) For candidates who filed during a special filing period, or were selected by a political party pursuant to either RCW 29A.52.010 or 29A.24.140, within seven calendar days after the close of the special filing period or selection by the party)).~~

(2) For ballot measures, including initiatives, (~~referenda~~) referenda, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: Within ten business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ten business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than twenty calendar days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than fourteen calendar days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the

secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so.

NEW SECTION

WAC 434-381-200 Political party preference information. If a state voters' pamphlet includes a race for partisan office, the pamphlet must include an explanation that each candidate for partisan office may state a political party that he or she prefers, and that a candidate's preference does not imply that the candidate is nominated or endorsed by the party or that the party approves of or associates with that candidate. The pamphlet must also explain that a candidate can choose to not state a political party preference.

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-113 Voter registration list maintenance. In addition to conducting searches to identify felons, duplicate registration records, and deceased voters as outlined in this chapter, the following applies:

(1) Each even-numbered year, maintenance of the voter registration list, as required by RCW 29A.08.605, must be completed ninety days prior to the date of the primary in that year. If a county conducts all elections by mail and receives address change information from each ballot mailing, additional list maintenance is not required. The voter registration list maintenance program is complete upon mailing the required notices. Counties have discretion to also run the voter registration list maintenance in odd-numbered years.

(2) If, at any time, the secretary finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the secretary must refer such information to the appropriate county auditor and county prosecutor.

(3) If, at any time, the auditor finds that a registered voter does not possess the qualifications required by state law to exercise his or her right to vote for reasons not listed in this chapter, the auditor must notify the county prosecutor.

AMENDATORY SECTION (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

WAC 434-335-040 Voting system requirements. (1) No voting device or its component software may be certified by the secretary of state unless it:

(a) Secures to the voter secrecy in the act of voting;

(b) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;

(c) Correctly registers all votes cast for any and all persons and for or against any and all measures;

(d) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for President and Vice-President of the United States;

(e) Produces a machine countable and human readable paper record for each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper record of an electronic vote may not be removed from the device by the voter. If the voting device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter; ~~and~~

(f) Has been tested and approved by the appropriate independent testing authority approved by the United States election assistance commission(~~;-and~~

~~(g) For a partisan primary, prevents the counting of votes for candidates of more than one political party)).~~

(2) No vote tabulating system may be certified by the secretary of state unless it:

(a) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(b) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(c) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each ballot measure on the ballot in that precinct;

(d) Produces precinct and cumulative totals in printed form; and

(e) Produces legislative and congressional district totals for statewide races and issues in electronic and printed form.

(3) A vote tabulating system must:

(a) Be capable of being secured with lock and seal when not in use;

(b) Be secured physically and electronically against unauthorized access;

(c) Not be connected to, or operated on, any electronic network including, but not limited to, internal office networks, the internet, or the world wide web. A network may be used as an internal, integral part of the vote tabulating system but that network must not be connected to any other network, the internet, or the world wide web; and

(d) Not use wireless communications in any way.

(4) Transfer of information from a remote tabulating system may be made by telephonic transmission only after the creation of a disk, paper tape, or other physical means of recording ballot results.

(5) The source code of electronic voting system software that has been placed in escrow must be identical to the source code of software that has been tested and certified by the federal independent testing authority and installed in the county. The applicant must place in escrow both the human-readable source code and the working or compiled version. In lieu of placing them in escrow, the source code and the working or compiled version may be deposited with the national software reference library. The software may be verified by matching the system's digital software signatures with the digital signatures the elections assistance commission has on file, when available.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-445 The preparation of logic and accuracy test decks. (1) Each county shall produce a test deck of ballots to be used in the official logic and accuracy test to verify that the vote tabulating system is programmed to correctly count the ballots.

(2) The pattern to mark the test deck shall begin by giving the first candidate in each race one vote, the second candidate in each race two votes, the third candidate in each race three votes, etc. Once the pattern is completed for each race and issue, each remaining precinct or ballot style must be tested by using a minimum of one ballot that has a first choice marked for each race and issue. Additional votes may be added to ensure all responses for a race or issue have unique results. Another pattern may be used if it meets the requirements outlined in this section and is approved by the secretary prior to marking the test deck.

(3) The test deck must also test that the vote tabulating system is programmed to accurately count write-in votes, overvotes and blank ballots. The test deck must also include a sampling of all ballots that will be used during the election, including ballot on demand, alternative language ballots, and ballots marked with an electronic ballot marker.

~~((4) In a partisan primary:~~

~~(a) When a consolidated ballot is used, the test deck must test that the partisan and nonpartisan votes are counted properly for situations where just one party is selected, no party is selected, and both parties are selected; and~~

~~(b) When separate ballots are used, a test deck for each party must be prepared in addition to a test deck for nonpartisan races.))~~

WSR 08-12-064

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed June 3, 2008, 8:15 a.m.]

WAC 388-740-0010, 388-740-0040 and 388-740-0070, proposed by the department of social and health services in WSR 07-23-092 appearing in issue 07-23 of the State Register, which was distributed on December 5, 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 08-12-066

PROPOSED RULES DEPARTMENT OF ECOLOGY

[Order 08-05—Filed June 3, 2008, 11:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-147.

Title of Rule and Other Identifying Information: Rule amendment for chapter 173-224 WAC, Wastewater discharge permit fees.

Hearing Location(s): Lacey Timberland Library, 500 College Way S.E., Lacey, WA, on July 8, 2008, at 1:00 p.m.; at the Hal Holmes Community Center, 209 North Ruby Street, Ellensburg, WA, on July 9, 2008, at 1:00 p.m.; and at the Spokane Regional Library, South Hill Branch, 3324 South Perry, Spokane, WA, on July 10, 2009 [2008], at 1:00 p.m.

Date of Intended Adoption: August 5, 2008.

Submit Written Comments to: Bev Poston, P.O. Box 47600, Olympia, WA 98605-7600 [98506-7600], e-mail bpos461@ecy.wa.gov, fax (360) 407-7151, by July 15, 2008.

Assistance for Persons with Disabilities: Contact Bev Poston by June 25, 2008, TTY (877) 833-6341 or 711 for Washington relay.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase fees for all wastewater and stormwater permit holders for FY2009 by 5.57% (the fiscal growth factor projection) as authorized by the state legislature. Ecology also will include a fee increase proposal for FY2010 totaling 5.39%, the fiscal growth factor projection, if a fee increase is authorized by the state legislature. If an increase is not authorized, FY2009 fees will remain. Moneys received fund the wastewater/stormwater permit program. Ecology also proposes to add a new definition for seafood processing to make clear what permitted activities fit into this fee category. An increase in the extreme hardship fee reduction for small business maximum is also being proposed. The fee will increase from \$100 to \$106 for FY2009 and \$112 for FY2010. Ecology also proposes to clean up language that will allow the proration of fees for aquatic pest control permits so they are treated the same as all other permit holders.

Reasons Supporting Proposal: The fee increase will allow continued operation of the wastewater/stormwater permit program. Wastewater and stormwater permits are tools used by ecology to ensure that man-made activities that discharge into the various water bodies of the state are discharged at a level where they will not impair the water.

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

Statute Being Implemented: RCW 90.48.465 Water pollution control.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bev Poston, Olympia, Washington, (360) 407-6425.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 173-224 WAC, Wastewater discharge permit fees, already provides relief from fees for small business with no more than one million dollars in gross revenue from the activity covered by the permit. To the extent there may be a disproportionate impact on small business, this provides mitigation, as would be required by the Regulatory Fairness Act (RCW 19.85.030) were a

small business economic impact statement found to be necessary.

A cost-benefit analysis is not required under RCW 34.05.328. Rules changing fee schedules are exempt from significant legislature [legislative] rule cost-benefit analyses (RCW 34.05.328) requirements. The exemptions apply to rules which set or adjust fees or rates pursuant to legislative standards. Legislative standards for these fees appear in RCW 90.48.465 Water pollution control (authorizing the fee). Ecology is proposing to increase fees by the state fiscal growth factor projections determined by the Washington state expenditure limit committee.

June 2, 2008

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending WSR 04-15-046, filed 7/13/04, effective 8/13/04)

WAC 173-224-030 Definitions. "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

"Aggregate production" means the mining or quarrying of sand, gravel, or rock, or the production of concrete, or asphalt or a combination thereof.

"Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

"Animal unit" means the following:

Animal Type	Number of Animals per Animal Unit
Dairy Cows	
Jersey Breed	
Milking Cow	0.900
Dry Cow	0.900
Heifer	0.220
Calf	0.220
Other Breeds	
Milking Cow	1.400
Dry Cow	1.000
Heifer	0.800
Calf	0.500
Feedlot Beef	0.877
Horses	0.500
Sheep	0.100
Swine for breeding	0.375
Swine for slaughter	0.110
Laying hens & pullets > 3 months	0.004
Broilers & pullets < 3 months	0.002

For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.

"Annual permit fee" means the fee charged by the department for annual expenses associated with activities specified in RCW 90.48.465. This annual fee is based on the state's fiscal year (July 1 - June 30).

"bbls/d" means barrels per day of feedstock for petroleum refineries.

"bins/yr" means total standard bins used during the last complete calendar year by a facility in the crop preparing industry. The bins measure approximately 47.5 inches x 47.4 inches x 29.5 inches and hold approximately 870 pounds of fruit.

"Chemical pulp mill w/chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

"Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

"Combined industrial waste treatment" means a facility which treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

"Combined sewer overflow (CSO)" means the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded.

"Concentrated animal feeding operation" means an "animal feeding operation" that meets the criteria in Appendix B of 40 CFR 122 as presently enacted and any subsequent modifications thereto.

"Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents will be considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and BTEX).

"Crane" means a machine used for the hoisting and lifting of ship hulls.

"Crop preparing" means the preparation of fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

"cu. yds/yr" means the total production from an aggregate production facility in cubic yards during the most recent completed calendar year.

"Department" means the department of ecology.

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

"Disturbed acres" means the total area which will be disturbed during all phases of the construction project or common plan of development or sale. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

"Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places,

together with any ground water infiltration or surface waters that may be present.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with such industrial waste as may be present.

"Existing operations" means those industrial operations requiring a wastewater discharge permit before July 1, 1993.

"EPA" means the United States Environmental Protection Agency.

"Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.

"Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

"Food processing" means the preparation of food for human or animal consumption or the preparation of animal byproducts, excluding crop preparing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes from only one separately permitted food processor must be treated as one facility for billing purposes.

"Gross revenue for business" means the gross income from Washington business activities as reported to the Washington state department of revenue.

"Hazardous waste clean up sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

"Industrial facility" means any facility not included in the definition of municipal/domestic facility.

"Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the wastewater discharge permit.

"Industrial storm water" means an operation required to be covered under ecology's NPDES and state waste discharge baseline general permit for storm water discharges associated with industrial activities or modifications to that permit or having an individual wastewater permit for storm water only.

"MGD" means permitted flow expressed in million gallons per day.

"Manufacturing" means the making of goods and articles by hand or especially, by machinery into a manufactured product.

"Median household income" means the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

"Metal finishing" means the preparation of metal surfaces by means of electroplating, electrodeless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

"Municipal/domestic facility" means a publicly owned facility treating domestic wastewater together with any industrial wastes that may be present, or a privately owned facility treating solely domestic wastewater.

"Municipal gross revenue" means gross receipts from monthly, bimonthly, and/or quarterly user charges for sewer services received from all classes of customers;

Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.

Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.

Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.

Gross revenue excludes:

Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.

Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.

Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.

Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.

Connection charges.

Revenues from sales of by-products such as sludge, processed wastewater, etc.

"Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

"Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but which may contain chemicals or additives added by the permittee to control corrosion or fouling of the cooling system.

"Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product, and which does not contain chemicals added by the permittee. The noncontact cooling water fee without additives category applies to those facilities which discharge only noncontact cooling water and which have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

"Nonferrous metals forming" means the manufacturing of semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

"Nonoperating aggregate site" means a location where previous mining or processing has occurred; that has not been fully reclaimed; that has no current mining or processing, and

that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation off-site for processing, use, or sale and still be considered a non-operating site. This definition can be found in ecology's *National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Storm Water, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations.*

"NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under Section 402 of the federal Clean Water Act and RCW 90.48.260.

"Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

"Portable facility" means a facility that is designed for mobility and is moved from site to site for short term operations. A portable facility applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

"RCRA" means Resource Conservation Recovery Act clean up sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters 70.105 and 70.105D RCW including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

"Residential equivalent" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it serves, "residential equivalent" means an influent flow of two hundred fifty gallons per day.

"Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals (fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

"Sewer service" means the activity of receiving sewage deposited into and carried off by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

"State waste discharge permit" means a permit required under RCW 98.48.260.

"Storm water" means an industrial operation or construction activity discharging storm water runoff as defined in 40 CFR 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p)(2)(E).

"Tons/yr." means the total production from an asphalt production facility in tons during the most recent completed calendar year.

"Vegetable/bulb washing" means the washing, packing, and shipping of fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

AMENDATORY SECTION (Amending Order 05-17, filed 5/30/06, effective 6/30/06)

WAC 173-224-040 Permit fee schedule. (1) Application fee. In addition to the annual fee, first time applicants

(except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or \$250.00, whichever is greater. An application fee will be assessed for RCRA sites regardless of whether a new permit is being issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is being modified.

(2) Industrial facility categories.

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) 2009 ANNUAL PERMIT FEE	FY ((2008)) 2010 ANNUAL PERMIT FEE ((AND- BEYOND)) *
Aluminum Alloys	\$(15,007.00) <u>16,713.00</u>	\$(15,831.00) <u>17,614.00</u>
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	((88,496.00)) <u>98,554.00</u>	((93,354.00)) <u>103,866.00</u>
b. State Permit	((44,250.00)) <u>49,279.00</u>	((46,679.00)) <u>51,935.00</u>
Aluminum Forming	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Aggregate Production - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	((2,582.00)) <u>2,876.00</u>	((2,724.00)) <u>3,031.00</u>
2. Nonoperating aggregate site (fee per site)	((106.00)) <u>118.00</u>	((112.00)) <u>124.00</u>
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	((1,076.00)) <u>1,198.00</u>	((1,135.00)) <u>1,263.00</u>
2. 50,000 - < 300,000 tons/yr.	((2,583.00)) <u>2,877.00</u>	((2,725.00)) <u>3,032.00</u>
3. 300,000 tons/yr. and greater	((3,231.00)) <u>3,598.00</u>	((3,408.00)) <u>3,792.00</u>
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	((1,076.00)) <u>1,198.00</u>	((1,135.00)) <u>1,263.00</u>
2. 25,000 - < 200,000 cu. yds/yr.	((2,583.00)) <u>2,877.00</u>	((2,725.00)) <u>3,032.00</u>
3. 200,000 cu. yds/yr. and greater	((3,231.00)) <u>3,598.00</u>	((3,408.00)) <u>3,792.00</u>
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	((2,582.00)) <u>2,876.00</u>	((2,724.00)) <u>3,031.00</u>
2. Asphalt	((2,582.00)) <u>2,876.00</u>	((2,724.00)) <u>3,031.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND- BEYOND))*
3. Concrete	((2,582.00)) <u>2,876.00</u>	((2,724.00)) <u>3,031.00</u>
Aggregate Production - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	((1,807.00)) <u>2,012.00</u>	((1,906.00)) <u>2,120.00</u>
2. Nonoperating aggregate site (fee per site)	((75.00)) <u>83.00</u>	((79.00)) <u>87.00</u>
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	((755.00)) <u>840.00</u>	((796.00)) <u>885.00</u>
2. 50,000 - < 300,000 tons/yr.	((1,808.00)) <u>2,013.00</u>	((1,907.00)) <u>2,122.00</u>
3. 300,000 tons/yr. and greater	((2,260.00)) <u>2,517.00</u>	((2,384.00)) <u>2,653.00</u>
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	((755.00)) <u>840.00</u>	((796.00)) <u>885.00</u>
2. 25,000 - < 200,000 cu. yds/yr.	((1,808.00)) <u>2,013.00</u>	((1,907.00)) <u>2,122.00</u>
3. 200,000 cu. yds/yr. and greater	((2,260.00)) <u>2,517.00</u>	((2,384.00)) <u>2,653.00</u>
The fee for a facility in the aggregate production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	((1,808.00)) <u>2,013.00</u>	((1,907.00)) <u>2,122.00</u>
2. Asphalt	((1,808.00)) <u>2,013.00</u>	((1,907.00)) <u>2,122.00</u>
3. Concrete	((1,808.00)) <u>2,013.00</u>	((1,907.00)) <u>2,122.00</u>
Aquaculture		
a. Finfish hatching and rearing - Individual Permit	((4,501.00)) <u>5,012.00</u>	((4,748.00)) <u>5,282.00</u>
b. Finfish hatching and rearing - General Permit Coverage	((3,153.00)) <u>3,511.00</u>	((3,326.00)) <u>3,700.00</u>
c. Shellfish hatching	((155.00)) <u>173.00</u>	((164.00)) <u>182.00</u>
Aquatic Pest Control		
a. Irrigation Districts	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>
b. Mosquito Control Districts	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>
c. Invasive Moth Control	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>
d. Aquatic Species Control & Eradication	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) 2009 ANNUAL PERMIT FEE	FY ((2008)) 2010 ANNUAL PERMIT FEE ((AND- BEYOND))*
e. Oyster Growers	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>
f. Rotenone Control	((338.00)) <u>377.00</u>	((357.00)) <u>397.00</u>
Boat Yards - Individual Permit Coverage		
a. With storm water only discharge	((384.00)) <u>428.00</u>	((405.00)) <u>451.00</u>
b. All others	((769.00)) <u>856.00</u>	((811.00)) <u>902.00</u>
Boat Yards - General Permit Coverage		
a. With storm water only discharge	((268.00)) <u>298.00</u>	((282.00)) <u>314.00</u>
b. All others	((540.00)) <u>602.00</u>	((570.00)) <u>634.00</u>
Coal Mining and Preparation		
a. < 200,000 tons per year	((5,999.00)) <u>6,680.00</u>	((6,328.00)) <u>7,040.00</u>
b. 200,000 - < 500,000 tons per year	((13,507.00)) <u>15,042.00</u>	((14,248.00)) <u>15,853.00</u>
c. 500,000 - < 1,000,000 tons per year	((24,010.00)) <u>26,739.00</u>	((25,328.00)) <u>28,180.00</u>
d. 1,000,000 tons per year and greater	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Combined Industrial Waste Treatment		
a. < 10,000 gpd	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
b. 10,000 - < 50,000 gpd	((7,501.00)) <u>8,354.00</u>	((7,913.00)) <u>8,804.00</u>
c. 50,000 - < 100,000 gpd	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
d. 100,000 - < 500,000 gpd	((30,012.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
e. 500,000 gpd and greater	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Combined Food Processing Waste Treatment Facilities	((14,367.00)) <u>16,000.00</u>	((15,156.00)) <u>16,862.00</u>
Combined Sewer Overflow System		
a. < 50 acres	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
b. 50 - < 100 acres	((7,501.00)) <u>8,354.00</u>	((7,913.00)) <u>8,804.00</u>
c. 100 - < 500 acres	((9,007.00)) <u>10,030.00</u>	((9,501.00)) <u>10,571.00</u>
d. 500 acres and greater	((12,004.00)) <u>13,368.00</u>	((12,663.00)) <u>14,089.00</u>
Commercial Laundry	((384.00)) <u>428.00</u>	((405.00)) <u>451.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) 2009	FY ((2008)) 2010
	ANNUAL PERMIT FEE	ANNUAL PERMIT FEE ((AND BEYOND))*
Concentrated Animal Feeding Operation		
a. < 200 Animal Units	((154.00)) <u>171.00</u>	((162.00)) <u>180.00</u>
b. 200 - < 400 Animal Units	((384.00)) <u>428.00</u>	((405.00)) <u>451.00</u>
c. 400 - < 600 Animal Units	((769.00)) <u>856.00</u>	((811.00)) <u>902.00</u>
d. 600 - < 800 Animal Units	((1,153.00)) <u>1,284.00</u>	((1,216.00)) <u>1,353.00</u>
e. 800 Animal Units and greater	((1,539.00)) <u>1,714.00</u>	((1,624.00)) <u>1,806.00</u>
Crop Preparing - Individual Permit Coverage		
a. 0 - < 1,000 bins/yr.	((299.00)) <u>333.00</u>	((315.00)) <u>351.00</u>
b. 1,000 - < 5,000 bins/yr.	((601.00)) <u>669.00</u>	((634.00)) <u>705.00</u>
c. 5,000 - < 10,000 bins/yr.	((1,200.00)) <u>1,337.00</u>	((1,266.00)) <u>1,409.00</u>
d. 10,000 - < 15,000 bins/yr.	((2,403.00)) <u>2,676.00</u>	((2,535.00)) <u>2,820.00</u>
e. 15,000 - < 20,000 bins/yr.	((3,974.00)) <u>4,425.00</u>	((4,192.00)) <u>4,664.00</u>
f. 20,000 - < 25,000 bins/yr.	((5,552.00)) <u>6,183.00</u>	((5,857.00)) <u>6,516.00</u>
g. 25,000 - < 50,000 bins/yr.	((7,427.00)) <u>8,271.00</u>	((7,835.00)) <u>8,717.00</u>
h. 50,000 - < 75,000 bins/yr.	((8,254.00)) <u>9,192.00</u>	((8,707.00)) <u>9,687.00</u>
i. 75,000 - < 100,000 bins/yr.	((9,603.00)) <u>10,694.00</u>	((10,130.00)) <u>11,270.00</u>
j. 100,000 - < 125,000 bins/yr.	((12,004.00)) <u>13,368.00</u>	((12,663.00)) <u>14,089.00</u>
k. 125,000 - < 150,000 bins/yr.	((15,006.00)) <u>16,712.00</u>	((15,830.00)) <u>17,613.00</u>
l. 150,000 bins/yr. and greater	((18,008.00)) <u>20,055.00</u>	((18,997.00)) <u>21,136.00</u>
Crop Preparing - General Permit Coverage		
a. 0 - < 1,000 bins/yr.	((209.00)) <u>232.00</u>	((220.00)) <u>245.00</u>
b. 1,000 - < 5,000 bins/yr.	((420.00)) <u>468.00</u>	((443.00)) <u>493.00</u>
c. 5,000 - < 10,000 bins/yr.	((842.00)) <u>937.00</u>	((888.00)) <u>988.00</u>
d. 10,000 - < 15,000 bins/yr.	((1,682.00)) <u>1,873.00</u>	((1,774.00)) <u>1,974.00</u>
e. 15,000 - < 20,000 bins/yr.	((2,783.00)) <u>3,100.00</u>	((2,936.00)) <u>3,267.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND- BEYOND))*
f.	20,000 - < 25,000 bins/yr.	((3,887.00)) <u>4,328.00</u>	((4,100.00)) <u>4,561.00</u>
g.	25,000 - < 50,000 bins/yr.	((5,198.00)) <u>5,788.00</u>	((5,483.00)) <u>6,100.00</u>
h.	50,000 - < 75,000 bins/yr.	((5,777.00)) <u>6,433.00</u>	((6,094.00)) <u>6,780.00</u>
i.	75,000 - < 100,000 bins/yr.	((6,717.00)) <u>7,481.00</u>	((7,086.00)) <u>7,884.00</u>
j.	100,000 - < 125,000 bins/yr.	((8,405.00)) <u>9,360.00</u>	((8,866.00)) <u>9,865.00</u>
k.	125,000 - < 150,000 bins/yr.	((10,504.00)) <u>11,698.00</u>	((11,081.00)) <u>12,329.00</u>
l.	150,000 bins/yr. and greater	((12,604.00)) <u>14,037.00</u>	((13,296.00)) <u>14,794.00</u>
Dairies \$.50 per Animal Unit not to exceed \$ ((1,077.00)) <u>1,199.00</u> for FY ((2007)) <u>2009</u> and \$ ((1,136.00)) <u>1,264.00</u> for FY ((2008 and beyond)) <u>2010</u>			
Facilities Not Otherwise Classified - Individual Permit Coverage			
a.	< 1,000 gpd	((1,501.00)) <u>1,671.00</u>	((1,583.00)) <u>1,761.00</u>
b.	1,000 - < 10,000 gpd	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
c.	10,000 - < 50,000 gpd	((7,502.00)) <u>8,355.00</u>	((7,914.00)) <u>8,805.00</u>
d.	50,000 - < 100,000 gpd	((12,004.00)) <u>13,368.00</u>	((12,663.00)) <u>14,089.00</u>
e.	100,000 - < 500,000 gpd	((23,890.00)) <u>26,606.00</u>	((25,202.00)) <u>28,040.00</u>
f.	500,000 - < 1,000,000 gpd	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
g.	1,000,000 gpd and greater	((45,019.00)) <u>50,135.00</u>	((47,490.00)) <u>52,837.00</u>
Facilities Not Otherwise Classified - General Permit Coverage			
a.	< 1,000 gpd	((1,052.00)) <u>1,172.00</u>	((1,110.00)) <u>1,235.00</u>
b.	1,000 - < 10,000 gpd	((2,177.00)) <u>2,425.00</u>	((2,297.00)) <u>2,556.00</u>
c.	10,000 - < 50,000 gpd	((5,254.00)) <u>5,851.00</u>	((5,542.00)) <u>6,166.00</u>
d.	50,000 - < 100,000 gpd	((8,405.00)) <u>9,360.00</u>	((8,866.00)) <u>9,865.00</u>
e.	100,000 - < 500,000 gpd	((16,805.00)) <u>18,715.00</u>	((17,728.00)) <u>19,724.00</u>
f.	500,000 - < 1,000,000 gpd	((21,007.00)) <u>23,394.00</u>	((22,160.00)) <u>24,655.00</u>
g.	1,000,000 gpd and greater	((31,513.00)) <u>35,095.00</u>	((33,243.00)) <u>36,987.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND- BEYOND))*
Flavor Extraction		
a. Steam Distillation	((154.00)) <u>171.00</u>	((162.00)) <u>180.00</u>
Food Processing		
a. < 1,000 gpd	((1,500.00)) <u>1,670.00</u>	((1,582.00)) <u>1,760.00</u>
b. 1,000 - < 10,000 gpd	((3,824.00)) <u>4,259.00</u>	((4,034.00)) <u>4,489.00</u>
c. 10,000 - < 50,000 gpd	((6,828.00)) <u>7,604.00</u>	((7,203.00)) <u>8,014.00</u>
d. 50,000 - < 100,000 gpd	((10,729.00)) <u>11,948.00</u>	((11,318.00)) <u>12,592.00</u>
e. 100,000 - < 250,000 gpd	((15,007.00)) <u>16,712.00</u>	((15,830.00)) <u>17,613.00</u>
f. 250,000 - < 500,000 gpd	((19,734.00)) <u>21,977.00</u>	((20,817.00)) <u>23,162.00</u>
g. 500,000 - < 750,000 gpd	((24,758.00)) <u>27,572.00</u>	((26,117.00)) <u>29,058.00</u>
h. 750,000 - < 1,000,000 gpd	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
i. 1,000,000 - < 2,500,000 gpd	((36,974.00)) <u>41,175.00</u>	((39,003.00)) <u>43,394.00</u>
j. 2,500,000 - < 5,000,000 gpd	((41,266.00)) <u>45,957.00</u>	((43,532.00)) <u>48,434.00</u>
k. 5,000,000 gpd and greater	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Fuel and Chemical Storage		
a. < 50,000 bbls	((1,501.00)) <u>1,671.00</u>	((1,583.00)) <u>1,761.00</u>
b. 50,000 - < 100,000 bbls	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
c. 100,000 - < 500,000 bbls	((7,501.00)) <u>8,354.00</u>	((7,913.00)) <u>8,804.00</u>
d. 500,000 bbls and greater	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
Hazardous Waste Clean Up Sites		
a. Leaking Underground Storage Tanks (LUST)		
1. State Permit	((3,936.00)) <u>4,383.00</u>	((4,152.00)) <u>4,619.00</u>
2. NPDES Permit Issued pre 7/1/94	((3,936.00)) <u>4,383.00</u>	((4,152.00)) <u>4,619.00</u>
3. NPDES Permit Issued post 7/1/94	((7,871.00)) <u>8,765.00</u>	((8,303.00)) <u>9,237.00</u>
b. Non-LUST Sites		
1. 1 or 2 Contaminants of concern	((7,696.00)) <u>8,570.00</u>	((8,118.00)) <u>9,032.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND- BEYOND))*
2. > 2 Contaminants of concern	((15,391.00)) <u>17,140.00</u>	((16,236.00)) <u>18,064.00</u>
Ink Formulation and Printing		
a. Commercial Print Shops	((2,308.00)) <u>2,571.00</u>	((2,435.00)) <u>2,710.00</u>
b. Newspapers	((3,849.00)) <u>4,286.00</u>	((4,060.00)) <u>4,517.00</u>
c. Box Plants	((6,156.00)) <u>6,856.00</u>	((6,494.00)) <u>7,226.00</u>
d. Ink Formulation	((7,696.00)) <u>8,571.00</u>	((8,119.00)) <u>9,033.00</u>
Inorganic Chemicals Manufacturing		
a. Lime Products	((7,501.00)) <u>8,354.00</u>	((7,913.00)) <u>8,804.00</u>
b. Fertilizer	((9,031.00)) <u>10,058.00</u>	((9,527.00)) <u>10,600.00</u>
c. Peroxide	((12,004.00)) <u>13,368.00</u>	((12,663.00)) <u>14,089.00</u>
d. Alkaline Earth Salts	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
e. Metal Salts	((21,006.00)) <u>23,393.00</u>	((22,159.00)) <u>24,654.00</u>
f. Acid Manufacturing	((30,006.00)) <u>33,416.00</u>	((31,653.00)) <u>35,217.00</u>
g. Chlor-alkali	((60,024.00)) <u>66,846.00</u>	((63,319.00)) <u>70,449.00</u>
Iron and Steel		
a. Foundries	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
b. Mills	((30,039.00)) <u>33,453.00</u>	((31,688.00)) <u>35,256.00</u>
Metal Finishing		
a. < 1,000 gpd	((1,799.00)) <u>2,004.00</u>	((1,898.00)) <u>2,112.00</u>
b. 1,000 - < 10,000 gpd	((3,000.00)) <u>3,341.00</u>	((3,165.00)) <u>3,521.00</u>
c. 10,000 - < 50,000 gpd	((7,500.00)) <u>8,353.00</u>	((7,912.00)) <u>8,803.00</u>
d. 50,000 - < 100,000 gpd	((15,006.00)) <u>16,712.00</u>	((15,830.00)) <u>17,613.00</u>
e. 100,000 - < 500,000 gpd	((30,010.00)) <u>33,420.00</u>	((31,657.00)) <u>35,221.00</u>
f. 500,000 gpd and greater	((45,017.00)) <u>50,133.00</u>	((47,488.00)) <u>52,835.00</u>
Noncontact Cooling Water With Additives - Individual Permit Coverage		
a. < 1,000 gpd	((939.00)) <u>1,046.00</u>	((991.00)) <u>1,102.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND- BEYOND))*
b.	1,000 - < 10,000 gpd	((1,310.00)) <u>1,459.00</u>	((1,382.00)) <u>1,538.00</u>
c.	10,000 - < 50,000 gpd	((2,816.00)) <u>3,136.00</u>	((2,971.00)) <u>3,305.00</u>
d.	50,000 - < 100,000 gpd	((6,567.00)) <u>7,314.00</u>	((6,928.00)) <u>7,708.00</u>
e.	100,000 - < 500,000 gpd	((11,252.00)) <u>12,531.00</u>	((11,870.00)) <u>13,206.00</u>
f.	500,000 - < 1,000,000 gpd	((15,946.00)) <u>17,758.00</u>	((16,821.00)) <u>18,715.00</u>
g.	1,000,000 - < 2,500,000 gpd	((20,636.00)) <u>22,982.00</u>	((21,769.00)) <u>24,221.00</u>
h.	2,500,000 - < 5,000,000 gpd	((25,216.00)) <u>28,082.00</u>	((26,600.00)) <u>29,596.00</u>
i.	5,000,000 gpd and greater	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
Noncontact Cooling Water With Additives - General Permit Coverage			
a.	< 1,000 gpd	((657.00)) <u>733.00</u>	((694.00)) <u>773.00</u>
b.	1,000 - < 10,000 gpd	((1,312.00)) <u>1,461.00</u>	((1,384.00)) <u>1,540.00</u>
c.	10,000 - < 50,000 gpd	((1,971.00)) <u>2,195.00</u>	((2,079.00)) <u>2,313.00</u>
d.	50,000 - < 100,000 gpd	((4,598.00)) <u>5,120.00</u>	((4,850.00)) <u>5,396.00</u>
e.	100,000 - < 500,000 gpd	((7,878.00)) <u>8,773.00</u>	((8,310.00)) <u>9,246.00</u>
f.	500,000 - < 1,000,000 gpd	((11,163.00)) <u>12,432.00</u>	((11,776.00)) <u>13,102.00</u>
g.	1,000,000 - < 2,500,000 gpd	((14,444.00)) <u>16,086.00</u>	((15,237.00)) <u>16,953.00</u>
h.	2,500,000 - < 5,000,000 gpd	((17,725.00)) <u>19,739.00</u>	((18,698.00)) <u>20,803.00</u>
i.	5,000,000 gpd and greater	((21,007.00)) <u>23,394.00</u>	((22,160.00)) <u>24,655.00</u>
Noncontact Cooling Water Without Additives - Individual Permit Coverage			
a.	< 1,000 gpd	((753.00)) <u>838.00</u>	((794.00)) <u>883.00</u>
b.	1,000 - < 10,000 gpd	((1,501.00)) <u>1,671.00</u>	((1,583.00)) <u>1,761.00</u>
c.	10,000 - < 50,000 gpd	((2,253.00)) <u>2,509.00</u>	((2,377.00)) <u>2,644.00</u>
d.	50,000 - < 100,000 gpd	((5,254.00)) <u>5,851.00</u>	((5,542.00)) <u>6,166.00</u>
e.	100,000 - < 500,000 gpd	((9,006.00)) <u>10,030.00</u>	((9,501.00)) <u>10,571.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND- BEYOND))*
f.	500,000 - < 1,000,000 gpd	((12,754.00)) <u>14,203.00</u>	((13,454.00)) <u>14,969.00</u>
g.	1,000,000 - < 2,500,000 gpd	((16,442.00)) <u>18,310.00</u>	((17,344.00)) <u>19,297.00</u>
h.	2,500,000 - < 5,000,000 gpd	((20,257.00)) <u>22,559.00</u>	((21,369.00)) <u>23,775.00</u>
i.	5,000,000 gpd and greater	((24,010.00)) <u>26,739.00</u>	((25,328.00)) <u>28,180.00</u>
Noncontact Cooling Water Without Additives - General Permit Coverage			
a.	< 1,000 gpd	((526.00)) <u>586.00</u>	((555.00)) <u>618.00</u>
b.	1,000 - < 10,000 gpd	((1,052.00)) <u>1,172.00</u>	((1,110.00)) <u>1,235.00</u>
c.	10,000 - < 50,000 gpd	((1,577.00)) <u>1,757.00</u>	((1,664.00)) <u>1,852.00</u>
d.	50,000 - < 100,000 gpd	((3,677.00)) <u>4,095.00</u>	((3,879.00)) <u>4,316.00</u>
e.	100,000 - < 500,000 gpd	((6,303.00)) <u>7,019.00</u>	((6,649.00)) <u>7,397.00</u>
f.	500,000 - < 1,000,000 gpd	((8,929.00)) <u>9,944.00</u>	((9,419.00)) <u>10,480.00</u>
g.	1,000,000 - < 2,500,000 gpd	((11,555.00)) <u>12,868.00</u>	((12,189.00)) <u>13,562.00</u>
h.	2,500,000 - < 5,000,000 gpd	((14,181.00)) <u>15,793.00</u>	((14,960.00)) <u>16,644.00</u>
i.	5,000,000 gpd and greater	((16,805.00)) <u>18,715.00</u>	((17,728.00)) <u>19,724.00</u>
Nonferrous Metals Forming		((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
Ore Mining			
a.	Ore Mining	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
b.	Ore mining with physical concentration processes	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
c.	Ore mining with physical and chemical concentration processes	((24,010.00)) <u>26,739.00</u>	((25,328.00)) <u>28,180.00</u>
Organic Chemicals Manufacturing			
a.	Fertilizer	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
b.	Aliphatic	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
c.	Aromatic	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Petroleum Refining			
a.	< 10,000 bbls/d	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) 2009 ANNUAL PERMIT FEE	FY ((2008)) 2010 ANNUAL PERMIT FEE ((AND- BEYOND))*
b.	10,000 - < 50,000 bbls/d	((59,503.00)) <u>66,266.00</u>	((62,770.00)) <u>69,838.00</u>
c.	50,000 bbls/d and greater	((120,054.00)) <u>133,699.00</u>	((126,645.00)) <u>140,905.00</u>
Photofinishers			
a.	< 1,000 gpd	((1,200.00)) <u>1,337.00</u>	((1,266.00)) <u>1,409.00</u>
b.	1,000 gpd and greater	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
Power and/or Steam Plants			
a.	Steam Generation - Nonelectric	((5,999.00)) <u>6,680.00</u>	((6,328.00)) <u>7,040.00</u>
b.	Hydroelectric	((5,999.00)) <u>6,680.00</u>	((6,328.00)) <u>7,040.00</u>
c.	Nonfossil Fuel	((9,005.00)) <u>10,028.00</u>	((9,499.00)) <u>10,569.00</u>
d.	Fossil Fuel	((24,010.00)) <u>26,739.00</u>	((25,328.00)) <u>28,180.00</u>
Pulp, Paper and Paper Board			
a.	Fiber Recyclers	((15,005.00)) <u>16,711.00</u>	((15,829.00)) <u>17,612.00</u>
b.	Paper Mills	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
c.	Groundwood Pulp Mills		
1.	< 300 tons per day	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
2.	> 300 tons per day	((90,037.00)) <u>100,270.00</u>	((94,980.00)) <u>105,675.00</u>
d.	Chemical Pulp Mills w/o Chlorine Bleaching	((120,047.00)) <u>133,692.00</u>	((126,638.00)) <u>140,898.00</u>
e.	Chemical Pulp Mills w/Chlorine Bleaching	((135,051.00)) <u>150,400.00</u>	((142,465.00)) <u>158,507.00</u>
Radioactive Effluents and Discharges (RED)			
a.	< 3 waste streams	((29,028.00)) <u>32,332.00</u>	((30,626.00)) <u>34,075.00</u>
b.	3 - < 8 waste streams	((50,417.00)) <u>56,147.00</u>	((53,185.00)) <u>59,173.00</u>
c.	8 waste streams and greater	((83,040.00)) <u>92,478.00</u>	((87,599.00)) <u>97,463.00</u>
RCRA Corrective Action Sites			
		((21,093.00)) <u>23,490.00</u>	((22,251.00)) <u>24,756.00</u>
Seafood Processing			
a.	< 1,000 gpd	((1,501.00)) <u>1,671.00</u>	((1,583.00)) <u>1,761.00</u>

INDUSTRIAL FACILITY CATEGORIES		FY ((2007)) 2009 ANNUAL PERMIT FEE	FY ((2008)) 2010 ANNUAL PERMIT FEE ((AND- BEYOND))*
b.	1,000 - < 10,000 gpd	((3,824.00)) <u>4,259.00</u>	((4,034.00)) <u>4,489.00</u>
c.	10,000 - < 50,000 gpd	((6,828.00)) <u>7,604.00</u>	((7,203.00)) <u>8,014.00</u>
d.	50,000 - < 100,000 gpd	((10,729.00)) <u>11,948.00</u>	((11,318.00)) <u>12,592.00</u>
e.	100,000 gpd and greater	((15,007.00)) <u>16,713.00</u>	((15,831.00)) <u>17,614.00</u>
Shipyards			
a.	Per crane, travel lift, small boat lift	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,552.00</u>
b.	Per drydock under 250 ft in length	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,552.00</u>
c.	Per graving dock	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,552.00</u>
d.	Per marine way	((4,501.00)) <u>5,012.00</u>	((4,748.00)) <u>5,282.00</u>
e.	Per sycrolift	((4,501.00)) <u>5,012.00</u>	((4,748.00)) <u>5,282.00</u>
f.	Per drydock over 250 ft in length	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
g.	In-water vessel maintenance	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.			
Solid Waste Sites (nonstorm water)			
a.	Nonputrescible	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
b.	< 50 acres	((12,003.00)) <u>13,367.00</u>	((12,662.00)) <u>14,087.00</u>
c.	50 - < 100 acres	((24,010.00)) <u>26,739.00</u>	((25,328.00)) <u>28,180.00</u>
d.	100 - < 250 acres	((30,011.00)) <u>33,422.00</u>	((31,659.00)) <u>35,223.00</u>
e.	250 acres and greater	((45,019.00)) <u>50,136.00</u>	((47,491.00)) <u>52,838.00</u>
Textile Mills			
		((60,024.00)) <u>66,846.00</u>	((63,319.00)) <u>70,449.00</u>
Timber Products			
a.	Log Storage	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
b.	Veneer	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
c.	Sawmills	((12,004.00)) <u>13,368.00</u>	((12,663.00)) <u>14,089.00</u>
d.	Hardwood, Plywood	((21,006.00)) <u>23,393.00</u>	((22,159.00)) <u>24,654.00</u>

INDUSTRIAL FACILITY CATEGORIES	FY ((2007)) <u>2009</u> ANNUAL PERMIT FEE	FY ((2008)) <u>2010</u> ANNUAL PERMIT FEE ((AND- BEYOND))*
e. Wood Preserving	((28,819.00)) <u>32,094.00</u>	((30,401.00)) <u>33,824.00</u>
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	((98.00)) <u>110.00</u>	((104.00)) <u>116.00</u>
b. 1,000 - < 5,000 gpd	((201.00)) <u>224.00</u>	((212.00)) <u>236.00</u>
c. 5,000 - < 10,000 gpd	((395.00)) <u>440.00</u>	((417.00)) <u>464.00</u>
d. 10,000 - < 20,000 gpd	((796.00)) <u>887.00</u>	((840.00)) <u>935.00</u>
e. 20,000 and greater	((1,315.00)) <u>1,464.00</u>	((1,387.00)) <u>1,543.00</u>
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	((3,001.00)) <u>3,342.00</u>	((3,166.00)) <u>3,522.00</u>
b. 0.5 - < 1.0 acre	((6,000.00)) <u>6,682.00</u>	((6,329.00)) <u>7,042.00</u>
c. 1.0 acre and greater	((9,005.00)) <u>10,028.00</u>	((9,499.00)) <u>10,569.00</u>
Water Plants - Individual Permit Coverage		
	((3,753.00)) <u>4,180.00</u>	((3,959.00)) <u>4,405.00</u>
Water Plants - General Permit Coverage		
	((2,627.00)) <u>2,925.00</u>	((2,771.00)) <u>3,083.00</u>
Wineries		
a. < 500 gpd	((306.00)) <u>341.00</u>	((323.00)) <u>359.00</u>
b. 500 - < 750 gpd	((614.00)) <u>684.00</u>	((648.00)) <u>721.00</u>
c. 750 - < 1,000 gpd	((1,228.00)) <u>1,367.00</u>	((1,295.00)) <u>1,441.00</u>
d. 1,000 - < 2,500 gpd	((2,455.00)) <u>2,734.00</u>	((2,590.00)) <u>2,881.00</u>
e. 2,500 - < 5,000 gpd	((3,917.00)) <u>4,362.00</u>	((4,132.00)) <u>4,597.00</u>
f. 5,000 gpd and greater	((5,376.00)) <u>5,987.00</u>	((5,671.00)) <u>6,310.00</u>

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

(a) Facilities other than those in the aggregate production, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the

annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Crop preparation and aggregate production permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. When required, the department will send the information form to the permit holder. The permit holder shall complete and return the information form to the department by the required due date. Failure to provide this information will

result in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized general partner;

(C) In the case of a general partnership, by an authorized partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for crop preparers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the crop preparing or noncontact cooling water without additives categories.

(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.

(f) Hazardous waste clean up sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70.105D RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70.105D RCW ceases.

(g) Any permit holder, with the exception of nonoperating aggregate operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode must be verified by the appropriate ecology staff. Once operations resume, the permit fee will be returned to the full amount.

Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period will be assessed permit fees as if they were active during the entire period.

(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(i) RCRA corrective action sites requiring a waste discharge permit will be assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(3) MUNICIPAL/DOMESTIC FACILITIES

(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

Residential Equivalents (RE)	FY ((2007)) 2009 Annual Permit Fee	FY ((2008)) 2010 Annual Permit Fee (and Beyond)*
< 250,000	\$1.80	\$1.80
> 250,000	((1.12)) 1.25	((1.18)) 1.32

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the state fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:

(i) Holds more than one permit for domestic wastewater facilities; and

(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.

A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.

(c) The sum of the annual permit fees for permits held by a municipality that:

(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

Permitted Flows	FY ((2007)) 2009 Annual Permit Fee	FY ((2008)) 2010 Annual Permit Fee (and Beyond)*
.1 MGD and Greater	\$ ((7,501.00)) 8,354.00	\$ ((7,913.00)) 8,804.00
.05 MGD to < .1 MGD	((3,001.00)) 3,342.00	((3,166.00)) 3,522.00
.0008 MGD to < .05 MGD	((1,501.00)) 1,671.00	((1,583.00)) 1,761.00
< .0008 MGD	((452.00)) 504.00	((477.00)) 531.00

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipalities different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.

(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.

(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.

The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.

(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.

(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:

(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.

(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.

In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.

(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.

(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.

(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately-owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.

(ii) The form shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized partner;

(D) In the case of a sole proprietorship, by the proprietor;

or
(4) STORM WATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))

(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

	FY ((2007)) 2009 Annual Permit Fee	FY ((2008)) 2010 Annual Permit Fee ((& Beyond)) *
a. Individual Construction or Industrial Storm Water Permits		
1. < 50 acres	\$(3,001.00) <u>3,342.00</u>	\$(3,166.00) <u>3,522.00</u>
2. 50 -< 100 acres	\$(5,999.00) <u>6,680.00</u>	\$(6,328.00) <u>7,040.00</u>
3. 100 -< 500 acres	\$(9,005.00) <u>10,028.00</u>	\$(9,499.00) <u>10,569.00</u>
4. 500 acres and greater	\$(12,004.00) <u>13,368.00</u>	\$(12,663.00) <u>14,089.00</u>
b. Facilities Covered Under the Industrial Storm Water General Permit		
1. Municipalities and state agencies	\$(982.00) <u>1,094.00</u>	\$(1,036.00) <u>1,153.00</u>
2. New permit holders without historical gross revenue information	\$(517.00) <u>575.00</u>	\$(545.00) <u>606.00</u>
3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year		
Gross Revenue		
Less than \$100,000	\$(100.00) <u>106.00</u>	\$(100.00) <u>112.00</u>
\$100,000 -< \$1,000,000	\$(414.00) <u>461.00</u>	\$(437.00) <u>486.00</u>
\$1,000,000 -< \$2,500,000	\$(496.00) <u>552.00</u>	\$(523.00) <u>582.00</u>
\$2,500,000 -< \$5,000,000	\$(827.00) <u>921.00</u>	\$(872.00) <u>971.00</u>
\$5,000,000 -< \$10,000,000	\$(1,241.00) <u>1,382.00</u>	\$(1,309.00) <u>1,456.00</u>
\$10,000,000 and greater	\$(1,499.00) <u>1,669.00</u>	\$(1,581.00) <u>1,759.00</u>

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

c. Construction Activities Covered Under the Construction Storm Water General Permit(s)			
1.	Less than 5 acres disturbed area	\$(388.00) <u>432.00</u>	\$(409.00) <u>455.00</u>
2.	5 -< 7 acres of disturbed area	\$(631.00) <u>703.00</u>	\$(666.00) <u>741.00</u>
3.	7 -< 10 acres of disturbed area	\$(853.00) <u>950.00</u>	\$(900.00) <u>1,001.00</u>
4.	10 -< 20 acres of disturbed area	\$(1,163.00) <u>1,295.00</u>	\$(1,227.00) <u>1,365.00</u>
5.	20 acres and greater of disturbed area	\$(1,447.00) <u>1,611.00</u>	\$(1,526.00) <u>1,698.00</u>

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal storm water permit annual fee for the entities listed below will be:

Name of Entity	FY ((2007)) 2009 Annual Permit Fee	FY ((2008)) 2010 Annual Permit Fee ((and Beyond))*
King County	\$(34,182.00) <u>38,067.00</u>	\$(36,059.00) <u>40,119.00</u>
Snohomish County	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>
Pierce County	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>
Tacoma, City of	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>
Seattle, City of	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>
Washington Department of Transportation	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>
Clark County	((34,182.00)) <u>38,067.00</u>	((36,059.00)) <u>40,119.00</u>

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

(b) Municipal storm water general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, will be determined in the following manner: For fiscal year ~~((2007))~~ 2009, ecology will charge ~~\$(1.00)~~ 1.11 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~\$(.50)~~ .53 per housing unit inside the geographic area cov-

ered by the permit. ~~((For fiscal year 2008))~~ If, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor, ecology will charge ~~\$(1.05)~~ 1.17 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to ~~\$(.53)~~ .56 per housing unit inside the geographic area covered by the permit. Fees will not exceed ~~\$(34,182.00)~~ 38,067.00 for fiscal year ~~((2007))~~ 2009 and ~~\$(36,059.00)~~ 40,119.00 for fiscal year ~~((2008 and beyond))~~ 2010. If ecology's request for the FY 2010 fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended. The minimum annual fee will not be lower than ~~\$(1,500.00)~~ 1,584.00 unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling ~~\$(.50)~~ .53 per housing unit for fiscal year 2009. The fee amount for FY 2010 will be \$.56 per housing unit if, and only if, the state legislature approves ecology's request to increase fees by the fiscal growth factor. If ecology's request for a FY 2010 fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended.

(c) Other entities required to have permit coverage under a municipal storm water general permit will pay an annual fee ~~((beginning in fiscal year 2007. The annual fee shall be))~~ based on the entities' previous year's annual operating budget as follows:

Annual Operating Budget	FY ((2007)) 2009 Annual Permit Fee	FY ((2008)) 2010 Annual Permit Fee ((and Beyond))*
Less than \$100,000	\$(100.00) <u>111.00</u>	\$(105.00) <u>117.00</u>
\$100,000 -< \$1,000,000	\$(400.00) <u>446.00</u>	\$(422.00) <u>470.00</u>
\$1,000,000 -< \$5,000,000	\$(1,000.00) <u>1,114.00</u>	\$(1,055.00) <u>1,174.00</u>

Annual Operating Budget	FY ((2007)) 2009 Annual Permit Fee	FY ((2008)) 2010 Annual Permit Fee ((and-Beyond))*
\$5,000,000 - \$10,000,000	\$(1,500.00)) 1,670.00	\$(1,582.00)) 1,760.00
\$10,000,000 and greater	\$(2,500.00)) 2,784.00	\$(2,637.00)) 2,934.00

*FY 2010 fee amounts are applicable if, and only if, the 2009 state legislature approves ecology's request to increase fees in FY 2010 by the fiscal growth factor. If the fee increase is not approved, the FY 2009 fees will remain in effect.

For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:

(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.

(ii) For ports, the annual operating budget for the port district.

(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.

(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.

(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.

(d) Municipal storm water permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:

(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.

(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or \$30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or \$15,000.

(iii) For entities that would otherwise be covered under a municipal storm water general permit as determined in (c) of this subsection, the fiscal year ~~((2007))~~ 2009 annual fee for a permit written for a specific entity shall be ~~\$(7,500))~~ 7,918.00. ((For fiscal year 2008 and beyond)) If, and only if, the state legislature approves ecology's request to increase fees in FY 2010, the annual fee will be \$(7,912)) 8,345.00. However, if a fee increase is not approved, the FY 2009 fee amount will remain in effect until this section is next amended.

(e) Ecology will assess a single permit fee for entities which apply only as co-permittees or co-applicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the co-permittees had applied separately.

AMENDATORY SECTION (Amending WSR 04-15-046, filed 7/13/04, effective 8/13/04)

WAC 173-224-050 Permit fee computation and payments. (1) The department shall charge permit fees based on the permit fee schedule contained in WAC 173-224-040. The department may charge fees at the beginning of the year to which they apply. The department shall notify permit holders of fee charges by mailing billing statements. Permit fees must be received by the department within forty-five days after the department mails a billing statement. The department may elect to bill permit holders a prorated portion of the annual fee on a monthly, quarterly, or other periodic basis.

(2) Permit fee computation for individual permits. Computation of permit fees shall begin on the first day of each fiscal year. In the case of facilities or activities not previously covered by permits, fee computation begins on the issuance date of the permit ~~((excluding permits issued for aquatic pest control. Permits issued for aquatic pest control fee category shall pay the full annual fee assessment regardless of when permit coverage is granted))~~. In the case of applicants for state waste discharge permits who are deemed to have a temporary permit under RCW 90.48.200, computation shall begin on the sixty-first day after the department accepts a completed application. In the case of NPDES permit holders who submit a new, updated permit application containing information that could change their assigned permit fee, computation and permit fee category reassignment begins upon acceptance of the application by the department. Any facility that obtains permit coverage but fails to operate will still be obligated to pay the annual permit fee assessment until the permit has been terminated by the department. Permits terminated during the fiscal year will have their fees prorated ~~((excluding permits issued for aquatic pest control,))~~ as follows unless it results in an annual fee assessment of less than one hundred dollars. ~~((Aquatic pest control permits issued during the fiscal year shall pay the full annual fee assessment regardless of when the permit termination is granted.))~~ Ecology will not process refunds of one hundred dollars or less:

(a) Permit coverage for up to three months will pay twenty-five percent of the annual permit fee;

(b) Permit coverage for three to six months will pay fifty percent of the annual permit fee;

(c) Permit coverage for six to nine months will pay seventy-five percent of the annual permit fee; and

(d) Permit coverage for nine months or greater will pay one hundred percent of the annual permit fee.

(3) Permit fee computation for general permits. Computation of fees for permittees covered under a general permit ~~((excluding those general permits issued for aquatic pest control,))~~ begins on the permit coverage date. ~~((Permits issued for aquatic pest control will pay the full annual fee assessment regardless of when the permit coverage begins.))~~ Any facility that obtains permit coverage is obligated to pay the annual permit fee regardless of whether or not the facility has ever operated until the permit has been terminated by the department. Permits terminated during the fiscal year excluding permits issued for aquatic pest control will have their fees prorated as described in subsection (2)(a), (b), (c), (d) of this section unless it results in an annual fee assessment of less than one hundred dollars. ~~((Aquatic pest control permits~~

issued during the fiscal year shall pay the annual fee assessment for that fiscal year regardless of when the permit termination is granted.) Ecology will not process refunds of one hundred dollars or less.

(4) Permit fees for sand and gravel (aggregate) general permit holders will be assessed as in subsection (3) of this section and:

(a) Nonoperating aggregate sites. A facility conducting mining, screening, washing and/or crushing activities excluding portable rock crushing operations is considered nonoperating for fee purposes if they are conducting these activities for less than ninety cumulative days during a calendar year. A facility producing no asphalt and/or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete and/or asphalt production will be assessed a prorated fee for the actual time inactive. For the actual time a concrete and/or asphalt facility is active excluding asphalt portable batch plants and concrete portable batch plants, fees will be based on total production of concrete and/or asphalt.

(c) Fees for continuously active sites that produce concrete and/or asphalt excluding asphalt portable batch plants and concrete portable batch plants, will be based on the average of the three previous calendar years production totals. Existing facilities must provide the department with the production totals for concrete and/or asphalt produced during the previous three calendar years or for the number of full calendar years of operation if less than three. New facilities with no historical asphalt and/or concrete production data will have their first year fee based on the production levels reported on the application for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Storm Water, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(d) Asphalt portable batch plants, concrete portable batch plants and portable rock crushing operations will be assessed fees as in subsection (3) of this section. Each permitted operation must commit to being shut down for a minimum of twelve calendar months before the status can be changed to nonoperating.

(5) Fees for crop preparation general permit holders will be assessed as in subsection (3) of this section and will be computed on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 (2)(d). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee will be determined based on the actual production during the first year and estimated production for the second year. The third year fee

will be determined based on the average of actual production for the first two years and estimated for the third year. Fee calculation for subsequent years will be based on the average production values of previous years.

(6) Facilities with construction and industrial storm water general permit coverage will have their annual permit fees begin on the permit issuance date. Permit fee accrual will continue until the permit has been terminated by the department regardless if the activity covered under the permit has already ceased.

(7) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction storm water general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.

(8) Computation of fees shall end on the last day of the state's fiscal year, or in the case of a terminated permit, during the quarter the termination took place.

(9) The applicable permit fee shall be paid by check or money order payable to the "Department of Ecology" and mailed to the Wastewater Discharge Permit Fee Program, P.O. Box ~~((5128))~~ 47611, ~~((Lacey))~~ Olympia, Washington ~~((98509-5128))~~ 98504-7611.

(10) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

(11) Delinquent accounts. Permit holders are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts will be processed in the following manner:

(a) Municipal and government entities shall be notified by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days may receive a permit revocation letter for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders shall be notified by the department by regular mail that they have forty-five days to bring the delinquent account up-to-date. Accounts that remain delinquent after forty-five days will be turned over for collection. In addition, a surcharge totaling twenty percent of the delinquent amount owed will also be added. The surcharge is to recover the costs for collection. If the collection agency fails to recover the delinquent fees after twelve months, the permit holder may receive a permit revocation letter for nonpayment of fees.

AMENDATORY SECTION (Amending WSR 04-15-046, filed 7/13/04, effective 8/13/04)

WAC 173-224-090 Small business fee reduction. Except as noted in subsection (6) of this section, a small business required to pay a permit fee under an industrial facility category may receive a reduction of its permit fee.

(1) To qualify for the fee reduction, a business must:

(a) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

(b) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

(c) Have annual sales of one million dollars or less of the goods or services produced using the processes regulated by the waste discharge permit; and

(d) Pay an annual wastewater discharge permit fee greater than five hundred dollars.

(2) To receive a fee reduction, the permit holder must submit an application in a manner prescribed by the department demonstrating that the conditions of subsection (1) of this section have been met. The application shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

(3) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, may deny the fee reduction request and revoke previously granted fee reductions.

(4) The permit fee for small businesses determined to be eligible under subsection (1) of this section shall be reduced to fifty percent of the assessed annual permit fee.

(5) If the annual gross revenue of the goods and services produced using the processes regulated by the waste discharge permit is one hundred thousand dollars or less, and the annual permit fee assessed imposes an extreme hardship to the business, the small business may request an extreme hardship fee reduction. The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below ~~((one hundred dollars))~~ \$106.00 for fiscal year 2009 and \$112.00 for fiscal year 2010.

(6) Facilities covered under the industrial storm water general permit are not eligible for a small business fee reduction under this section.

AMENDATORY SECTION (Amending Order 93-08, filed 4/28/94, effective 5/29/94)

WAC 173-224-100 Administrative appeals to the department. Any person aggrieved by a determination made under this chapter by the department may file a written appeal to the department no later than each fiscal year's first billing due date for payment of fees. Such appeal shall state the reasons that the aggrieved person believes that the department's determination is contrary to the requirements of RCW 90.48.465, and specific actions that he/she is requesting that are consistent with those requirements. The department shall either issue a revised determination or a statement upholding the original determination. A revised determination shall be consistent with the requirements of RCW 90.48.465. Any person feeling aggrieved by the administrative appeals decision made by the department regarding their permit fee may obtain review thereof by filing an appeal with the Pollution Control Hearings Board, P.O. Box 40903, Olympia, Washington 98504-0903, within thirty days of receipt of the department's decision. In addition, a copy of the appeal must be served on the Department of Ecology, Attention: Water

Quality Program Permit Fee Unit, P.O. Box ~~((47696))~~ 47600, Olympia, Washington 98504-7696, within thirty days of receipt. These procedures are consistent with the provisions of chapter 43.21B RCW and the rules and regulations adopted thereunder.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-224-120 Past due payments.

WSR 08-12-068
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES

[Filed June 3, 2008, 2:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-07-049.

Title of Rule and Other Identifying Information: Chapter 332-08 WAC, Practice and procedure.

Hearing Location(s): Timberland Regional Library, Olympia Branch, 313 8th Avenue S.E., Olympia, WA 98501, on July 8, 2008, at 6:30 p.m.

Date of Intended Adoption: August 5, 2008.

Submit Written Comments to: Jamey Taylor, P.O. Box 47015, Olympia, WA 98504-7015, e-mail jamey.taylor@dnr.wa.gov, fax (360) 902-1561, by July 22, 2008.

Assistance for Persons with Disabilities: Contact Jamey Taylor by July 3, 2008, TTY (360) 902-1156.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to update and clarify the agency's practice and procedures rules.

It is not anticipated to have any effects other than clarify the process and make it easier to follow.

Reasons Supporting Proposal: The agency's practice and procedure rules have not been updated since 1992. This proposal updates statute references, other rule references that have been recodified as well as some sections need clarification and updating. Language needs to reflect what is currently in other statutes which this chapter guides for the department's administrative appeals process for regulatory actions. The oil and gas conservation committee was disbanded several years ago and the authority is now directly the department of natural resources. In addition, the governor's initiate [initiative] to put rules into plain talk language has occurred in the last few years.

Statutory Authority for Adoption: RCW 34.05.220, Administrative Procedure Act.

Statute Being Implemented: RCW 34.05.220, Administrative Procedure Act.

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: None recommended except proposed rule changes.

Name of Proponent: Simon Kihia, department of natural resources, governmental.

Name of Agency Personnel Responsible for Drafting: Simon Kihia, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-1424; Implementation and Enforcement: Vickie Christiansen, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-1603.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Little or no impacts are expected.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule changes do not fall under the definition of significant rule making.

June 2, 2008
Bonnie B. Bunning
Executive Director of
Policy and Administration

PART I

PURPOSE AND AUTHORITY—GENERAL PROVISIONS

NEW SECTION

WAC 332-08-001 Purpose and scope. (1) **What do these rules do?** The department's practices and procedures rules, set out in this chapter, govern the method, time and place for challenging department actions and the procedures for conducting an adjudicative proceeding of that challenge.

(2) **Do these rules govern my issue?** Generally, these rules apply if you are challenging a department determination regarding:

- (a) Derelict vessels (chapter 79.100 RCW);
- (b) Forest practices notices to comply (chapter 76.09 RCW);
- (c) Oil and gas drilling (chapter 78.52 RCW);
- (d) Surface mining (chapter 78.44 RCW);
- (e) Other department determinations that are not proprietary and do not fall within the exclusive jurisdiction of separate quasi-judicial boards, such as the forest practices appeals board.

(3) **How are these rules organized?** This chapter contains provisions for all reviews (adjudicative proceedings) heard by the department or the office of administrative hearings on the department's behalf. WAC 332-08-101 through 332-08-610 contain specific procedures for adjudicative proceedings and are divided by subject matter. Subject-specific sections apply to the following topics:

- (a) Derelict vessels - Part II;
- (b) Forest practices notices to comply - Part III;
- (c) Oil and gas drilling - Part IV;
- (d) Surface mining - Part V; and
- (e) Other department determinations that are not proprietary and fall within the direct review authority of the department - Part VI.

(4) When reviewing these rules, one should review the general provisions under Part I and the specific rules con-

tained in Parts II through VI that relate to the applicable subject matter.

NEW SECTION

WAC 332-08-002 Proprietary decisions. Is review under the Administrative Procedure Act available for proprietary decisions? No. This section, concerning administrative review, is not available for proprietary decisions. Under RCW 34.05.010(3), sales, leases, contracts, or other proprietary decisions in the management of public lands or real property interests are not agency actions and are not subject to adjudicative proceedings under the Administrative Procedure Act (APA). Accordingly, the department will not commence APA-based adjudicative proceedings for proprietary decisions, including, but not limited to, actions taken under the terms of geoduck harvesting agreements, aquatic lands leases, easements, rights of way, revocation to install residential dock and residential mooring buoys, purchases or leases of public lands or any valuable materials thereon, permits to use state-owned land and resources, timber sale contracts, mineral prospecting leases, mining contracts, or other proprietary agreements to which the department is a party. Nonjudicial review of these actions may be available or required under the terms of the specific agreement or related laws.

NEW SECTION

WAC 332-08-003 Exhaustion of administrative remedies. What happens if I don't file a timely challenge of a department action? You may be precluded from filing any challenge if you do not timely file your challenge with the department under these rules.

AMENDATORY SECTION (Amending Order 573, filed 6/17/91, effective 7/18/91)

WAC 332-08-015 Definitions. (1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. This definition includes an agency's or quasi-judicial board's consideration of a challenge through a brief adjudicative proceeding, formal adjudicative proceeding, petition for administrative review of an initial order, or a request for reconsideration.

(2) "BAP" means "brief adjudicative proceeding" as described in RCW 34.05.482 through 34.05.494.

((2)) (3) "Department" means the department of natural resources.

((3) Where the rules of this chapter use words defined in RCW 34.05.010, those definitions shall govern.) (4) "Filing a document that is required to be filed with an agency" means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head. A document is not delivered until it is received by the intended recipient.

(5) "Formal adjudicative proceeding" refers to the adjudicative process described in RCW 34.05.413 through 34.05.476.

(6) "Service" means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail.

(7) For adjudicative hearings before the department, including hearings conducted by the office of administrative hearings, words used in this chapter have the meaning stated in RCW 34.05.010.

(8) For adjudicative hearings before the pollution control hearings board, terms used in this chapter relating to practice and procedure have the meaning stated in the pollution control hearings board's practices and procedures rules, chapter 371-08 WAC, except that "department" means the department of natural resources.

NEW SECTION

WAC 332-08-022 Incorporation of model rules of procedure. (1) **Formal adjudicative proceedings:** The department incorporates by reference the model rules of procedure, as now or as hereinafter amended, for the department's adjudicative proceedings conducted under RCW 34.05.413 through 34.05.479. The model rules of procedure are those that are adopted by the chief administrative law judge pursuant to RCW 34.05.250. The procedures are contained in chapter 10-08 WAC.

(a) Other rules adopted in this chapter supplement the model rules of procedure.

(b) The rules of this chapter supersede the procedures of chapter 10-08 WAC where there is a conflict.

(2) **Brief adjudicative proceedings.** The department does not incorporate by reference the model rules of procedure for BAPs, which are conducted under less formal requirements provided in RCW 34.05.482 through 34.05.494.

NEW SECTION

WAC 332-08-030 Department settlement authority. May the department settle a dispute without an adjudicative proceeding? The department may informally settle disputes. To explore the possibility of settlement, you should consider discussing settlement options with the department. Generally, settlement negotiations will not be admissible as evidence to show wrongdoing pursuant to Evidence Rule 408. Settlement negotiations do not alter the timelines associated with adjudicative proceeding or judicial appeals.

NEW SECTION

WAC 332-08-035 Standard of proof. What is the standard of proof? Unless the rules or law requires otherwise, the standard of proof in an adjudicative proceeding is a preponderance of the evidence. Preponderance of the evidence means the evidence as a whole makes a fact more probable than not.

NEW SECTION

WAC 332-08-045 De novo review. What does a presiding officer consider? The presiding officer will conduct a de novo review of the department's action(s) in reaching its initial order. New facts and law may be presented to the presiding officer to support or contest a department action in the course of an adjudicative proceeding, except to the extent that new facts or argument are limited by other laws and rules.

NEW SECTION

WAC 332-08-055 Discovery. What limits apply to discovery in adjudicative proceedings being conducted by the department? Discovery in any adjudicative proceeding must comply with Civil Rule (CR) 26 through CR 36 unless otherwise agreed by the parties or ordered by the presiding officer.

NEW SECTION

WAC 332-08-065 Exhibits. How may exhibits be presented? Any party intending to offer documentary evidence during the hearing must prepare a minimum of two copies of each document to be offered, and must give one complete copy to each of the other parties of record no later than the date set for the hearing. The presiding officer may in her/his discretion order different requirements so long as consistent with the parties' rights. The presiding officer may exclude from evidence documents that fail to conform to his/her order or this rule unless the offering party shows good cause for the failure.

NEW SECTION

WAC 332-08-075 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. May the parties access the data underlying expert or opinion testimony? The presiding officer or other appropriate officer, in her/his discretion but consistent with the rights of the parties, may cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying expert or opinion testimony including testimony based on economic and statistical data. Wherever practicable, she/he will restrict to a minimum the placing of such data in the record.

PART II

PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR DERELICT AND ABANDONED VESSEL ACTIONS

NEW SECTION

WAC 332-08-101 Applicability to department actions under the derelict and abandoned vessel act, chapter 79.100 RCW. When is this chapter applicable to department actions relating to the derelict and abandoned vessel act? This chapter applies when a challenge to the action of a state agency acting as an authorized public

entity is filed with the department under the derelict and abandoned vessel act as provided in RCW 79.100.120 (2)(a).

NEW SECTION

WAC 332-08-102 Derelict and abandoned vessel—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

- (1) Be in writing;
- (2) Be signed by the applicant or the applicant's representative;
- (3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and
- (4) Include a copy of the department's written action that is the subject of the appeal.

NEW SECTION

WAC 332-08-111 Derelict and abandoned vessel—Appeal deadline. When must my appeal be filed? An application for an adjudicative proceeding regarding an agency action under chapter 79.100 RCW can be filed with the department as soon as the department issues its notice of its intent to take custody, but the application must be filed no later than twenty days after the date the authorized public entity took custody of the vessel, or if the vessel was redeemed before the authorized public entity took custody, no later than twenty days after the date of redemption.

NEW SECTION

WAC 332-08-121 Derelict and abandoned vessel—Filing location and presiding officer. (1) Where must my appeal be filed? An application for adjudicative proceeding concerning a decision to take temporary possession or custody of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW must be filed at the following address:

Department of Natural Resources
Aquatic Resources Division
Derelict Vessel Removal Program
P.O. Box 47027
Olympia, WA 98504-7027

(2) **Who may serve as the presiding officer?** Adjudicative proceedings governed by subsection (1) of this section will be initially decided through the office of administrative hearings unless the commissioner of public lands decides that he/she will enter a decision.

NEW SECTION

WAC 332-08-135 Derelict and abandoned vessel—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the burden of proof in adjudicative proceedings pursuant to RCW 34.05.413 through 34.05.476 shall be on the department in proceedings concerning the decision to take custody or temporary possession of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW.

NEW SECTION

WAC 332-08-145 Derelict and abandoned vessel—Summary judgment. May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any prehearing order. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

NEW SECTION

WAC 332-08-155 Derelict and abandoned vessel—Administrative review of initial orders. (1) How may I obtain review of an initial order?

(a) Initial orders in all adjudicative proceedings relating to a decision to take temporary possession or custody of a vessel or the amount owed to an authorized public entity under chapter 79.100 RCW shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(b) A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(2) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the policy director or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(3) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(4) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) If a reply is filed, a copy must be served on all parties or their representatives at the time the reply is filed.

(5) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a differ-

ent schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in support of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(6) May the parties offer new evidence on review? The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

NEW SECTION

WAC 332-08-165 Derelict and abandoned vessel—Petition for reconsideration of a final order. May I seek further agency review of the agency's final order?

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section, is not subject to judicial review.

**PART III
PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR FOREST PRACTICES, CHAPTER 76.09 RCW**

NEW SECTION

WAC 332-08-201 Applicability to department actions under forest practices laws and rules. When is this chapter applicable to the department's forest practices actions? This chapter applies to challenges of notices to comply that the department issues under chapter 76.09 RCW (Forest Practices Act) and chapter 222-46 WAC. These challenges are initially reviewed through brief adjudicative proceedings (BAPs). Other department actions regarding forest practices, including appeals from department BAP actions on notices to comply, are generally subject to review by the forest practices appeals board under chapter 223-08 WAC.

NEW SECTION

WAC 332-08-205 Forest practices—Statutes for brief adjudicative proceedings (BAPs) for notices to comply. What statutes apply to brief adjudicative proceedings (BAPs) for notices to comply? RCW 34.05.482 through 34.05.494 apply to BAPs reviewing forest practices notices to comply.

NEW SECTION

WAC 332-08-215 Forest practices—Appeal of notice to comply—BAP. How do I appeal a notice to comply?

(1) An application for a BAP must be written, and must specify the factual basis for appeal and the issue to be adjudicated in the proceeding.

(2) A copy of the department's written action that is the subject of the appeal must be attached to the application for an adjudicative proceeding.

(3) An application for a BAP concerning a forest practices notice to comply must be filed within fifteen days after the date of service of the notice to comply. The application must be filed with the resource protection and services assistant region manager (RP&S Asst. Reg. Mgr) at the following addresses:

Northwest Region
RP&S Asst. Reg. Mgr
919 N Township St
Sedro-Woolley, WA 98284
Pacific Cascade Region
RP&S Asst. Reg. Mgr
601 Bond Rd
Castle Rock, WA 98611
Southeast Region
RP&S Asst. Reg. Mgr
713 Bowers Rd
Ellensburg, WA 98926

Olympic Region
RP&S Asst. Reg. Mgr
411 Tillicum Lane
Forks, WA 98331
South Puget Sound Region
RP&S Asst. Reg. Mgr
950 Farman Ave. N
Enumclaw, WA 98022
Northeast Region
RP&S Asst. Reg. Mgr
P.O. Box 190
Colville, WA 99114

NEW SECTION

WAC 332-08-225 Forest practices—BAP presiding officer. Who is the decision maker for a BAP? The presiding officer shall be a department region manager or resource protection and services assistant region manager unless otherwise designated by the commissioner of public lands.

NEW SECTION

WAC 332-08-235 Forest practices—BAP scheduling. When will a BAP hearing occur?

(1) The department shall schedule a hearing for a date not more than twenty days after receiving an application for a BAP on a forest practices notice to comply.

(2) The applicant may waive the requirement that a hearing be held within twenty days.

(3) Subject to the approval of the presiding officer, a continuance of any hearing date may be made by agreement of the parties. The presiding officer will provide written documentation to all parties of their decision related to request for continuances.

NEW SECTION

WAC 332-08-245 Forest practices—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the department shall have the burden of proof to support its issuance of a forest practices notice to comply.

NEW SECTION

WAC 332-08-255 Forest practices—Timing of BAP decision. When will a BAP decision be made? Within ten days of completing the BAP hearing on a forest practices notice to comply, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by the recipient of the notice to comply.

NEW SECTION

WAC 332-08-265 Forest practices—Appeal of BAP decision. (1) How do I administratively appeal a BAP decision? The operator, forest land owner, or timber owner subject to a final order of the department on a forest practices notice to comply may, within thirty days from the date of the order, appeal to the forest practices appeals board.

(2) **Who reviews the BAP decision?** The forest practices appeals board will conduct the review. The provisions of chapter 223-08 WAC govern such appeals.

PART IV

PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR OIL AND GAS DRILLING, CHAPTER 78.52 RCW

NEW SECTION

WAC 332-08-301 Oil and gas drilling—Department of natural resources replaces the oil and gas conservation committee. Who replaced the oil and gas conservation committee? The department of natural resources has replaced the Washington oil and gas conservation committee in administering chapter 78.52 RCW and the oil and gas rules. Appeals of department determinations regarding chapter 78.52 RCW and the implementing rules will be governed by the department's practices and procedures rules in Part IV of this chapter and the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 332-08-311 Applicability to department actions under the oil and gas laws and rules. When is this chapter applicable to department actions relating to the Oil and Gas Conservation Act (chapter 78.52 RCW)? This chapter applies when a challenge is filed against a department action under the Oil and Gas Conservation Act.

NEW SECTION

WAC 332-08-325 Oil and gas drilling—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

- (1) Be in writing;
- (2) Be signed by the applicant or the applicant's representative;
- (3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and
- (4) Include a copy of the department's written determination that is the subject of the appeal.

NEW SECTION

WAC 332-08-335 Oil and gas drilling—Appeal deadline. When must my appeal be filed? An appeal of a department suspension must be filed within fifteen days. Appeals of any other determination regarding oil and gas issues, chapter 78.52 RCW, must be filed within thirty days of the department's determination.

NEW SECTION

WAC 332-08-345 Oil and gas drilling—Filing location and presiding officer. (1) Where must my appeal be filed? Applications for adjudicative proceedings regarding department determinations under the Oil and Gas Conservation Act, chapter 78.52 RCW must be filed with:

Oil and Gas Supervisor
 Division of Geology and Earth Resources
 Department of Natural Resources
 P.O. Box 47007
 Olympia, WA 98504-7007

(2) **Who considers my appeal?** Adjudicative proceedings governed by this section will be initially decided through the office of administrative hearings unless the commissioner of public lands decides that he/she will enter a decision.

NEW SECTION

WAC 332-08-355 Oil and gas drilling—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the burden of proof in adjudicative proceedings relating to department determinations under the Oil and Gas Conservation Act, chapter 78.52 RCW, shall be:

(1) On a person challenging the department's decision approving or disapproving an application for an oil and gas permit or permit renewal under chapter 78.52 RCW;

(2) On a person seeking the imposition of any other order of the department; and

(3) On the department to support an enforcement action, such as a suspension, civil penalty, or cancellation of the permit.

NEW SECTION

WAC 332-08-365 Oil and gas drilling—Summary judgment. May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any prehearing order. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

NEW SECTION

WAC 332-08-375 Oil and gas drilling—Administrative review of initial orders. (1) How may I obtain review of an initial order?

(a) Initial orders in all adjudicative proceedings relating to department actions under the Oil and Gas Conservation Act, chapter 78.52 RCW, shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
 Department of Natural Resources
 P.O. Box 47001
 Olympia, WA 98504-7001

(b) A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(2) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the executive

director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(3) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(4) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) If a reply is filed, a copy must be served on all parties or their representatives at the time the reply is filed.

(5) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in support of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(6) **May the parties offer new evidence on review?**

The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

NEW SECTION

WAC 332-08-385 Oil and gas drilling—Petition for reconsideration of final order. May I seek further agency review of the agency's final order?

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued

the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section, is not subject to judicial review.

PART V

PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR SURFACE MINING, CHAPTER 78.44 RCW

NEW SECTION

WAC 332-08-401 Applicability to department actions under surface mining laws and rules. When is this chapter applicable to department determinations relating to the surface mining act, chapter 78.44 RCW? This chapter applies when a challenge is filed against a department determination made under the surface mining act, chapter 78.44 RCW.

NEW SECTION

WAC 332-08-411 Surface mining—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

(1) Be in writing;

(2) Be signed by the applicant or the applicant's representative;

(3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and

(4) Include a copy of the department's written determination that is the subject of the appeal.

NEW SECTION

WAC 332-08-415 Surface mining—Appeal deadline. When must my appeal be filed? Time limits for filing applications for adjudicative proceedings regarding depart-

ment determinations under the surface mining act, chapter 78.44 RCW, are as follows:

(1) Concerning approval or disapproval of a new or revised reclamation permit, a new, modified, or revised reclamation plan, or reclamation permit transfer - filed within thirty days of the department's determination;

(2) Concerning a civil penalty - served on the department and filed with the pollution control hearings board within thirty days of the date the applicant receives the civil penalty notice, or within thirty days of the date the applicant receives the department's notice of disposition of a timely application for remission or mitigation of the civil penalty under WAC 332-18-05007. The pollution control hearings board's practice and procedure rules govern these proceedings;

(3) Concerning a stop work order to rectify deficiencies, an emergency notice and order to rectify deficiencies or emergency order to suspend surface mining, a suspension order, a cancellation of a permit, an order to submit performance security, or any other appealable surface mining determination - filed within thirty days of the date of the department's service of the order or notice.

NEW SECTION

WAC 332-08-421 Surface mining—Filing location and presiding officer. Where must my appeal be filed?

Applications for adjudicative proceedings relating to surface mining must be filed at the location identified below for each of the issues listed below:

(1) Civil penalty.

(a) File with:

Pollution Control Hearings Board
4224 6th Avenue S.E., Building 2, Rowe Six
P.O. Box 40903
Lacey, WA 98504-0903

(b) And serve:

Assistant Division Manager
Division of Geology and Earth Resources
Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

(c) **Who considers my appeal?** The pollution control hearings board will consider properly filed appeals and enter the final decision on appeals of department civil penalties. Chapter 371-08 WAC will govern the proceedings conducted by the pollution control hearings board, except that the burden of proof and standard of proof will be as provided in this chapter.

(2) **Where must my appeal of other department surface mining actions be filed?** All other surface mining related determinations including requests for brief adjudicative proceedings governed by WAC 332-08-445:

(a) File with:

Assistant Division Manager
Division of Geology and Earth Resources
Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

(b) **Who considers my appeal?** Adjudicative proceedings governed by this subsection will be initially decided through the office of administrative hearings unless subject to a brief adjudicative proceeding through WAC 332-08-445 or the commissioner of public lands decides that he/she will enter a decision.

NEW SECTION

WAC 332-08-425 Surface mining—Burden of proof. Who has the burden of proof? Unless otherwise ordered by the presiding officer or required by law, the burden of proof in adjudicative proceedings regarding department determinations under the surface mining act, chapter 78.44 RCW, shall be:

(1) On the person challenging the department's decision approving or disapproving an application for a new or revised surface mining reclamation permit, new modified, or revised reclamation plan or a reclamation permit transfer under chapter 78.44 RCW;

(2) On the department to show that a reclamation permit holder must submit a modified reclamation plan under RCW 78.44.151;

(3) On the department in proceedings concerning reclamation permit cancellation under chapter 78.44 RCW;

(4) On the department in civil penalty proceedings and proceedings concerning suspension orders; and

(5) On the department in proceedings concerning a declaration of abandonment.

NEW SECTION

WAC 332-08-431 Surface mining—Summary judgment. May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any prehearing order. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

NEW SECTION

WAC 332-08-435 Surface mining—Administrative review of initial orders. (1) How may I obtain review of an initial order?

(a) Initial orders in all adjudicative proceedings relating to department actions under the surface mining act, chapter 78.44 RCW, shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(b) A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(2) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(3) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(4) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) A copy of the reply must be served on all parties or their representatives at the time the reply is filed.

(5) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in support of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(6) **May the parties offer new evidence on review?**

The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

NEW SECTION

WAC 332-08-441 Surface mining—Petition for reconsideration of final order. May I seek further agency review of the agency's final order?

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the spe-

cific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section, is not subject to judicial review.

NEW SECTION

WAC 332-08-442 Surface mining—Appeal procedures for stop work orders. What appeal procedures apply to surface mining stop work orders? The procedures in WAC 332-08-401 through 332-08-441 apply to challenges of stop work orders; however, the department shall proceed as quickly as feasible to complete the requested adjudicative proceeding for any immediately effective stop work order. DNR shall request the office of administrative hearings to quickly schedule and hear the matter. Neither the department nor the office of administrative hearings is required to review an appeal more quickly than the parties' agreed timeline. If the department issues a stop work order that is not effective immediately, the department and the office of administrative hearings may proceed on a normal schedule.

NEW SECTION

WAC 332-08-443 Surface mining—Appeal procedures for emergency orders. What appeal procedures apply to emergency surface mining orders? The procedures in WAC 332-08-401 through 332-08-441 apply to administrative appeals of emergency orders to rectify deficiencies, emergency orders to suspend surface mining, or other enforcement actions under chapter 78.44 RCW that are effective when entered and call for emergency adjudications; however, the department shall also follow the provisions of RCW 34.05.479. DNR shall proceed as quickly as feasible to complete any requested adjudicative proceedings regarding these enforcement actions. DNR shall request the office of

administrative hearings to quickly schedule and hear these matters. Neither the department nor the office of administrative hearings is required to review an appeal more quickly than the parties' agreed timeline.

NEW SECTION

WAC 332-08-445 Surface mining—Availability of brief adjudicative proceedings (BAPs). When may BAPs be used for surface mining determinations? RCW 34.05.482 through 34.05.494 apply to BAPs under Part V. The department may use brief adjudicative proceedings (BAPs) where their use will violate no provision of law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. The department may use BAPs for matters relating to surface mining under chapter 78.44 RCW when agreed in writing by all parties and consistent with chapter 34.05 RCW, specifically RCW 34.05.482.

NEW SECTION

WAC 332-08-451 Surface mining—BAP presiding officer. Who is the decisionmaker for a BAP? The presiding officer shall be the nonregulatory assistant division manager for the geology and earth resources division unless otherwise designated by the commissioner of public lands.

NEW SECTION

WAC 332-08-455 Surface mining—Conversion of BAP to formal adjudicative proceeding. When may a BAP be converted to a formal proceeding? Any BAP concerning surface mining under chapter 78.44 RCW may, in the department's discretion, be converted to a formal adjudicative hearing. Formal proceedings are conducted pursuant to procedures of RCW 34.05.413 through 34.05.479 and WAC 332-08-401 through 332-08-441. The decision to convert the proceeding to a formal adjudicative proceeding may be made by either the presiding BAP officer or a geology division manager or assistant manager. Conversion to a formal adjudicative proceeding may be completed by:

(1) The BAP officer's notification to the parties; or

(2) A geology division manager or assistant manager's notification to the BAP officer and the parties. Upon conversion, the department shall promptly forward the application for an adjudicative proceeding to the office of administrative hearings.

NEW SECTION

WAC 332-08-461 Surface mining—BAP scheduling. When will the BAP occur? The department shall serve notice of a hearing date within ten days of the parties' written agreement to use a BAP. The BAP hearing is not required to occur within this ten-day period, but should be conducted so an initial decision can be issued within ninety days of the initial filing of the appeal.

NEW SECTION

WAC 332-08-465 Surface mining—Timing of a BAP decision. When will a BAP decision be made? Within ten days of completing the BAP hearing, the presiding officer shall serve upon each party an initial order, containing a brief written statement of the department's decision and the reasons for the decision.

NEW SECTION

WAC 332-08-471 Surface mining—Appeal of BAP decision and reviewing officer. (1) Who may seek review of a BAP decision? A party affected by an initial order of the department may request administrative review of the initial order. The department may review any BAP decision on its own motion.

(2) How do I appeal a BAP decision? A request for administrative review must be in writing, and must be filed at the following address within twenty-one days after the date of service of the initial order:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(3) Who else gets a copy of my petition? A copy of the petition for review must also be served on all parties or their authorized representatives at the time of filing.

(4) Who considers my appeal of the BAP decision? By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case. The provisions of WAC 10-08-211 apply to petitions for review of initial orders.

(5) When is the initial order final? The initial order becomes a final order if no timely petition for administrative review is filed.

PART VI**PROVISIONS RELATING TO DEPARTMENT ADJUDICATIVE PROCEEDINGS FOR OTHER DEPARTMENT DETERMINATIONS**NEW SECTION

WAC 332-08-501 Applicability to other department actions. When is this chapter applicable to department determinations that are not expressly identified in this chapter? This chapter applies when a nonproprietary department action is subject to challenge in an adjudicative proceeding.

NEW SECTION

WAC 332-08-511 Other department actions—Contents of appeal. What must my appeal contain? An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.494 must:

- (1) Be in writing;
- (2) Be signed by the applicant or the applicant's representative;
- (3) Specify the factual basis for appeal and the issue(s) to be adjudicated in the proceeding; and
- (4) Include a copy of the department's written determination that is the subject of the appeal.

NEW SECTION

WAC 332-08-521 Other department actions—Appeal deadline. When must I file my appeal of a department determination that is not expressly discussed in statute or rule? Applications for adjudicative proceedings by the department must be filed within thirty days of the department's action unless a different time period is provided in statute or rule.

NEW SECTION

WAC 332-08-531 Other department actions—Filing location and presiding officer. (1) Where must I file my appeal of "other" department actions? Applications for adjudicative proceedings regarding department actions that are not expressly addressed in this chapter and that are not subject to review according to some other statute or rule must be filed with:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(2) Who will consider my appeal? Adjudicative proceedings under this subsection will be initially decided through the office of administrative hearings unless the commissioner of public lands decides that he/she will enter a decision.

NEW SECTION

WAC 332-08-541 Other department actions—Burden of proof. Who has the burden of proof? For adjudicative proceedings that are not specified in other DNR practices and procedures rules, the proponent of an order shall carry the burden of proof in adjudicative proceedings unless otherwise set out in rule, ordered by the presiding officer, or required by law. The department shall have the burden to prove its enforcement actions.

NEW SECTION

WAC 332-08-555 Other department actions—May the parties move for summary judgment on some or all issues? Yes. A request to resolve an issue (claim) may be brought as a motion for summary judgment so long as the motion complies with the timing requirements of any pre-hearing order. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

NEW SECTION

WAC 332-08-575 Other department actions—Administrative review of initial orders. (1) **How may I obtain review of an initial order?** Initial orders in all adjudicative proceedings relating to other department actions shall become final without further action by the department unless, within twenty-one days of the date of service of the initial order, a petition for administrative review is filed at the following address:

Executive Director - Policy and Administration
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(2) **Who else gets a copy of my petition?** A copy of the petition for administrative review must be served on all parties or their authorized representatives at the time the petition is filed.

(3) **Who is the reviewing officer?** By adopting this rule, the commissioner of public lands appoints the executive director - policy and administration or delegated alternate as reviewing officer of petitions for administrative review of initial orders. The commissioner may appoint an alternate reviewing officer or retain the reviewing officer role for any case.

(4) **What must my petition for administrative review of an initial order include?** The petition for administrative review shall clearly identify the parts of the initial order with which the party disagrees and shall refer to the evidence of record which is relied upon to support the party's position.

(5) **How does a party reply to the petition for administrative review?**

(a) Any party may file a reply to a petition for administrative review. The reply shall be filed with the office where the petition for administrative review was filed on or before the tenth business day after the date the petition for administrative review was served on the party.

(b) A copy of the reply must be served on all parties or their representatives at the time the reply is filed.

(6) **May I provide written and oral argument?**

(a) The parties may provide written argument in support of a petition for administrative review or a reply to a petition for administrative review.

(b) Upon receipt of a petition for administrative review and any reply thereto, the reviewing officer shall hold a scheduling conference to establish a deadline for written argument. Unless the reviewing officer determines a different schedule is appropriate, the following schedule will apply:

(i) Written argument in support of a petition for administrative review must be filed at the address designated for the petition for administrative review within ten days of the scheduling conference. A copy of the written argument in support of the petition must be served on all parties or their representatives at the time the written argument is filed.

(ii) Written argument in support of the reply must be filed at the address designated for the petition for administrative review within ten days of service of the written argument in support of the petition. A copy of written argument in sup-

port of the reply must be served on all parties or their representatives at the time the written argument is filed.

(c) Oral argument is generally not available and is a matter of the reviewing officer's discretion.

(7) **May the parties offer new evidence on review?** The parties must limit their arguments to the evidence in the record, except to the extent that supplementation of the evidence would be appropriate under the standards of RCW 34.05.562 for judicial reviews. Whether to allow the supplementation of the record is within the discretion of the reviewing officer.

NEW SECTION

WAC 332-08-585 Other department actions—Petition for reconsideration of a final order. May I seek further agency review of the agency's final order?

(1) Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The petition for reconsideration must be received by the officer who issued the order within ten days of his or her mailing. Any petition for reconsideration must also be postmarked as being mailed to the other parties within this ten-day period.

(2) A petition for reconsideration does not stay the effectiveness of the reviewing officer's final order.

(3) If a petition for reconsideration is timely filed, and the petitioner has complied with the procedural rules for reconsideration, the time for filing a petition for judicial review does not commence until the agency disposes of the petition for reconsideration. The agency is deemed to have denied the petition for reconsideration if, within twenty days from the date the petition is filed, the agency does not either:

(a) Dispose of the petition; or

(b) Serve the parties with a written notice specifying the date by which it will act on the petition.

(4) Unless the petition for reconsideration is deemed denied under subsection (3) of this section, the petition shall be disposed of by the same person or persons who entered the order, if reasonably available. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(5) The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration, or a notice provided for in subsection (3)(b) of this section is not subject to judicial review.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 332-08-005	Adoption of model rules of procedure.
WAC 332-08-025	Inapplicability to proprietary decisions.
WAC 332-08-105	Adjudicative proceedings—Application.

WAC 332-08-115	Application for adjudicative proceeding—Time limit.	WAC 344-08-100	Service of process—Upon whom served.
WAC 332-08-125	Application for adjudicative proceeding—Place of filing.	WAC 344-08-110	Service of process—Service upon parties.
WAC 332-08-305	Exhibits.	WAC 344-08-120	Service of process—Method of service.
WAC 332-08-315	Burden of proof.	WAC 344-08-130	Service of process—When service complete.
WAC 332-08-405	Petitions for review of initial orders—Final orders.	WAC 344-08-140	Service of process—Filing with agency.
WAC 332-08-490	Expert or opinion testimony and testimony based on economic and statistical data—Supporting data.	WAC 344-08-150	Subpoenas—Where provided by law—Form.
WAC 332-08-505	Brief adjudicative proceedings—Matters to which subject.	WAC 344-08-160	Subpoenas—Where provided by law—Issuance to parties.
WAC 332-08-515	Brief adjudicative proceedings—Application procedure.	WAC 344-08-170	Subpoenas—Where provided by law—Service.
WAC 332-08-525	Brief adjudicative proceedings—Hearing.	WAC 344-08-180	Subpoenas—Where provided by law—Fees.
WAC 332-08-535	Brief adjudicative proceedings—Decision.	WAC 344-08-190	Subpoenas—Where provided by law—Proof of service.
WAC 332-08-545	Brief adjudicative proceedings—Review.	WAC 344-08-200	Subpoenas—Where provided by law—Quashing.
<u>REPEALER</u>		WAC 344-08-210	Subpoenas—Where provided by law—Enforcement.
The following chapter of the Washington Administrative Code is repealed:		WAC 344-08-220	Subpoenas—Where provided by law—Geographical scope.
WAC 344-08-010	Appearance and practice before agency—Who may appear.	WAC 344-08-230	Depositions and interrogatories in contested cases—Right to take.
WAC 344-08-020	Appearance and practice before agency—Appearance in certain proceedings may be limited to attorneys.	WAC 344-08-240	Depositions and interrogatories in contested cases—Scope.
WAC 344-08-040	Standards of ethical conduct.	WAC 344-08-250	Depositions and interrogatories in contested cases—Officer before whom taken.
WAC 344-08-050	Standards of ethical conduct—Appearance by former employee of committee or former member of attorney general's staff.	WAC 344-08-260	Depositions and interrogatories in contested cases—Authorization.
WAC 344-08-060	Standards of ethical conduct—Former employee as expert witness.	WAC 344-08-270	Depositions and interrogatories in contested cases—Protection of parties and deponents.
WAC 344-08-070	Computation of time.	WAC 344-08-280	Depositions and interrogatories in contested cases—Oral examination and cross-examination.
WAC 344-08-080	Notice and opportunity for hearing in contested cases.		
WAC 344-08-090	Service of process—By whom served.		

WAC 344-08-290	Depositions and interrogatories in contested cases—Recordation.		conomic and statistical data—Written sworn statements.
WAC 344-08-300	Depositions and interrogatories in contested cases—Signing attestation and return.	WAC 344-08-490	Expert or opinion testimony and testimony based on economic and statistical data—Supporting data.
WAC 344-08-310	Depositions and interrogatories in contested cases—Use and effect.	WAC 344-08-500	Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 344-08-470 or 344-08-480.
WAC 344-08-320	Depositions and interrogatories in contested cases—Fees of officers and deponents.	WAC 344-08-510	Continuances.
WAC 344-08-330	Depositions upon interrogatories—Submission of interrogatories.	WAC 344-08-520	Rules of evidence—Admissibility criteria.
WAC 344-08-340	Depositions upon interrogatories—Interrogation.	WAC 344-08-530	Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections.
WAC 344-08-350	Depositions upon interrogatories—Attestation and return.	WAC 344-08-540	Petitions for rule making, amendment, or repeal—Who may petition.
WAC 344-08-360	Depositions upon interrogatories—Provisions of deposition rule.	WAC 344-08-550	Petitions for rule making, amendment, or repeal—Requirements.
WAC 344-08-370	Official notice—Matters of law.	WAC 344-08-560	Petitions for rule making, amendment, or repeal—Agency must consider.
WAC 344-08-380	Official notice—Material facts.	WAC 344-08-570	Petitions for rule making, amendment, or repeal—Notice of disposition.
WAC 344-08-390	Presumptions.		
WAC 344-08-400	Stipulations and admissions of record.	WAC 344-08-580	Declaratory rulings.
WAC 344-08-410	Form and content of decisions in contested cases.	WAC 344-08-590	Forms.
WAC 344-08-420	Definition of issues before hearing.		
WAC 344-08-430	Prehearing conference rule—Authorized.		
WAC 344-08-440	Prehearing conference rule—Record of conference action.		
WAC 344-08-450	Submission of documentary evidence in advance.		
WAC 344-08-460	Excerpts from documentary evidence.		
WAC 344-08-470	Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications.		
WAC 344-08-480	Expert or opinion testimony and testimony based on economic and statistical data—		

WSR 08-12-073**PROPOSED RULES****DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed June 3, 2008, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-21-021.

Title of Rule and Other Identifying Information: The department is amending WAC 388-535A-0010 Definitions for orthodontic services, 388-535A-0020 Eligibility for orthodontic services, 388-535A-0030 Providers of orthodontic services, 388-535A-0040 Covered and noncovered orthodontic services and limitations to coverage, 388-535A-0050 Authorization and prior authorization for orthodontic services, and 388-535A-0060 Reimbursement for orthodontic services.

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

Date of Intended Adoption: Not earlier than July 9, 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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 8, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by July 1, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates definition for "craniofacial team," clarifies who is eligible for orthodontic treatment and orthodontic-related services, replaces "MAA's orthodontic consultant" with "department," removes language regarding limitation extensions, extends the time period HRSA covers comprehensive full orthodontic treatment, removes references to specific medical conditions, updates cross-references, and clarifies, simplifies, and omits redundant language.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.08.-090.

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, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1748.

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 Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TTY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

May 28, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-01-064, filed 12/8/04, effective 1/8/05)

WAC 388-535A-0010 Definitions for orthodontic services. The following definitions and those found in WAC 388-500-0005 apply to this chapter.

"Appliance placement" means the application of orthodontic attachments to the teeth for the purpose of correcting dentofacial abnormalities.

"Cleft" means an opening or fissure involving the dentition and supporting structures, especially one occurring in utero. These can be:

- (1) Cleft lip;
- (2) Cleft palate (involving the roof of the mouth); or
- (3) Facial clefts (e.g., macrostomia).

"Comprehensive full orthodontic treatment" means utilizing fixed orthodontic appliances for treatment of the permanent dentition leading to the improvement of a client's severe handicapping craniofacial dysfunction and/or dentofacial deformity, including anatomical and functional relationships.

"Craniofacial anomalies" means abnormalities of the head and face, either congenital or acquired, involving disruption of the dentition and supporting structures.

"Craniofacial team" means a (~~department of health and medical assistance administration recognized~~) cleft palate/maxillofacial team or an American Cleft Palate Association-certified craniofacial team. These teams are responsible for the management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated (~~ease~~) management, promote parent-professional partnership, and make appropriate referrals to implement and coordinate treatment plans.

"Dental dysplasia" means an abnormality in the development of the teeth.

"EPSDT" means the department's early and periodic screening, diagnosis, and treatment program for clients twenty years of age and younger as described in chapter 388-534 WAC.

"Hemifacial microsomia" means a developmental condition involving the first and second brachial arch. This creates an abnormality of the upper and lower jaw, ear, and associated structures (half or part of the face appears smaller sized).

"Interceptive orthodontic treatment" means procedures to lessen the severity or future effects of a malformation and to affect or eliminate the cause. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental cross-bite, or recovery of recent minor space loss where overall space is adequate.

"Limited transitional orthodontic treatment" means orthodontic treatment with a limited objective, not involving the entire dentition. It may be directed only at the existing problem, or at only one aspect of a larger problem in which a decision is made to defer or forego more comprehensive therapy.

"Malocclusion" means improper alignment of biting or chewing surfaces of upper and lower teeth.

"Maxillofacial" means relating to the jaws and face.

"Occlusion" means the relation of the upper and lower teeth when in functional contact during jaw movement.

"Orthodontics" means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

"Orthodontist" means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the department of health.

AMENDATORY SECTION (Amending WSR 05-01-064, filed 12/8/04, effective 1/8/05)

WAC 388-535A-0020 ((Eligibility)) Clients who are eligible for orthodontic treatment and orthodontic services. (1) Subject to the limitations of this chapter and the age restrictions listed in this section, the ~~((medical assistance administration (MAA)))~~ department covers medically necessary orthodontic treatment and orthodontic-related services for severe handicapping malocclusions, craniofacial anomalies, or cleft lip or palate ~~((for children only))~~, as follows:

(a) Clients in the categorically needy program ~~((CN) or ((CNP))~~ (CNP) and the medically needy program (MNP) may receive orthodontic treatment and orthodontic-related services through age twenty. Any orthodontic treatment plan that extends beyond the client's twenty-first birthday will not be approved by the department.

(b) ~~((Clients in the medically needy program (MNP) receive orthodontic services through age twenty.~~

~~((c))~~ (c) Clients in the state children's health insurance program (CHIP) may receive orthodontic treatment and orthodontic-related services through age eighteen. ((See WAC 388-416-0015 for when certification periods may be extended.

~~((d))~~ (c) Clients who are eligible for services under the EPSDT program may receive orthodontic treatment and orthodontic-related services under the provisions of WAC 388-534-0100.

(2) ~~((MAA does not cover orthodontic services for adults.~~

~~((3))~~ (3) Eligible clients may receive the same orthodontic treatment and orthodontic-related services in ~~((designated border))~~ recognized out-of-state bordering cities on the same basis as provided in-state. See WAC 388-501-0175.

AMENDATORY SECTION (Amending WSR 05-01-064, filed 12/8/04, effective 1/8/05)

WAC 388-535A-0030 Providers of orthodontic treatment and orthodontic-related services. The following provider types may furnish and be ~~((reimbursed))~~ paid for providing covered orthodontic treatment and orthodontic-related services to eligible medical assistance ~~((administration (MAA)))~~ clients:

- (1) Orthodontists;
- (2) Pediatric dentists;
- (3) General dentists; and

(4) Department recognized craniofacial teams or other orthodontic specialists approved by ~~((MAA's orthodontic consultant))~~ the department.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-535A-0040 Covered and noncovered orthodontic treatment and orthodontic-related services and limitations to coverage. (1) Subject to the limitations in this section and other applicable WAC, the department covers orthodontic treatment and orthodontic-related services for a client who has one of the ~~((following))~~ medical conditions ~~((:))~~ listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or department-recognized craniofacial team and do not require prior authorization.

(a) ~~((Cleft lip, cleft palate, or other craniofacial anomalies when the client is treated by and receives follow-up care from a department-recognized craniofacial team for:~~

~~((i))~~ (i) Cleft lip and palate, cleft palate, or cleft lip with alveolar process involvement ~~((:))~~.

~~((ii))~~ (b) The following craniofacial anomalies ~~((: including but not limited to))~~:

- (A) Hemifacial microsomia;
- (B) Craniosynostosis syndromes;
- (C) Cleidocranial dental dysplasia;
- (D) Arthrogyrposis; or
- (E) Marfan syndrome.

~~((iii))~~ (iii) ~~Other medical conditions with significant facial growth impact (e.g., juvenile rheumatoid arthritis (JRA)); or~~

~~((iv))~~ (iv) ~~Post-traumatic, post-radiation, or post-burn jaw deformity.~~

(b) ~~Other severe handicapping malocclusions, including one or more of the following:~~

~~((i))~~ (i) ~~Deep impinging overbite when lower incisors are destroying the soft tissues of the palate;~~

~~((ii))~~ (ii) ~~Crossbite of individual anterior teeth when destruction of the soft tissue is present;~~

~~((iii))~~ (iii) ~~Severe traumatic malocclusion (e.g., loss of a premaxilla segment by burns or by accident, the result of osteomyelitis, or other gross pathology);~~

~~((iv))~~ (iv) ~~Overjet greater than 9mm with incompetent lips or reverse overjet greater than 3.5mm with reported masticatory and speech difficulties; or~~

~~((v))~~ (v) ~~Medical conditions as indicated on the)~~ (2) Subject to prior authorization requirements and the limitations in this section and other applicable WAC, the department covers orthodontic treatment and orthodontic-related services for severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score ((that result in a score)) of twenty-five or higher. ((On a case-by-case basis, the department reviews all requests for treatment for conditions that result in a score of less than twenty-five, based on medical necessity.

~~((2))~~ (3) The department may cover ~~((requests for))~~ orthodontic treatment for dental malocclusions other than those listed in subsection (1) and (2) of this section ((when the department determines that the treatment is medically necessary)) on a case-by-case basis and when prior authorized.

~~((3))~~ (4) The department does not cover the following orthodontic treatment or orthodontic-related services:

(a) Replacement of lost or repair of broken orthodontic appliances;

(b) Orthodontic treatment for cosmetic purposes;

(c) Orthodontic treatment that is not medically necessary (see WAC 388-500-0005);

(d) Out-of-state orthodontic treatment, except as stated in WAC 388-501-0180 (see also WAC 388-501-0175 for medical care provided in bordering cities); or

(e) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC.

~~((4))~~ (5) The department covers the following orthodontic treatment and orthodontic-related services, subject to the limitations listed (providers must bill for these services according to WAC 388-535A-0060):

(a) Panoramic radiographs ~~((X-rays))~~ x-rays ~~((once per client in a three-year period))~~ when medically necessary.

(b) Interceptive orthodontic treatment, once per ~~((the))~~ a client's lifetime.

(c) Limited transitional orthodontic treatment, ~~((up to one year from))~~ once per a client's lifetime. The treatment must be completed within twelve months of the date of the original appliance placement (see subsection ((5)) (6)(a) of this section for information on limitation extensions).

(d) Comprehensive full orthodontic treatment ~~((, up to two years from))~~ once per a client's lifetime. The treatment must be completed within thirty months of the date of the original appliance placement (see subsection ((5)) (6)(a) of this section for information on limitation extensions).

(e) Orthodontic appliance removal only when:

(i) The client's appliance was placed by a different provider or dental clinic; and

(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.

(f) Other medically necessary orthodontic treatment and orthodontic-related services as determined by the department.

~~((5) A request to exceed stated limitations or other restrictions on covered services is called a limitation extension (LE), which is a form of prior authorization. The department evaluates and approves requests for LE for orthodontic services when medically necessary, under the provisions of WAC 388-501-0165.))~~

(6) The department evaluates a request for ~~((any))~~ orthodontic ~~((service not listed as covered in this section under the provisions of WAC 388-501-0160))~~ treatment or orthodontic-related services:

(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 388-501-0169; and

(b) That are listed as noncovered according to WAC 388-501-0160.

(7) The department reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 388-534-0100.

AMENDATORY SECTION (Amending WSR 05-01-064, filed 12/8/04, effective 1/8/05)

WAC 388-535A-0050 Authorization and prior authorization for orthodontic treatment and orthodontic-related services. (1) When the ~~((medical assistance administration (MAA)))~~ department authorizes an interceptive ortho-

odontic treatment, limited orthodontic treatment, ~~((or))~~ full orthodontic treatment, or orthodontic-related services for a client, including a client eligible for services under the EPSDT program, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The client must be eligible for the covered service at the time the service is provided.

(2) For orthodontic treatment of a client with cleft lip, cleft palate, or other craniofacial anomaly, prior authorization ~~((=~~

~~((=))~~ is not required if the client is being treated by a department-recognized craniofacial team, or an orthodontic specialist who has been approved by ((an MAA dental consultant)) the department to treat cleft lip, cleft palate, or other craniofacial anomalies((; and

~~((b) Is required if the client is not being treated by a provider listed in (a) of this subsection)).~~

(3) Subject to the conditions and limitations of this section and other applicable WAC, ~~((MAA))~~ the department requires prior authorization for orthodontic treatment and/or orthodontic-related services for other dental ~~((malocclusions))~~ malocclusions that are not listed in WAC 388-535A-0040(1).

AMENDATORY SECTION (Amending WSR 05-01-064, filed 12/8/04, effective 1/8/05)

WAC 388-535A-0060 ((Reimbursement)) Payment for orthodontic treatment and orthodontic-related services. (1) The ~~((medical assistance administration (MAA) reimburses))~~ department pays providers for furnishing covered orthodontic treatment and orthodontic-related services described in WAC 388-535A-0040 according to this section and other applicable WAC.

(2) ~~((MAA))~~ The department considers that a provider who furnishes covered orthodontic treatment and orthodontic-related services to an eligible client has accepted ~~((MAA's rates and))~~ the department's fees as published in the department's fee schedules.

(3) ~~((To be reimbursed for providing limited transitional orthodontic treatment, providers must bill MAA in intervals during the treatment and complete treatment within twelve months of the date of appliance placement.))~~ Interceptive orthodontic treatment. The department pays for interceptive orthodontic treatment as follows:

(a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months.

(b) Treatment must be completed within twelve months of the date of appliance placement.

(4) **Limited transitional orthodontic treatment.** The department pays for limited transitional orthodontic treatment as follows:

(a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months. The provider ~~((should))~~ must bill ~~((MAA))~~ the department with the date of service that the initial appliance is placed.

(b) Continuing follow-up treatment must be billed after each three-month treatment interval during the treatment.

(c) Treatment must be completed within twelve months of the date of appliance placement. Treatment provided after one year from the date the appliance is placed requires a limitation extension. See WAC (~~(388-535A-0040(5))~~) 388-535A-0040(6).

~~((4) To be reimbursed for providing comprehensive full orthodontic treatment, providers must bill MAA in intervals during the treatment and complete treatment within twenty-four months of the date of the appliance placement))~~ (5) Comprehensive full orthodontic treatment. The department pays for comprehensive full orthodontic treatment as follows:

(a) The first six months of treatment starts the date the initial appliance is placed and includes active treatment ~~((within))~~ for the first six months. The provider ~~((should))~~ must bill ((MAA)) the department with the date of service that the initial appliance is placed.

(b) Continuing follow-up treatment must be billed after each three-month treatment interval, with the first three-month interval beginning six months after the initial appliance placement.

(c) Treatment must be completed with thirty months of the date of appliance placement. Treatment provided after ~~((two years))~~ thirty months from the date the appliance is placed requires a limitation extension. See WAC (~~(388-535A-0040(5))~~) 388-535A-0040(6).

~~((5))~~ (6) Payment for orthodontic treatment and orthodontic-related services is based on ((MAA's)) the department's published fee schedule ((of maximum allowances; fees listed in the fee schedule are the maximum allowable fees)).

~~((6))~~ (7) Orthodontic providers who are in department-designated bordering cities must:

(a) Meet the licensure requirements of their state; and

(b) Meet the same criteria for payment as in-state providers, including the requirements to contract with ~~((MAA))~~ the department.

~~((7))~~ (8) If the client's eligibility for orthodontic treatment under WAC 388-535A-0020 ends before the conclusion of the orthodontic treatment, payment for any remaining treatment is the individual's responsibility((-MAA)). The department does not ((reimburse)) pay for these services.

~~((8))~~ (9) The client is responsible for payment of any orthodontic service or treatment received during any period of ineligibility, even if the treatment was started when the client was eligible((-MAA)). The department does not ((reimburse)) pay for these services.

~~((9))~~ (10) See WAC 388-502-0160 and 388-501-0200 for when a provider or a client is responsible to pay for a covered service.

WSR 08-12-074

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 3, 2008, 2:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-110.

Title of Rule and Other Identifying Information: The department is amending WAC 388-535-1245 Access to baby and child dentistry (ABCD) program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on July 8, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 9, 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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 8, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by July 1, 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: This rule making clarifies that the department pays enhanced fees only to ABCD-certified dentists and other department-approved certified providers for furnishing ABCD program services; removes language that an oral health education visit must have a duration of at least twenty minutes; clarifies that an oral health education visit is limited to one visit per day per family, up to two visits per child in a twelve-month period; removes language that an oral health education visit must include topical application of gel or varnish. In addition, the proposed rule clarifies what ABCD program services include.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.08.-090.

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, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, 626 8th Avenue, Olympia, WA 98504-5506, (360) 725-1748.

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 Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TYY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

May 29, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-06-042, filed 3/1/07, effective 4/1/07)

WAC 388-535-1245 Access to baby and child dentistry (ABCD) program. The access to baby and child dentistry (ABCD) program is a program established to increase access to dental services for Medicaid-eligible clients ages five and younger.

(1) Client eligibility for the ABCD program is as follows:

(a) Clients must be age five and younger. Once enrolled in the ABCD program, eligible clients are covered until their sixth birthday.

(b) Clients eligible under one of the following medical assistance programs are eligible for the ABCD program:

(i) Categorically needy program (CNP);

(ii) Limited casualty program-medically needy program (LCP-MNP);

(iii) Children's health program; or

(iv) State children's health insurance program (SCHIP).

(c) ABCD program services for eligible clients enrolled in a managed care organization (MCO) plan are paid through the fee-for-service payment system.

(2) Health care providers and community service programs identify and refer eligible clients to the ABCD program. If enrolled, the client and an adult family member may receive:

(a) Oral health education;

(b) "Anticipatory guidance" (expectations of the client and the client's family members, including the importance of keeping appointments); and

(c) Assistance with transportation, interpreter services, and other issues related to dental services.

(3) ~~(Dentists must be certified through the continuing education program in the University of Washington School of Pediatric Dentistry to furnish ABCD program services.~~

~~(4))~~ The department pays enhanced fees only to ABCD-certified ~~((participating))~~ dentists and other department-approved certified providers for furnishing ABCD program services. ABCD program services include, when appropriate:

(a) Family oral health education. An oral health education visit:

(i) ~~((Must have a duration of at least twenty minutes for each visit;~~

~~((is)))~~ Is limited to one visit per day per family, up to two visits per ~~((calendar year))~~ child in a twelve-month period, per provider or clinic; and

~~((iii)))~~ (ii) Must include all of the following:

(A) "Lift the lip" training;

(B) Oral hygiene training;

(C) Risk assessment for early childhood caries;

(D) Dietary counseling;

(E) ~~((Topical application of gel or varnish;~~

~~((F)))~~ Discussion of fluoride supplements; and

~~((G)))~~ (F) Documentation in the client's file or the client's designated adult member's (family member or other responsible adult) file to record the activities provided and duration of the oral education visit.

(b) ~~((Comprehensive and))~~ Periodic oral evaluation, up to two visits per client, per calendar year, per provider or clinic;

(c) Topical application of fluoride varnish;

~~((d))~~ (d) Amalgam, resin, and glass ionomer restorations on primary teeth, as specified in current department-published documents;

~~((e))~~ (e) Therapeutic pulpotomy;

~~((f))~~ (f) Prefabricated stainless steel crowns on primary teeth, as specified in current department-published documents;

~~((g))~~ (g) Resin-based composite crowns on anterior primary teeth; and

~~((h))~~ (h) Other dental-related services, as specified in current department-published documents.

~~((i))~~ (4) The client's file must show documentation of the ABCD program services provided.

WSR 08-12-075
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed June 3, 2008, 2:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-074.

Title of Rule and Other Identifying Information: WAC 415-104-455 Are my spouse and dependent children eligible to have their health care insurance premiums paid for?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on July 9, 2008, at 2:00 p.m.

Date of Intended Adoption: July 10, 2008.

Submit Written Comments to: Sarah Monaly, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail sarahm@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on July 9, 2008.

Assistance for Persons with Disabilities: Contact Sarah Monaly, rules coordinator, by July 2, 2008, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement SB 6723 (2006), which provides for the payment of health care insurance premiums for spouses and dependent children of members of the law enforcement officers' and fire fighters' retirement system (LEOFF) Plan 2 who die in the line of duty.

Reasons Supporting Proposal: SB 6723 took effect on June 7, 2006. The department needs to update its rules to

assist plan members and their families, employers, and department staff.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.26.510.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah Monaly, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Michelle Hardesty, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7193.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

June 3, 2008

Sarah Monaly

Rules Coordinator

NEW SECTION

WAC 415-104-455 Are my spouse and dependent children eligible to have their health care insurance premiums paid for? If you are a Plan 2 member and you die in the line of duty, your surviving spouse and/or dependent children may be eligible for PEBB health care insurance and to have their monthly premiums paid for.

(1) **Who can have their health care insurance premiums paid for?** To have PEBB health care insurance premiums paid for, your beneficiary must:

(a) Be a surviving spouse or surviving dependent child, as defined in RCW 41.26.030, of a Plan 2 member who dies in the line of duty;

(b) Receive a death benefit; and

(c) Be approved for PEBB health care insurance.

(2) **Who makes this determination?** L&I, DRS, and HCA each play a role in determining your spouse or children's eligibility to have their PEBB health care insurance premiums paid for. L&I will determine whether you died in the line of duty and will notify DRS of their determination. DRS will identify your eligible spouse and dependent children and will notify HCA. HCA will then determine eligibility for enrollment in PEBB health care insurance.

(3) **What do my spouse or dependent children need to do to receive these payments?** Once DRS is notified of your death in the line of duty, we will send your spouse or dependent children information about enrolling in PEBB health care insurance. If your spouse or dependent children want PEBB health care insurance, they must complete an enrollment application and send it to HCA. DRS or HCA may contact them for more information.

(4) **How will the monthly premiums be paid for?** Upon enrollment in PEBB health care insurance, DRS will make direct payment of your spouse or dependent children's monthly premiums to HCA. They do not need to send any money to DRS or HCA.

(5) **How long can my spouse or dependent children remain enrolled in PEBB health care insurance?** Your spouse or dependent children can remain enrolled in PEBB health care insurance so long as they are eligible under HCA rules. As long as they are eligible for PEBB health care insurance, their monthly premiums will be paid for by DRS.

(6) **Definitions:**

(a) DRS - department of retirement systems.

(b) HCA - health care authority.

(c) L&I - department of labor and industries.

(d) PEBB - public employees benefits board.

WSR 08-12-079

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed June 3, 2008, 4:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-07-072.

Title of Rule and Other Identifying Information: WAC 246-310-010(9), certificate of need definition of "bed-to-population ratio."

Hearing Location(s): Department of Health, Point Plaza East Conference Center, 310 Israel Road, Tumwater, WA 98501, on July 14, 2008, at 9:30 a.m.

Date of Intended Adoption: July 21, 2008.

Submit Written Comments to: Yvette Fox, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, e-mail yvette.fox@doh.wa.gov, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by July 14, 2008.

Assistance for Persons with Disabilities: Contact Yvette Fox by July 8, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will amend WAC 246-310-010(9), the certificate of need definition of bed-to-population ratio. It currently requires the department to calculate the need for nursing home beds based on the ratio of forty beds per one thousand persons age sixty-five and older. The proposed rules change the ratio to forty beds per one thousand persons age seventy and older.

Reasons Supporting Proposal: The average age for all nursing home residents is 79.97 years. Changing the established ratio based on the population age seventy or older more accurately reflects the population served by nursing homes.

Statutory Authority for Adoption: RCW 70.38.135.

Statute Being Implemented: RCW 70.38.135.

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 and Implementation: Bart Eggen, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-2960; and Enforcement: Steve Saxe, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-2902.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025

and 34.05.310 (4)(b), a small business economic impact statement is not required for proposed rules that relate only to internal governmental operations and that are not subject to violation by a nongovernmental party.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts rules that relate only to internal governmental operations that are not subject to violation by a nongovernment party.

June 2, 2008
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 06-24-050, filed 12/1/06, effective 1/1/07)

WAC 246-310-010 Definitions. For the purposes of chapter 246-310 WAC, the following words and phrases have the following meanings unless the context clearly indicates otherwise.

(1) "Acute care facilities" means hospitals and ambulatory surgical facilities.

(2) "Affected person" means an interested person who:

(a) Is located or resides in the applicant's health service area;

(b) Testified at a public hearing or submitted written evidence; and

(c) Requested in writing to be informed of the department's decision.

(3) "Alterations," see "construction, renovation, or alteration."

(4) "Ambulatory care facility" means any place, building, institution, or distinct part thereof not a health care facility as defined in this section and operated for the purpose of providing health services to individuals without providing such services with board and room on a continuous twenty-four-hour basis. The term "ambulatory care facility" includes the offices of private physicians, whether for individual or group practice.

(5) "Ambulatory surgical facility" means any free-standing entity, including an ambulatory surgery center that operates primarily for the purpose of performing surgical procedures to treat patients not requiring hospitalization. This term does not include a facility in the offices of private physicians or dentists, whether for individual or group practice, if the privilege of using the facility is not extended to physicians or dentists outside the individual or group practice.

(6) "Applicant," means:

(a) Any person proposing to engage in any undertaking subject to review under chapter 70.38 RCW; or

(b) Any person or individual with a ten percent or greater financial interest in a partnership or corporation or other comparable legal entity engaging in any undertaking subject to review under chapter 70.38 RCW.

(7) "Bed banking" means the process of retaining the rights to nursing home bed allocations which are not licensed as outlined in WAC 246-310-395.

(8) "Bed supply" means within a geographic area the total number of:

(a) Nursing home beds which are licensed or certificate of need approved but not yet licensed or beds banked under

RCW 70.38.111 (8)(a) or where the need is deemed met under RCW 70.38.115 (13)(b), excluding:

(i) Those nursing home beds certified as intermediate care facility for the mentally retarded (ICF-MR) the operators of which have not signed an agreement on or before July 1, 1990, with the department of social and health services department of social and health services to give appropriate notice prior to termination of the ICF-MR service;

(ii) New or existing nursing home beds within a CCRC which are approved under WAC 246-310-380(5); or

(iii) Nursing home beds within a CCRC which is excluded from the definition of a health care facility per RCW 70.38.025(6); and

(iv) Beds banked under RCW 70.38.115 (13)(b) where the need is not deemed met.

(b) Licensed hospital beds used for long-term care or certificate of need approved hospital beds to be used for long-term care not yet in use, excluding swing-beds.

(9) "Bed-to-population ratio" means the nursing home bed supply per one thousand persons of the estimated or forecasted resident population age (~~sixty-five~~) seventy and older.

(10) "Capital expenditure": Except for WAC 246-310-280, capital expenditure means an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor), which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting and other services which, under generally accepted accounting principles, are not properly chargeable as an expense of operation and maintenance) shall be considered capital expenditures. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required certificate of need review if the acquisition had been made by purchase, this acquisition shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility, which if acquired directly by the facility, would be subject to review under this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to the review.

(11) "Certificate of need" means a written authorization by the secretary's designee for a person to implement a proposal for one or more undertakings.

(12) "Certificate of need program" means that organizational program of the department responsible for the management of the certificate of need program.

(13) "Commencement of the project" means whichever of the following occurs first: In the case of a construction project, giving notice to proceed with construction to a contractor for a construction project provided applicable permits have been applied for or obtained within sixty days of the notice; beginning site preparation or development; excavating or starting the foundation for a construction project; or beginning alterations, modification, improvement, extension, or expansion of an existing building. In the case of other projects, initiating a health service.

(14) "Construction, renovation, or alteration" means the erection, building, remodeling, modernization, improvement, extension, or expansion of a physical plant of a health care facility, or the conversion of a building or portion thereof to a health care facility.

(15) "Continuing care contract" means a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services. The contract is conditioned on the transfer of property, the payment of an entrance fee to the provider of the services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(16) "Continuing care retirement community (CCRC)" means any of a variety of entities, unless excluded from the definition of health care facility under RCW 70.38.025(6), which provides shelter and services based on continuing care contracts with its residents which:

Maintains for a period in excess of one year a CCRC contract with a resident which provides or arranges for at least the following specific services:

- (a) Independent living units;
- (b) Nursing home care with no limit on the number of medically needed days;
- (c) Assistance with activities of daily living;
- (d) Services equivalent in scope to either state chore services or Medicaid home health services;
- (e) Continues a contract, if a resident is no longer able to pay for services;
- (f) Offers services only to contractual residents with limited exception during a transition period; and
- (g) Holds the Medicaid program harmless from liability for costs of care, even if the resident depletes his or her personal resources.

(17) "Days" means calendar days. Days are counted starting the day after the date of the event from which the designated period of time begins to run. If the last day of the period falls on a Saturday, Sunday, or legal holiday observed by the state of Washington, a designated period runs until the end of the first working day following the Saturday, Sunday, or legal holiday.

(18) "Department" means the Washington state department of health.

(19) "Effective date of facility closure" means:

- (a) The date on which the facility's license was relinquished, revoked or expired; or
- (b) The date the last resident leaves the facility, whichever comes first.

(20) "Enhance the quality of life for residents" means, for the purposes of voluntary bed banking, those services or facility modifications which have a direct and immediate benefit to the residents. These include, but are not limited to: Resident activity and therapy facilities; family visiting rooms; spiritual rooms and dining areas. These services or facility modifications shall not include those that do not have direct and immediate benefit to the residents, such as: Modifications to staff offices; meeting rooms; and other staff facilities.

(21) "Established ratio" means a bed-to-population ratio of forty beds per one thousand persons of the estimated or forecast resident population age (~~sixty-five~~) seventy and older established for planning and policy-making purposes. The department may revise this established ratio using the process outlined in WAC 246-310-370.

(22) "Estimated bed need" means the number of nursing home beds calculated by multiplying the planning area's forecasted resident population by the established ratio for the projection year.

(23) "Estimated bed projection" means the number of nursing home beds calculated by the department statewide or within a planning area, by the end of the projection period.

(24) "Ex parte contact" means any oral or written communication between any person in the certificate of need program or any other person involved in the decision regarding an application for, or the withdrawal of, a certificate of need and the applicant for, or holder of, a certificate of need, any person acting on behalf of the applicant or holder, or any person with an interest regarding issuance or withdrawal of a certificate of need.

(25) "Expenditure minimum" means one million dollars for the twelve-month period beginning with July 24, 1983, adjusted annually by the department according to WAC 246-310-900.

(26) "Health care facility" means hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers including freestanding dialysis units, ambulatory surgical facilities, continuing care retirement communities, hospices and home health agencies, and includes the facilities when owned and operated by a political subdivision or instrumentality of the state and other facilities as required by federal law and rules, but does not include any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or any health facility or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy.

(a) In addition, the term "health care facility" does not include any nonprofit hospital:

- (i) Operated exclusively to provide health care services for children;
- (ii) Which does not charge fees for the services; and
- (iii) If not contrary to federal law as necessary to the receipt of federal funds by the state.

(b) In addition, the term "health care facility" does not include a continuing care retirement community which:

- (i) Offers services only to contractual residents;
- (ii) Provides its residents a contractually guaranteed range of services from independent living through skilled nursing, including some form of assistance with activities of daily living;

(iii) Contractually assumes responsibility for costs of services exceeding the resident's financial responsibility as stated in contract, so that, with the exception of insurance purchased by the retirement community or its residents, no third party, including the Medicaid program, is liable for costs of care even if the resident depletes personal resources;

(iv) Offers continuing care contracts and operates a nursing home continuously since January 1, 1988, or obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the department of social and health services assuring financial liability for services to residents, including nursing home services, shall not fall upon the department of social and health services;

(vi) Does not operate, and has not undertaken, a project resulting in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has undertaken no increase in the total number of nursing home beds after January 1, 1988, unless a professional review of pricing and long-term solvency was obtained by the retirement community within the prior five years and fully disclosed to residents.

(27) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, Section 1310(d) of the Public Health Service Act; or

(b) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage;

(c) Is compensated (except for copayments) for the provision of the basic health care services listed in this subsection to enrolled participants by a payment made on a periodic basis without regard to the date the health care services are provided and fixed without regard to the frequency, extent, or kind of health service actually provided; and

(d) Provides physicians' services primarily:

(i) Directly through physicians who are either employees or partners of the organization; or

(ii) Through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(28) "Health service area" means a geographic region appropriate for effective health planning including a broad range of health services.

(29) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services.

(30) "Home health agency" means an entity which is, or has declared its intent to become, certified as a provider of home health services in the Medicaid or Medicare program.

(31) "Hospice" means an entity which is, or has declared its intent to become, certified as a provider of hospice services in the Medicaid or Medicare program.

(32) "Hospital" means any institution, place, building or agency or distinct part thereof which qualifies or is required to qualify for a license under chapter 70.41 RCW, or as a psychiatric hospital licensed under chapter 71.12 RCW.

(33) "Inpatient" means a person receiving health care services with board and room in a health care facility on a continuous twenty-four-hour-a-day basis.

(34) "Interested persons" means:

(a) The applicant;

(b) Health care facilities and health maintenance organizations providing services similar to the services under review and located in the health service area;

(c) Third-party payers reimbursing health care facilities in the health service area;

(d) Any agency establishing rates for health care facilities and health maintenance organizations in the health service area where the proposed project is to be located;

(e) Health care facilities and health maintenance organizations which, in the twelve months prior to receipt of the application, have submitted a letter of intent to provide similar services in the same planning area;

(f) Any person residing within the geographic area to be served by the applicant; and

(g) Any person regularly using health care facilities within the geographic area to be served by the applicant.

(35) "Licensee" means an entity or individual licensed by the department of health or the department of social and health services. For the purposes of nursing home projects, licensee refers to the operating entity and those persons specifically named in the license application as defined under chapter 388-97 WAC.

(36) "Net estimated bed need" means estimated bed need of a planning area changed by any redistribution as follows:

(a) Adding nursing home beds being redistributed from another nursing home planning area or areas; or

(b) Subtracting nursing home beds being redistributed to another nursing home planning area or areas.

(37) "New nursing home bed" means a nursing home bed never licensed by the state or beds banked under RCW 70.38.115(13), where the applicant must demonstrate need for the previously licensed nursing home beds. This term does not include beds banked under RCW 70.38.111(8).

(38) "Nursing home" means any entity licensed or required to be licensed under chapter 18.51 RCW or distinct part long-term care units located in a hospital and licensed under chapter 70.41 RCW.

(39) "Obligation," when used in relation to a capital expenditure, means the following has been incurred by or on behalf of a health care facility:

(a) An enforceable contract has been entered into by a health care facility or by a person on behalf of the health care facility for the construction, acquisition, lease, or financing of a capital asset; or

(b) A formal internal commitment of funds by a health care facility for a force account expenditure constituting a capital expenditure; or

(c) In the case of donated property, the date on which the gift is completed in accordance with state law.

(40) "Offer," when used in connection with health services, means the health facility provides one or more specific health services.

(41) "Over the established ratio" means the bed-to-population ratio is greater than the statewide current established ratio.

(42) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political

subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(43) "Planning area" means each individual county designated by the department as the smallest geographic area for which nursing home bed need projections are developed, except as follows:

(a) Clark and Skamania counties shall be one planning area.

(b) Chelan and Douglas counties shall be one planning area.

(44) "Predevelopment expenditures" means capital expenditures, the total of which exceeds the expenditure minimum, made for architectural designs, plans, drawings, or specifications in preparation for the acquisition or construction of physical plant facilities. "Predevelopment expenditures" exclude any obligation of a capital expenditure for the acquisition or construction of physical plant facilities and any activity which the department may consider the "commencement of the project" as this term is defined in this section.

(45) "Professional review of continuing care retirement community pricing and long-term solvency" means prospective financial statements, supported by professional analysis and documentation, which:

(a) Conform to Principles and Practices Board Statement Number 9 of the Healthcare Financial Management Association, "Accounting and Reporting Issues Related to Continuing Care Retirement Communities"; and

(b) Project the financial operations of the continuing care retirement community over a period of ten years or more into the future; and

(c) Are prepared and signed by a qualified actuary as defined under WAC 284-05-060 or an independent certified public accountant, or are prepared by management of the continuing care retirement community and reviewed by a qualified actuary or independent certified public accountant who issues a signed examination or compilation report on the prospective financial statements; and

(d) Include a finding by management that the intended expansion project of the continuing care retirement project is financially feasible.

(46) "Project" means all undertakings proposed in a single certificate of need application or for which a single certificate of need is issued.

(47) "Project completion" for projects requiring construction, means the date the facility is licensed. For projects not requiring construction, project completion means initiating the health service.

(48) "Projection period" means the three-year time interval following the projection year.

(49) "Projection year" for nursing home purposes, means the one-year time interval preceding the projection period.

(50) "Public comment period" means the time interval during which the department shall accept comments regarding a certificate of need application.

(51) "Redistribution" means the shift of nursing home bed allocations between two or more planning areas or the shift of nursing home beds between two or more nursing homes.

(52) "Replacement authorization" means a written authorization by the secretary's designee for a person to

implement a proposal to replace existing nursing home beds in accordance with the eligibility requirements in WAC 246-310-044 and notice requirements in WAC 246-310-396.

(53) "Resident population" for purposes of nursing home projects, means the number of residents sixty-five years of age and older living within the same geographic area which:

(a) Excludes contract holders living within a recognized CCRC:

(i) With approval for new nursing home beds under WAC 246-310-380(4); or

(ii) Excluded from the definition of a health care facility per RCW 70.38.025(6);

(b) Is calculated using demographic data obtained from:

(i) The office of financial management; and

(ii) Certificate of need applications and exemption requests previously submitted by a CCRC.

(54) "Secretary" means the secretary of the Washington state department of health or the secretary's designee.

(55) "State Health Planning and Resources Development Act" means chapter 70.38 RCW.

(56) "Statewide current ratio" means a bed-to-population ratio computed from the most recent statewide nursing home bed supply and the most recent estimate of the statewide resident population.

(57) "Swing beds" means up to the first five hospital beds designated by an eligible rural hospital which are available to provide either acute care or nursing home services.

(58) "Tertiary health service" means a specialized service meeting complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

(59) "Transition period" means the period of time, not exceeding five years, between the date a CCRC is inhabited by a member, and the date it fully meets the requirements of a CCRC.

(60) "Under the established ratio" means the bed-to-population ratio is less than the statewide current established ratio.

(61) "Undertaking" means any action subject to the provisions of chapter 246-310 WAC.

(62) "Working days" excludes Saturdays, Sundays, and legal holidays observed by the state of Washington. Working days are counted in the same way as calendar days.

WSR 08-12-081

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed June 3, 2008, 5:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-038.

Title of Rule and Other Identifying Information: Amending WAC 4-25-400 What is the authority for and the purpose of the board's rules?, 4-25-410 Definitions, 4-25-520 What public records does the board maintain?, 4-25-521 How can the board be contacted?, 4-25-540 What rules govern the proceedings before the board?, 4-25-550 Do I need to notify the board if I change my address?, 4-25-551 Must I respond

to inquiries from the board?, 4-25-610 Which rules govern the conduct of CPAs, CPA-inactive certificateholders, CPA firms, and firm owners?, 4-25-620 What are the requirements concerning integrity and objectivity?, 4-25-622 When must a CPA or CPA firm be independent?, 4-25-626 What restrictions govern commissions, referral, and contingent fees?, 4-25-630 What are the requirements concerning competence?, 4-25-631 With which rules, regulations and professional standards must a CPA, CPA-inactive certificateholder, CPA firm, and firm owner comply?, 4-25-640 What are the requirements concerning records and clients confidential information?, 4-25-650 What acts are considered discreditable?, 4-25-660 What are the limitations on advertising and other forms of solicitation?, 4-25-670 What enforcement actions must be reported to the board?, 4-25-735 How does a CPA-inactive certificateholder apply for licensure?, 4-25-745 How do I apply for an initial CPA license?, 4-25-746 How do I apply for a Washington state CPA license if I hold a valid CPA license in another state?, 4-25-750 What are the CPA firm licensing requirements?, 4-25-752 How do I register to be a resident nonlicensee owner of a licensed firm and with which rules must a nonlicensee firm owner comply?, 4-25-820 What are the requirements for participating in quality assurance review (QAR)?, 4-25-830 What are the CPE requirements? and 4-25-910 What are the bases for the board to impose discipline?; new WAC 4-25-747 Must an individual holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state? and 4-25-753 Must a firm holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state?; and repealing WAC 4-25-756 I am licensed in another state— How do I notify the board of my intent to enter the state in order to obtain practice privileges in the state of Washington?

Hearing Location(s): The Heathman Lodge, Sacajawea, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, on July 18, 2008, at 9:00 a.m.

Date of Intended Adoption: July 18, 2008.

Submit Written Comments to: Richard C. Sweeney, Executive Director, P.O. Box 9131, Olympia, WA 98507-

9131, e-mail webmaster@cpaboard.wa.gov, fax (360) 664-9190, by July 11, 2008.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by July 11, 2008, TTY (800) 833-6384 or (360) 664-9194.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adopt, amend, or repeal rules to implement the revisions to chapter 18.04 RCW passed through the 2008 legislative session (SSB 6604).

General Note: SSB 6604 passed by the legislature during the 2008 regular session amended the Public Accountancy Act. The amendments require the board to modify the majority of its rules to:

- Include out-of-state individuals and firms and the employees of those persons.
- Remove references to practice privileges as it currently exists and expand or modify current rules because notification and fees no longer apply.
- Remove references to the exclusion of out-of-state sole practicing CPAs from the licensing requirements.
- Make ethics and prohibited practices found in board rules applicable to all persons including persons exercising practice privileges.
- Repeal current WAC 4-25-756 because "entering the state" and notification for "practice privileges" is unnecessary.
- Replace current WAC 4-25-756 with a proposed rule summarizing the practice privileges' requirements of SSB 6604.

Additionally, the board is proposing to revise language to:

- Remove reference in the rules that "notices" will be mailed on January 1. This is an agency policy issue not a requirement of regulated persons.
- Clarify that the validation of license status or status as a CPA-inactive certificateholder, or resident nonlicensee firm owner occurs at the time the license number is entered into the board's licensee database and available for public confirmation.

WAC section:	The suggested revision:
WAC 4-25-400	Clarifies that the board sets the qualifications to be a licensee of Washington state. The board does not set the qualifications to be a licensee in any other state.
WAC 4-25-410	<p>For ease of reference and consistency, the board incorporates definitions appearing in RCW 18.04.025 into its rules.</p> <p>Proposed Section:</p> <p>(2) "Active individual participant" - changes reference from "natural person" to "individual" to coincide with definition in RCW 18.04.025 changed by SSB 6604.</p> <p>(4)(a) Clarifies that the CPA examination is the uniform examination used by all United States jurisdictions.</p> <p>(4)(b) Changes applicant for "CPA" license to an applicant for an "individual" license to distinguish from a "firm."</p> <p>(4)(b) Adds "initial" to distinguish from a renewal or reinstatement applicant.</p> <p>(4)(b) Removes reference to "practice privileges." SSB 6604 eliminated the requirement for out-of-state CPAs to notify the Washington state board of intent to practice.</p>

WAC section:	The suggested revision:
	<p>(4)(d) Adds practice privileges to applicants for reinstatement.</p> <p>(5) Replaces the definition of "attest services" for consistency with the definition of "attest" in RCW 18.04.025 as amended by SSB 6604.</p> <p>(6) Points the reader to the definition of "licensee" in this same section.</p> <p>(10) "Client" - clarifies that the definition is applicable to all licensees, certificate holders, and nonlicensee owners regulated by the board and entities affiliated with a licensed firm, being retained to perform "professional services."</p> <p>(11)(a) Points the reader to the definition of "licensee" in this same section and clarifies that the definition is applicable to all licensees, certificate holders, and nonlicensee owners of a licensed firm regulated by the board and persons affiliated with a licensed firm.</p> <p>(12) Adds the definition for "compilation" from SSB 6604 for consistency and ease of reference.</p> <p>(14) Changes "person" to "individual" to coincide with the definitions in SSB 6604. This provides clarification that a CPA is a living human being rather than a nongovernmental organization or business entity. Clarifies that a CPA includes individuals exercising practice privileges as referenced in RCW 18.04.350(2).</p> <p>(15) Changes "person" to "individual" to coincide with the definitions in SSB 6604.</p> <p>Formerly (16) "Entering the state" deleted. SSB 6604 eliminated the reference to entering the state. This definition is no longer needed.</p> <p>(17) "Firm" - adds reference to Washington state law under which limited liability companies or partnerships, or professional service corporations are formed to provide an index to the reader.</p> <p>(20) Removes "firm" from the definition because the definition of "person" in SSB 6604 includes firms.</p> <p>(21) Adds the definition for "home office" from SSB 6604 for consistency and ease of reference.</p> <p>(22) "Inactive" - changes "person" to "individual" to coincide with the definitions in SSB 6604. This rule is applicable to living human beings rather than nongovernmental organizations or business entities.</p> <p>(23) Adds the definition for "individual" from SSB 6604 for consistency and ease of reference.</p> <p>(24) "Independence" - changes "attest" to "professional" services. Professional services include compilations which are not considered "attest" services under the definition included in SSB 6604. Independence is required when professional standards require a report expressing assurance.</p> <p>(27) Changes "accountancy" to "accounting" to coincide with definition of the "practice of public accounting" in RCW 18.04.025.</p> <p>(28) Clarifies that "licensee" includes those out-of-state individuals and firms referenced in the Public Accountancy Act as amended by SSB 6604.</p> <p>Formerly (29) "Natural person" deleted. SSB 6604 changed the definition of "natural person" to "individual." See (23) above.</p> <p>(30) Clarifies that a "nonlicensee firm owner" is an individual.</p> <p>(33) Adds the definition for "person" from SSB 6604 for consistency and ease of reference.</p> <p>(35) "Practice privileges" - changes individual to "person" to include firms exercising practice privileges as authorized by RCW 18.04.195 as amended by SSB 6604. Adds the consent to the appointment of the issuing state board as agent for the service of process from RCW 18.02.350 (4)(d).</p> <p>(36) "Principal place of business" - adds licensed firm to the definition.</p> <p>(38) "Quality assurance review" - replaces attest work with "audit, compilation and review and other attestation work" to reflect board rule, WAC 4-25-820, that includes compilation and other attestation services. SSB 6604 removed compilation from the definition of attest.</p> <p>(41) "Reports on financial statements" - conforms the definition to the definition found in RCW 18.04.025 and as amended by SSB 6604. Expanded to include other attestation standards as established by board rule, WAC 4-25-820.</p> <p>(42) "Representing oneself" - conforms the definition to the board's current interpretation.</p> <p>(43) "Rules of professional conduct" - changes CPA and CPA firm to "licensee" as defined by the board. With this change this definition is applicable to those out-of-state individuals and firms exercising practice privileges.</p>

WAC section:	The suggested revision:
	<p>(45) "Sole proprietorship" - new definition to distinguish an individual from a firm. A proprietorship is a legal form of organization.</p> <p>(46) "State" - adds the Commonwealth of the Northern Mariana Islands to conform to the definition of "state" in RCW 18.04.025 as amended by SSB 6604.</p>
WAC 4-25-520	<ul style="list-style-type: none"> • Removes the reference to individuals granted practice privileges. SSB 6604 eliminated the requirement for out-of-state individuals to notify the board when practicing in Washington state. Therefore, the board will no longer grant practice privileges or track such notification. • Changes "rule files" to "rule-making files" to better describe public records that the board maintains.
WAC 4-25-521	<ul style="list-style-type: none"> • Adds the board's physical address for information purposes. • Changes the board's e-mail address for information purposes.
WAC 4-25-540	<p>(1) - (6) Adds "staff" to clarify that staff makes the initial decision and denial. The executive director does not participate in the initial decision.</p> <p>(7) Conforms language to RCW 18.04.420.</p>
WAC 4-25-550	<p>Adds language to clarify that individuals and firms in Washington state must comply with this rule. Individuals and firms exercising practice privileges as reflected in SSB 6604 are not required to provide any notification of address changes to the board.</p>
WAC 4-25-551	<p>Adds language to clarify that individuals and firms exercising practice privileges as reflected in SSB 6604 are required to respond to board inquiry in addition to individuals and firms licensed in Washington state.</p>
WAC 4-25-610	<p>Chapter 18.04 RCW authorizes the board to prescribe rules of professional conduct for all licensees, certificate holders, and nonlicensee owners of licensed firms, in order to establish and maintain high standards of competence and ethics.</p> <ul style="list-style-type: none"> • Replaces CPA and CPA firm with "licensee." With this change, the definition is also applicable to those out-of-state individuals and firms exercising practice privileges to conform with the amendments to chapter 18.04 RCW by SSB 6604. • Adds employees of regulated persons. This clarifies that a licensee, CPA-inactive certificateholder, or nonlicensee firm owner may not conduct themselves unprofessionally through their employees.
WAC 4-25-620	<p>Chapter 18.04 RCW authorizes the board to prescribe rules of professional conduct for all licensees, certificate holders, and nonlicensee owners of licensed firms, in order to establish and maintain high standards of competence and ethics.</p> <ul style="list-style-type: none"> • Replaces CPA and CPA firm with "licensee." With this change, the definition is also applicable to those out-of-state individuals and firms exercising practice privileges to conform with the amendments to chapter 18.04 RCW by SSB 6604. • Adds employees of regulated persons. This clarifies that a licensee, CPA-inactive certificateholder, or nonlicensee firm owner may not conduct themselves unprofessionally through their employees.
WAC 4-25-622	<ul style="list-style-type: none"> • Replaces CPA and CPA firm with "licensee." With this change, the definition is also applicable to those out-of-state individuals and firms exercising practice privileges to conform with the amendments to chapter 18.04 RCW by SSB 6604. • Adds CPA-inactive certificateholders, nonlicensee firm owners, and employees. This clarifies that a licensee may not conduct themselves unprofessionally through their employees. • Replaces "attest" with "professional services for which a report expressing assurance is prescribed by professional standards." SSB 6604 revised the definition of attest to exclude compilations. Independence is required for compilations if the report does not disclose a lack of independence.
WAC 4-25-626	<ul style="list-style-type: none"> • Replaces CPA, CPA-inactive certificateholder, firm owner, or licensed firm with "licensees and/or their employees." The rule, in part, prohibits licensees and their employees from receiving commissions, referral fees, and contingent fees when rendering "attest" or "compilation" services. Only licensees are authorized to perform compilation, or other professional services for which a report expressing assurance is prescribed by professional standards. • Commissions, referral fees, and contingent fees are permitted by all regulated persons when attest and compilation services are not provided and prescribed disclosure is made. • Replaces "attest" with "compilation, or other professional services for which a report expressing assurance is prescribed by professional standards." SSB 6604 revised the definition of attest to exclude compilations. • Removes redundant repetitive language.

WAC section:	The suggested revision:
WAC 4-25-630	<ul style="list-style-type: none"> • Replaces CPA and CPA firm with "licensee." With this change, the definition is also applicable to those out-of-state individuals and firms exercising practice privileges to conform with the amendments to chapter 18.04 RCW by SSB 6604. • Adds employees of regulated persons. This clarifies that a licensee, CPA-inactive certificateholder, or nonlicensee firm owner may not conduct themselves in an incompetent manner through their employees. • Clarifies that the service provided is a professional service.
WAC 4-25-631	<ul style="list-style-type: none"> • Replaces CPA and CPA firm with "licensee." With this change, the definition is also applicable to those out-of-state individuals and firms exercising practice privileges to conform with the amendments to chapter 18.04 RCW by SSB 6604. • Specifically, includes individuals exercising practice privileges or firms exercising practice privileges through an individual. • Adds employees of regulated persons. This clarifies that a licensee, CPA-inactive certificateholder, or nonlicensee firm owner may not disregard rules, regulations and professional standards through their employees. • Corrects grammar. • Adds documentation requirements for individuals and firms when professional services are governed by standards not listed in the rule. • Removes the note that the standards may be inspected at the board's office.
WAC 4-25-640	<ul style="list-style-type: none"> • Adds CPA-inactive certificateholder, and nonlicensee firm owner. These regulated individuals may provide those services described in RCW 18.04.350(10). When the CPA-inactive certificateholder and nonlicensee firm owner provide those services, they are bound by the requirements concerning records and client confidential information. • Adds "nonlicensee" to all references to firm owner to conform the rule to RCW 18.04.195. Other firm owners are included in the definition of licensee. • Adds "compilation or other reporting services governed by professional standards" to "attest" to reflect board rule, WAC 4-25-820, that includes compilation and other attestation services. SSB 6604 eliminated "compilation" from the definition of attest.
WAC 4-25-650	<ul style="list-style-type: none"> • Replaces CPA and CPA firm with "licensee." With this change, the definition is also applicable to those out-of-state individuals and firms exercising practice privileges to conform with the amendments to chapter 18.04 RCW by SSB 6604. • Adds employees of regulated persons. This clarifies that a licensee, CPA-inactive certificateholder, or nonlicensee firm owner may not act in a discreditable manner through their employees. • Numbers the list of discreditable acts for ease of reference.
WAC 4-25-660	<ul style="list-style-type: none"> • Replaces CPA and CPA firm with "licensee." With this change, the definition is also applicable to those out-of-state individuals and firms exercising practice privileges to conform with the amendments to chapter 18.04 RCW by SSB 6604. • (2) Specifically, includes individuals exercising practice privileges or firms exercising practice privileges through a qualified practice privilege individual. • (4) Establishes the requirement for out-of-state persons qualified only for restricted professional services and offering those restricted professional services within this state to post the restriction on their web site clearly, visibly, and prominently. • (5) Conforms the language referencing nonlicensee firm owners to chapter 18.04 RCW.
WAC 4-25-670	<ul style="list-style-type: none"> • (1) Eliminates the requirement to use a form to report enforcement actions. • (2) Verbiage change for clarity. • (3) Adds clarifying language to avoid inconsistency with subsection (2).
WAC 4-25-735	<ul style="list-style-type: none"> • Changes the agency's legacy practice of requiring signed forms. This change will facilitate the agency's eventual move to online application. • Changes the effective date of licensure as implied by current rule: Current agency guidance is that the license is not valid until the applicant receives a hard copy in the mail. However, once posted to the board database the license is effective.
WAC 4-25-745	<ul style="list-style-type: none"> • Clarifies that the rule only applies to individuals as opposed to firms. • Changes the agency's legacy practice of requiring signed forms. This change will facilitate the agency's eventual move to online application. • Changes the effective date of licensure as implied by current rule: Current agency guidance is that the license is not valid until the applicant receives a hard copy in the mail. However, once posted to the board database the license is effective.

WAC section:	The suggested revision:
WAC 4-25-746	<ul style="list-style-type: none"> • Renumbers for easy reference. • Changes "accountancy" to "accounting" to coincide with definition of the "practice of public accounting" in RCW 18.04.025. • Clarifies that the rule only applies to individuals as opposed to firm. • Adds clarifying language specifying entitlements granted when an individual is granted a license. • Changes the agency's legacy practice of requiring signed forms. This change will facilitate the agency's eventual move to online application. • Changes the effective date of licensure as implied by current rule: Current agency guidance is that the license is not valid until the applicant receives a hard copy in the mail. However, once posted to the board database the license is effective. • Remove references to the exclusion of out-of-state sole practicing CPAs from the licensing requirements.
WAC 4-25-747 New Section	For ease of understanding and reference, this proposed rule summarizes the practice privileges requirements of SSB 6604 amending RCW 18.04.350.
WAC 4-25-750	<ul style="list-style-type: none"> • Removes reference to the exclusion of out-of-state sole practicing CPAs from the firm licensing requirements due to the amendment of RCW 18.04.350 by SSB 6604. • SSB 6604 amended RCW 18.04.195 identifying which entities must obtain firm licenses including out-of-state firms exercising practice privileges. Rather than list the requirements in this rule, the board is proposing a new section, WAC 4-25-753, to summarize the firm licensing and practice privilege requirements for firms. • Removes requirement that all owners must be natural persons to conform to RCW 18.04.195 as amended by SSB 6604. RCW 18.04.195, as amended by SSB 6604, requires a simple majority of the ownership of the licensed firm in terms of financial interests and voting rights of all owners shall be held by persons who are licensees or holders of a valid license issued under the Public Accountancy Act or by another state. RCW 18.04.025, as amended by SSB 6604, defines "person" to include limited liability companies and corporations. This amendment will bring the board's rule into conformity with RCW 18.04.195 and allow professional limited liability companies or professional corporations to be registered owners of CPA firms provided the professional limited liability company or professional corporation is registered with the board as a CPA firm. • Changes reference from "natural person" to "individual" to coincide with definition in RCW 18.04.025 changed by SSB 6604. • Specifies who on behalf of the firm must apply for an initial firm license, renewal, or amendment. • Changes the agency's legacy practice of requiring signed forms. This change facilitates the agency's eventual move to online application. • Provides notice that forms are available from the board. • Changes the effective date of licensure as implied by current rule: Current agency guidance is that the license is not valid until the applicant receives a hard copy in the mail. However, once posted to the board database the license is effective. • Includes other minor housekeeping language amendments.
WAC 4-25-752	<ul style="list-style-type: none"> • Adds "initially register" to distinguish the rule from renewal. • Changes reference from "natural person" to "individual" to coincide with definition in RCW 18.04.025 changed by SSB 6604. • Verbiage improvements for clarity. • Changes the agency's legacy practice of requiring signed forms. This change facilitates the agency's eventual move to online registration. • Changes the effective date of registration as implied by current rule: Current agency guidance is that the registration is not valid until the applicant receives a hard copy in the mail. However, once posted to the board database the registration is effective.
WAC 4-25-753 New Section	For ease of understanding and reference, this proposed rule summarizes the firm licensing and practice privilege requirements for firms of RCW 18.04.195, as amended by SSB 6604.
WAC 4-25-756 Repeal	SSB 6604 eliminated the reference to entering the state and the requirement for out-of-state CPAs to notify the Washington state board of intent to practice within Washington state. The rule is unnecessary.

WAC section:	The suggested revision:
WAC 4-25-820	<ul style="list-style-type: none"> • Replaces attest with "audit, compilation and review and other attestation standards." SSB 6604 removed compilation from the definition of attest. The board's quality assurance review program includes monitoring licensees' compliance with compilation standards. • RCW 18.04.195 requires out-of-state firms qualified for practice privileges that perform compilations and other professional services when professional standards require a report expressing assurance to meet the board's QAR program requirements. However, RCW 18.04.350(2), as amended by SSB 6604, eliminates notification. Therefore, out-of-state firms qualified for practice privileges that perform compilations and other professional services when professional standards require a report expressing assurance are exempt from QAR registration requirements. Note: If the firm does not comply in their home state, the board may take disciplinary action against the firm's right to exercise practice privilege. • Clarifies that the registration requirement for participation in the QAR program is applicable only to those licensed firms with an office in this state. • Removes reference that "notice" will be mailed on January 1. This is an agency policy issue not a requirement of regulated persons. • Numbers bulleted list for easy reference.
WAC 4-25-830	<ul style="list-style-type: none"> • Clarifies that the rule is applicable to individuals as opposed to firms. • (1)(a) and (3) replaces "CPA" with "individual licensed to practice in this state." The board's definition of "CPA" includes those individuals exercising practice privileges. This replacement clarifies that those individuals exercising practice privileges are not required to comply with the CPE requirements. • (3) Removes dated implementation language that is no longer necessary. • (8) Changes CPA "waiver" to "extension." This verbiage change more accurately reflects board practice. The board does not waive continuing education requirements but allows additional time to complete the requirements. This conforms to RCW 18.04.215(7) that authorizes the board to renew a certificate or license upon condition that the applicant follow a particular program of CPE. • (8) Adds "resident" to nonlicensee firm owners to clarify and conform with statute, RCW 18.04.195 and board rule, WAC 4-25-790. • Changes the agency's legacy practice of requiring signed forms. This change will facilitate the agency's eventual move to online business. • Provides notice that a form is available.
WAC 4-25-910	<ul style="list-style-type: none"> • Adds to the listing of authorizing sections: RCW 18.04.350, as amended by SSB 6604, that authorizes the board to impose discipline against out-of-state individuals and firms exercising practice privileges. • (1) and (2) removes all references to notification or renewal of practice privileges. SSB 6604 eliminated the notification requirement. • (1), (2), (4), and (5) - adds "resident" to nonlicensee firm owners to clarify and conform with statute and board rule. RCW 18.04.195(12) and board rule, WAC 4-25-750, require "resident" nonlicensee firm owners to register with the board. Therefore, the board may take disciplinary action against a "resident" nonlicensee firm owner for prohibited acts. • (5), (6), (8), (14) - replaces CPA and CPA firm with "licensee." With this change, the rule is also applicable to those out-of-state individuals and firms exercising practice privileges to conform with the amendments to chapter 18.04 RCW by SSB 6604. <p>(4) Verbiage improvements for clarity.</p> <p>(5) Adds references to specific sections of chapter 18.04 RCW for clarify [clarity], indexing and easy reference.</p> <p>(5)(i) Adds CPA-inactive certificateholders to the listing of regulated individuals to whom the board will apply the subsection.</p> <p>(6), (8), (9), (13), and (15) - points the reader to the definition of "licensee" as defined by board rule, WAC 4-25-410, for clarity and easy reference.</p> <p>(6) and (9) - adds employees of regulated persons. This clarifies that a licensee, CPA-inactive certificateholder, or nonlicensee firm owner may not act in a discreditable manner through their employees.</p> <p>(6) Adds to the list of prima facie evidence sanctions imposed by nongovernmental professionally related standard-setting bodies as authorized by RCW 18.04.195 (13)(b). Nongovernmental professionally related standard-setting bodies include the American Institute of CPAs (AICPA), the Washington Society of CPAs (WSCPA), and others recognized by the board.</p>

WAC section:	The suggested revision:
	(8)(b) Replace client with a list of persons from whom the regulated person may not borrow funds. This covers out-of-state individuals and firms providing services to Washington state clients. (9) Adds the listing of regulated persons to whom the board will apply this subsection for clarity. (9) Incorporates disciplinary authority from RCW 18.04.350, as amended by SSB 6604 that authorizes the board to impose discipline against out-of-state individuals and firms exercising practice privileges and RCW 18.04.195. (11) Makes concealing another's violation of the Public Accountancy Act or board rules a separate subsection. (15) Includes persons exercising practice privileges as authorized by RCW 18.04.195 and 18.04.350 as amended by SSB 6604. (15) Eliminates the reference to use a form to report enforcement actions to conform with board rule, WAC 4-25-670. (15) Adds the reference to "timely" notification of sanctions imposed by others to conform with board rule, WAC 4-25-670.

Reasons Supporting Proposal: SSB 6604 that passed through the 2008 legislative session revised the Public Accountancy Act (chapter 18.04 RCW) enhancing the mobility of certified public accountants and requiring the licensing of out-of-state firms providing audit or opinion-type services. The board of accountancy needs to adopt, amend, or repeal rules to implement the revisions to chapter 18.04 RCW. See above.

Statutory Authority for Adoption:

- The board's goal with all of its rule proposals is to:
- Promote clarity.
 - Ensure effective communication.
 - Ensure fairness in interpretation and application of the rules.
 - Promote efficiencies through minimizing gray areas.

WAC section:	Statutory authority for adoption:	Statute being implemented:
WAC 4-25-400	RCW 18.04.055	RCW 18.04.055
WAC 4-25-410	RCW 18.04.055, 18.04.025	RCW 18.04.055, 18.04.025
WAC 4-25-520	RCW 18.04.055, 42.56.070	RCW 18.04.055, 42.56.070
WAC 4-25-521	RCW 18.04.055, 42.56.040	RCW 18.04.055, 42.56.040
WAC 4-25-540	RCW 18.04.055(1), 34.05.220, and 34.05.482	RCW 18.04.055(1), 34.05.220, and 34.05.482
WAC 4-25-550	RCW 18.04.055(16)	RCW 18.04.055(16)
WAC 4-25-551	RCW 18.04.055(16)	RCW 18.04.055(16)
WAC 4-25-610	RCW 18.04.055(2)	RCW 18.04.055(2)
WAC 4-25-620	RCW 18.04.055(2)	RCW 18.04.055(2)
WAC 4-25-622	RCW 18.04.055(2)	RCW 18.04.055(2)
WAC 4-25-626	RCW 18.04.055(2)	RCW 18.04.055(2)
WAC 4-25-630	RCW 18.04.055(2)	RCW 18.04.055(2)
WAC 4-25-631	RCW 18.04.055(2)	RCW 18.04.055(2)
WAC 4-25-640	RCW 18.04.055(2), 18.04.390 (4)(b), 18.04.405(1)	RCW 18.04.055(2), 18.04.390 (4)(b), 18.04.405(1)
WAC 4-25-650	RCW 18.04.055(2)	RCW 18.04.055(2)
WAC 4-25-660	RCW 18.04.055(2)	RCW 18.04.055(2)
WAC 4-25-670	RCW 18.04.195 (13)(b), 18.04.215 (9)(b)	RCW 18.04.195 (13)(b), 18.04.215 (9)(b)
WAC 4-25-735	RCW 18.04.055(12), 18.04.105(4)	RCW 18.04.055(12), 18.04.105(4)
WAC 4-25-745	RCW 18.04.055, 18.04.105(1), 18.04.215(1)	RCW 18.04.055, 18.04.105(1), 18.04.215(1)
WAC 4-25-746	RCW 18.04.180, 18.04.215(6)	RCW 18.04.180, 18.04.215(6)
WAC 4-25-747 New Section	RCW 18.04.350 (2), (3), (4), (5)	RCW 18.04.350 (2), (3), (4), (5)
WAC 4-25-750	RCW 18.04.055(8), 18.04.195, 18.04.205	RCW 18.04.055(8), 18.04.195, 18.04.205
WAC 4-25-752	RCW 18.04.055(13), 18.04.195 (11) and (12)	RCW 18.04.055(13), 18.04.195 (11) and (12)
WAC 4-25-753 New Section	RCW 18.04.055(8), 18.04.195	RCW 18.04.195

WAC section:	Statutory authority for adoption:	Statute being implemented:
WAC 4-25-756 Repeal	RCW 18.04.055, 18.04.350(2)	RCW 18.04.350(2)
WAC 4-25-820	RCW 18.04.055(9)	RCW 18.04.055(9)
WAC 4-25-830	RCW 18.04.055(7), 18.04.215(5)	RCW 18.04.055(7), 18.04.215(5)
WAC 4-25-910	RCW 18.04.055(16), 18.04.195 (11)(d), 18.04.295, 18.04.305, 18.04.350(2)	RCW 18.04.055(16), 18.04.195 (11)(d), 18.04.295, 18.04.305, 18.04.350(2)

Statute Being Implemented: See Statutory Authority above.

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

Name of Proponent: Primarily the Washington state board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard C. Sweeney, CPA, Olympia, Washington, (360) 586-0163.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule(s) will not have more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.-328.

June 3, 2008

Richard C. Sweeney, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-400 What is the authority for and the purpose of the board's rules? The Public Accountancy Act (act), chapter 18.04 RCW, establishes the board as the licensing and disciplinary agency for certified public accountants (CPA), CPA-Inactive certificateholders, CPA firms, and owners of CPA firms. The act authorizes the board to promulgate rules to carry out the purpose of the act, which include:

- Protecting the public interest;
- Enhancing the reliability of information used for guidance in financial transactions or for accounting for or assessing financial status or performance;
- Establishing one set of qualifications to be a licensee of this state;
- Assuring that CPAs practicing in Washington have substantially equivalent qualifications to those practicing in other states;
- Regulating ownership of CPA firms;
- Publishing consumer alerts and public protection information regarding persons and firms who violate the act or board rules; and
- Providing general consumer protection information to the public.

The board's rules, contained in chapter 4-25 WAC, encompass these subjects:

- Definitions;
- Administration of the board;
- Ethics and prohibited practices;

- Entry and renewal requirements;
- Continuing competency; and
- Regulation and enforcement.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-410 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

(1) "**Act**" means the Public Accountancy Act codified as chapter 18.04 RCW.

(2) "**Active individual participant**" means (~~(a natural person)~~) an individual whose primary occupation is at the firm or affiliated entity's business. An individual whose primary source of income from the business entity is provided as a result of passive investment is not an active individual participant.

(3) "**Affiliated entity**" means any entity, entities or persons that directly or indirectly through one or more relationships influences or controls, is influenced or controlled by, or is under common influence or control with other entities or persons. This definition includes, but is not limited to, parents, subsidiaries, investors or investees, coinvestors, dual employment or management in joint ventures or brother-sister entities.

(4) "**Applicant**" means an individual who has applied:

(a) To take the national uniform CPA (~~(exam)~~) examination;

(b) For (~~(a CPA)~~) an initial individual license, (~~(a CPA)~~) an initial firm license, or initial registration as a resident nonlicense owner (~~(, or practice privileges)~~);

(c) To renew (~~(a CPA)~~) an individual license, a CPA-Inactive certificate, a CPA firm license, or registration as a resident nonlicensee firm owner;

(d) To reinstate (~~(a CPA)~~) an individual license, a CPA-Inactive certificate, (~~(or)~~) registration as a resident nonlicensee firm owner, or practice privileges.

(5) "**Attest** (~~(services)~~)" (~~(are services performed by a licensee in accordance with:~~

~~(a) Statements on Auditing Standards and related Auditing Interpretations issued by the American Institute of Certified Public Accountants (AICPA);~~

~~(b) Statements on Standards for Accounting and Review Services and related Accounting and Review Services Interpretations issued by the AICPA;~~

~~(c) Statements on Standards for Attestation Engagements and related Attestation Engagements Interpretations issued by the AICPA; or~~

~~(d) Auditing standards issued by the Public Company Accounting Oversight Board (PCAOB))~~ means providing the following financial statement services:

(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) Any review of a financial statement to be provided in accordance with the statements on standards for accounting and review services;

(c) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements; and

(d) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

(6) **"Audit," "review," and "compilation"** are terms reserved for use by licensees ~~((and individuals granted practice privileges under the act))~~, as defined in subsection (28) of this section.

(7) **"Board"** means the board of accountancy created by RCW 18.04.035.

(8) **"Certificate"** means a certificate as a CPA-Inactive issued in the state of Washington prior to July 1, 2001, as authorized by the act, unless otherwise defined in rule.

(9) **"Certificateholder"** means the holder of a valid CPA-Inactive certificate where the individual is not a licensee and is prohibited from practicing public accounting.

(10) **"Client"** means the person or entity that retains a ~~((CPA firm, a CPA, the CPA's firm, or a firm owner;))~~ licensee, as defined in subsection (28) of this section, a CPA-Inactive certificateholder, a nonlicensee firm owner of a licensed firm, or an entity affiliated ((entity, or the owner of an affiliated entity)) with a licensed firm to perform professional services through other than an employer/employee relationship.

(11) **"Commissions and referral fees"** are compensation arrangements where:

(a) The primary contractual relationship for the product or service is not between the client and ~~((the CPA firm, the CPA, the CPA's firm, or a firm owner;))~~ licensee, as defined in subsection (28) of this section, CPA-Inactive certificateholder, nonlicensee firm owner of a licensed firm, or a person affiliated with a licensed firm;

(b) ~~((The CPA firm, the CPA, the CPA's firm, or a firm owner is))~~ Such persons are not primarily responsible to the client for the performance or reliability of the product or service;

(c) ~~((The CPA firm, the CPA, the CPA's firm, or a firm owner;))~~ Such persons add((s)) no significant value to the product or service; or

(d) A third party instead of the client pays the ~~((CPA firm, the CPA, the CPA's firm, or a firm owner;))~~ persons for the products or services.

(12) **"Compilation"** means providing a service to be performed in accordance with statements on standards for accounting and review services that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(13) **"Contingent fees"** are fees established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

~~((13))~~ (14) **"CPA" or "certified public accountant"** means ~~((a natural person))~~ an individual holding a ~~((CPA))~~ license to practice public accounting under chapter 18.04 RCW or recognized by the board in the state of Washington, including ~~((a person granted))~~ an individual exercising practice privileges pursuant to RCW 18.04.350(2).

~~((14))~~ (15) **"CPA-Inactive"** means ~~((a natural person))~~ an individual holding a CPA-Inactive certificate recognized in the state of Washington. An individual holding a CPA-Inactive certificate is prohibited from practicing public accounting and may only use the CPA-Inactive title if they are not offering accounting, tax, tax consulting, management advisory, or similar services to the public.

~~((15))~~ (16) **"CPE"** means continuing professional education.

~~((16) "Entering the state" means an individual is practicing public accounting in the state of Washington and that individual spends more than ten percent of his or her total work hours on activities conducted within the state of Washington, maintains an office or workstation in the state of Washington or advertises to provide his or her services within the state of Washington.))~~

(17) **"Firm"** means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company or partnership formed under chapters 25.15 and 18.100 RCW and a professional service corporation formed under chapters 23B.02 and 18.100 RCW.

(18) **"Generally accepted accounting principles"** (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

(19) **"Generally accepted auditing standards"** (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

(20) **"Holding out"** means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person ~~((or firm))~~ that the person ~~((or firm))~~ holds a license or practice privileges under the act and that the person ~~((or firm))~~ offers to perform any professional services to the public ~~((as a licensee))~~. "Holding out" shall not affect or limit a person ~~((or firm))~~ not required to hold a license under the act from engaging in practices identified in RCW 18.04.350.

(21) **"Home office"** is the location specified by the client as the address to which a service is directed.

(22) **"Inactive"** means the ~~((person))~~ individual held a valid certificate on June 30, 2001, has not met the current requirements of licensure and has been granted CPA-Inactive certificateholder status through the renewal process established by the board. A CPA-Inactive may not practice public accounting nor may the individual use the CPA-Inactive title if they are offering accounting, tax, tax consulting, management advisory, or similar services to the public.

~~((22))~~ (23) **"Individual"** means a living, human being.

~~((24))~~ **"Independence"** means an absence of relationships that impair a licensee's impartiality and objectivity in rendering ~~((attest))~~ professional services for which a report expressing assurance is prescribed by professional standards.

~~((23))~~ **(25) "Interactive self-study program"** means a CPE program that provides feedback throughout the course.

~~((24))~~ **(26) "IRS"** means Internal Revenue Service.

~~((25))~~ **(27) "License"** means a license to practice public ~~((accountancy))~~ accounting issued to an individual or a firm under the act or the act of another state.

~~((26))~~ **(28) "Licensee"** means an individual or firm holding a valid license to practice public ~~((accountancy))~~ accounting issued under the act, including out-of-state individuals qualifying for practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(b).

~~((27))~~ **(29) "Manager"** means a manager of a limited liability company licensed as a firm under the act.

~~((28))~~ **(30) "NASBA"** means the National Association of State Boards of Accountancy.

~~((29))~~ **"Natural person"** means a living, human being.

~~((30))~~ **(31) "Nonlicensee firm owner"** means ~~((a CPA))~~ an individual, not licensed in any state to practice public accounting, who holds an ownership interest in a firm ~~((owner who is not licensed in any state))~~ permitted to practice public ~~((accountancy))~~ accounting in this state.

~~((31))~~ **(32) "PCAOB"** means Public Company Accounting Oversight Board.

~~((32))~~ **(33) "Peer review"** means a study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee or licensed firm in the practice of public ~~((accountancy))~~ accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under ~~((RCW 18.04.025(14))~~ subsection (38) of this section.

~~((33))~~ **(34) "Person"** means any individual, nongovernmental organization, or business entity regardless of legal form, including a sole proprietorship, firm, partnership, corporation, limited liability company, association, or not-for-profit organization, and including the sole proprietor, partners, members, and, as applied to corporations, the officers.

(35) "Practice privileges" means ~~((an individual))~~ a person:

~~((a))~~ **(a)** Has a principal place of business outside of Washington state;

~~((b))~~ **(b)** Is licensed to practice public accounting in another substantially equivalent state;

~~((c))~~ **(c)** Has notified the board of intent to enter the state;

~~((d))~~ **(d)** Meets the statutory criteria for ~~((a grant))~~ the exercise of privileges as set forth in RCW 18.04.350(2) for individuals or RCW 18.04.195 (1)(b) for firms;

(e) Exercises the right to practice public accounting in this state individually or on behalf of a firm;

~~((f))~~ **(f)** Is subject to ~~((discipline in the state of Washington))~~ the personal and subject matter jurisdiction and disciplinary authority of the board in this state; ~~((and~~

~~((g))~~ **(g)** Must comply with the act and all board rules applicable to Washington state licensees to retain the privilege; and

~~((h))~~ **(h)** Consents to the appointment of the issuing state board of another state as agent for the service of process in any action or proceeding by this state's board against the certificateholder or licensee.

~~((34))~~ **(36) "Principal place of business"** means a single fixed location designated by the individual from which the individual, or licensed firm conducts, directs, controls, ~~((and))~~ or coordinates the majority of his or her business activities.

~~((35))~~ **(37) "Public practice"** or the **"practice of public accounting"** means performing or offering to perform by a person or firm holding itself out to the public as a licensee, or as an individual holding practice privileges, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "audit reports," "review reports," or "compilation reports" on financial statements, or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW 18.04.350(6) by persons or firms not required to be licensed under the act.

~~((36))~~ **(38) "Quality assurance review or QAR"** is the process, established by and conducted at the direction of the board, of study, appraisal, or review of one or more aspects of the ~~((attest))~~ audit, compilation and review, and other attestation work of a licensee or licensed firm in the practice of public ~~((accountancy))~~ accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed.

~~((37))~~ **(39) "Reciprocity"** means board recognition of licenses, permits, certificates or other public accounting credentials of another jurisdiction that the board will rely upon in full or partial satisfaction of licensing requirements.

~~((38))~~ **(40) "Referral fees"** see definition of "commissions and referral fees" in subsection (11) of this section.

~~((39))~~ **(41) "Reports on financial statements"** means any reports or opinions prepared by licensees, based on services performed in accordance with generally accepted auditing standards, standards for attestation engagements, or standards for accounting and review services, as to whether the presentation of information used for guidance in financial transactions or for accounting for or assessing the status or performance of an entity, whether public, private, or governmental, conforms with generally accepted accounting principles or an "other comprehensive bases of accounting," or the presentation and disclosure requirements of other professional standards. "Reports on financial statements" does not include services referenced in RCW 18.04.350(~~((6))~~) (10) provided by persons not holding a license under the act.

~~((40))~~ **(42) "Representing oneself"** ~~((for the purposes of RCW 18.04.295(2) and WAC 4-25-910(3))~~) means having a license, practice privilege, certificate or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a nonlicensee firm owner.

~~((41))~~ **(43) "Rules of professional conduct"** means rules adopted by the board to govern the conduct of ~~((CPAs~~

~~and CPA firms~~) licensees, as defined in subsection (28) of this section, while representing themselves to others as ~~((CPAs))~~ licensees. These rules also govern the conduct of CPA-Inactive certificateholders, nonlicensee firm owners, and persons ~~((granted))~~ exercising practice privileges pursuant to RCW 18.04.350(2).

~~((42))~~ (44) "SEC" means the Securities and Exchange Commission.

~~((43))~~ (45) "**Sole proprietorship**" means a legal form of organization owned by one person meeting the requirements of RCW 18.04.195.

(46) "State" includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands at such time as the board determines that the Commonwealth of the Northern Mariana Islands is issuing licenses under the substantially equivalent standards of RCW 18.04.350 (2)(a).

~~((44))~~ (47) "**Statements on auditing standards (SAS)**" are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

~~((45))~~ (48) "**Statements on standards for accounting and review services (SSARS)**" are standards, promulgated by the AICPA, to give guidance to licensees who are associated with the financial statements of nonpublic companies and issue compilation or review reports.

~~((46))~~ (49) "**Statements on standards for attestation engagements (SSAE)**" are guidelines, promulgated by the AICPA, for use by licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

AMENDATORY SECTION (Amending WSR 02-04-064, filed 1/31/02, effective 3/15/02)

WAC 4-25-520 What public records does the board maintain? The board maintains the following public records:

- (1) A data base of licensees~~((;))~~ and certificateholders ~~((and individuals granted practice privileges));~~
- (2) A data base of CPA examination candidates;
- (3) A data base of registered resident nonlicensee firm owners;
- (4) Board orders;
- (5) Board meeting minutes;
- (6) Board policies;
- (7) Board ~~((rules))~~ rule-making files; and
- (8) Documents dealing with the regulatory, supervisory, and enforcement responsibilities of the board.

In order to obtain a list of individuals under the provisions of RCW 42.17.260(9), educational and professional organizations must use the form provided by the board and apply for and receive recognition by the board. Fees for lists must be paid in advance.

AMENDATORY SECTION (Amending WSR 01-11-126, filed 5/22/01, effective 6/30/01)

WAC 4-25-521 How can I contact the board? The board's administrative office, executive director and staff are

located in Olympia, Washington. You may utilize the following numbers or addresses to contact the board:

- 711 South Capitol Way, Suite 400, Olympia, WA 98501 (physical address);
- P.O. Box 9131, Olympia, Washington 98507-9131 (mailing address);
- 360/753-2586 (telephone);
- 360/664-9190 (fax);
- 800/833-6388 (TT service);
- 800/833-6385 (Telebraille services);
- ~~((webmaster@cpaboard.wa.gov))~~ customerservice@cpaboard.wa.gov (e-mail address); and
- www.cpaboard.wa.gov (web site address).

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-550 Do I need to notify the board if I change my address? Yes. All ~~((CPAs))~~ individuals licensed in this state, CPA-Inactive certificateholders, CPA firms licensed ~~((with the board))~~ in this state, individuals registered with the board as resident nonlicensee firm owners, and applicants must notify the board **in writing** within thirty days of any change of address. Firms licensed in this state must notify the board of any opening, closing, or relocation of the main office or a branch office in this state.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-551 Must I respond to inquiries from the board? Yes. All ~~((CPAs))~~ licensees, including out-of-state individuals qualifying for practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the condition prescribed in RCW 18.04.195 (1)(b), CPA-Inactive certificateholders, ~~((CPA firms licensed with the board, individuals registered with the board as resident))~~ nonlicensee firm owners, and applicants must respond, **in writing**, to board communications requesting a response. Your response must be made within **twenty days of the date** the board's communication is posted in the U.S. mail. Communications from the board to you are directed to the last address you furnished the board.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-540 What rules govern the proceedings before the board? Except where they are inconsistent with the rules in this chapter and subject to additional rules that the board may adopt from time to time, practice and procedure in and before the board are governed by the uniform procedural rules codified in the Washington Administrative Code, chapter 10-08 WAC.

For certain types of decisions, the board has adopted an appeal process authorized by RCW 34.05.482 through 34.05.494 which is called a brief adjudicative proceeding. Decisions to which this appeal process will be applied are:

- (1) Staff denials of initial individual license applications, renewals, or applications for reinstatement;

(2) Staff denials of CPA-Inactive certificate renewals or applications for reinstatement;

(3) Staff denials of practice privilege rights or reinstatements;

(4) Staff denials of initial resident nonlicensee firm owner registration applications, renewals, or applications or requests for reinstatement;

(5) Staff denials of initial firm license applications, renewals, and amendments;

(6) Staff denials of exam applications; and

(7) A proposed suspension as a result of a determination ((whether a licensee, CPA-Inactive certificateholder, or registered nonlicensee firm owner has been certified)) by a lending agency ((and reported for)) of nonpayment or default on a federally or state-guaranteed student loan or service conditional scholarship.

To appeal a decision you must submit your request for a brief adjudicative proceeding, **in writing**, to the board **within thirty days** after the decision by board staff is posted in the U.S. mail. The presiding officer for the brief adjudicative proceedings is the executive director, or designee. After consulting with a board member, the executive director, or designee, renders a decision either upholding or overturning the decision by board staff. This decision, called an order, is mailed to you.

If you are dissatisfied with the order in the brief adjudicative proceeding, you may appeal to the board's vice-chair, or designee. This appeal process is called an administrative review. Your appeal must be received by the board, **orally or in writing, within twenty-one days** after the brief adjudicative proceedings order is posted in the U.S. mail. The vice-chair, or designee, considers your appeal and either upholds or overturns the brief adjudicative proceeding order. The vice-chair's, or designee's, decision, also called an order, is mailed to you.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-610 Which rules govern the conduct of CPAs, CPA-Inactive certificateholders, CPA firms, and firm owners? The rules that govern the conduct of CPAs, CPA-Inactive certificateholders, CPA firms, and firm owners are as follows:

(1) **Professional judgment** - In carrying out their responsibilities, a person representing oneself as a ((CPA)) licensee, CPA-Inactive certificateholder, or nonlicensee firm owner, and/or using the CPA or CPA-Inactive title, ((CPA firms, and firm owners)) and employees of such persons must exercise professional judgment in all their activities.

(2) **The public interest** - A person representing oneself as a ((CPA)) licensee, CPA-Inactive certificateholder, or nonlicensee firm owner, and/or using the CPA or CPA-Inactive title, ((CPA firms, and firm owners)) and employees of such persons must accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism.

(3) **Integrity** - To maintain and broaden public confidence a person representing oneself as a ((CPA)) licensee, CPA-Inactive certificateholder, or nonlicensee firm owner,

and/or using the CPA or CPA-Inactive title, ((CPA firms, and firm owners)) and employees of such persons must perform all professional responsibilities with the highest sense of honesty.

(4) **Objectivity** - Objectivity is to be maintained by a person representing oneself as a ((CPA)) licensee, CPA-Inactive certificateholder, or nonlicensee firm owner, and/or using the CPA or CPA-Inactive title, ((CPA firms, and firm owners)) and employees of such persons. Specifically, ((#)) such persons ((representing oneself as a CPA, CPA-Inactive, or using the CPA or CPA-Inactive title, CPA firms, and firm owners)) must:

(a) Avoid rendering professional services where actual or perceived conflicts of interest exist;

(b) Be independent in fact and appearance when providing attestation services.

(5) **Due care** - A person representing oneself as a ((CPA)) licensee, CPA-Inactive certificateholder, or nonlicensee firm owner, and/or using the CPA or CPA-Inactive title, ((CPA firms, and firm owners)) and employees of such persons must comply with federal and state laws and the profession's technical and ethical standards, maintain competence and strive to improve the quality of services, and discharge professional responsibility to the best of the person's or the firm's ability.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-620 What are the requirements concerning integrity and objectivity? When offering or performing services, ((CPAs)) licensees, CPA-Inactive certificateholders, ((CPA firms, and firm owners)) nonlicensee firm owners, and employees of such persons must:

- Remain honest and objective;

- Not misrepresent facts;

- Not subordinate their judgment to others; and

- Remain free of conflicts of interest unless such conflicts are specifically permitted by board rule or professional standards listed in WAC 4-25-631.

If the language of the professional standards listed in WAC 4-25-631 differ from or conflict with specific board rules, board rules prevail.

AMENDATORY SECTION (Amending WSR 03-24-034, filed 11/25/03, effective 12/31/03)

WAC 4-25-622 When ~~((must a CPA or CPA firm be independent))~~ is independence required? When performing ((attest)) professional services ((CPAs and CPA firms are responsible for maintaining)) for which a report expressing assurance is prescribed by professional standards, licensees, as defined in WAC 4-25-410, CPA-Inactive certificateholders, nonlicensee firm owners, and employees of such persons must evaluate and maintain their independence so that ((attest)) opinions, reports, conclusions, and judgments will be impartial and viewed as impartial by parties expected to rely on ((the attest)) any report expressing assurance by such persons. ((CPAs and CPA firms)) Such persons are required:

(*) (1) To comply with all applicable independence rules, regulations, and the AICPA code of conduct as referenced in and required by WAC 4-25-631; and

(*) (2) To decline ((attest)) attestation engagements where ((the CPA or CPA firm has)) such persons have a relationship that could lead a reasonable and foreseeable user to conclude that ((the CPA or CPA firm is)) such persons are not independent.

Independence is not required when performing a compilation engagement provided the ((CPA's)) report discloses a lack of independence.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-626 What restrictions govern commissions, referral, and contingent fees? For the purposes of this section, the term "licensed firm" includes any affiliated entity(ies) and the term "firm owner" includes the owner(s) of any affiliated entity(ies).

(1) ((A CPA, CPA Inactive certificateholder, a firm owner, or a licensed firm)) Licensees and/or their employees must not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when ((the CPA, CPA Inactive certificateholder, the CPA's or CPA Inactive certificateholder's firm, the owner's firm, or the firm)) such persons perform((s attest services)) compilation, or other professional services for which a report expressing assurance is prescribed by professional standards for that client. This prohibition applies:

(a) During the period in which ((the CPA, CPA Inactive certificateholder, the CPA's or CPA Inactive certificateholder's firm, the owner's firm, or the firm is)) such persons are engaged to perform the ((attest)) attestation services; and

(b) During the period covered by any historical financial statements ((involved in the attest services)) for which an attestation report was issued by such persons.

(2) ((A CPA, CPA Inactive certificateholder, licensed firm, or firm owner who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission must disclose, consistent with the requirements set forth in subsection (7) of this section, that fact to any person or entity to whom the CPA, CPA Inactive certificateholder, the CPA's or CPA Inactive certificateholder's firm, the firm owner, the owner's firm, or the licensed firm recommends or refers a product or service to which the commission relates.

(3) A CPA, CPA Inactive certificateholder, firm owner, or licensed firm accepting a referral fee for recommending or referring any services to any person or entity or who pays a referral fee to obtain a client must disclose, consistent with the requirements set forth in subsection (7) of this section, such acceptance or payment to the client.

(4) A CPA, CPA Inactive certificateholder, firm owner, or licensed firm)) Licensees and/or their employees must also not:

(a) Perform for a contingent fee any professional services for, or receive such a fee from a client for whom ((the CPA, CPA Inactive certificateholder, the CPA's or CPA-

~~Inactive certificateholder's firm, the firm owner, the owner's firm, or the licensed firm performs attest services)) such persons perform compilation, or other professional services for which a report expressing assurance is prescribed by professional standards; or~~

(b) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

((5)) (3) The prohibition ((in subsection (4)(a) of this section)) against contingent fees applies:

(a) During the period in which ((the CPA, CPA Inactive certificateholder, the CPA's or CPA Inactive certificateholder's firm, the owner's firm, or the licensed firm is)) such persons are engaged to perform the ((attest)) attestation services; and

(b) During the period covered by any historical financial statements involved in the ((attest)) attestation services.

((6)) (4) Fees are not considered contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. Fees may vary depending, for example, on the complexity of services rendered.

((7) All CPAs, CPA Inactive certificateholders, firm owners, and licensed firms who accept commission, referral and contingent fee arrangements must)) (5) Any person subject to board rules who is not prohibited by this section from performing services for, or receiving a commission, referral or contingent fee and who are paid or expect to be paid accordingly must disclose that fact to any person or entity to whom such persons recommend or refer a product or service to which the commission, referral or contingent fee relates in the manner prescribed below:

(a) Disclose the arrangement in writing and in advance of client acceptance;

(b) Disclose the method of calculating the fee or amount of fee;

(c) Specify the ((CPA's)) licensee's, CPA-Inactive certificateholder's, or nonlicensee firm owner's role as the client's advisor; and

(d) Obtain the client's consent to the fee arrangement in writing.

((8)) (6) Nothing in this rule shall be interpreted to preclude ((a CPA)) licensees, as defined in WAC 4-25-410, CPA-Inactive certificateholders, or nonlicensee firm owners((, or licensed firm)) from purchasing, selling, or merging all or a portion of a ((CPA practice)) licensed firm or affiliated entity or to require disclosure to clients of terms or payments made or received pursuant to the purchase, sale, or merger.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-630 What are the requirements concerning competence? ((CPAs)) Licensees, CPA-Inactive certificateholders, ((CPA firms, and)) nonlicensee firm owners, and employees of such persons must not undertake to perform any professional service ((as a CPA, CPA Inactive certificateholder, CPA firm, or as a firm owner)) unless ((they)) such persons can reasonably expect to complete the service with professional competence.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-631 Compliance is required with which rules, regulations and professional standards ((~~must a CPA, CPA Inactive certificateholder, CPA firm, and firm owner comply~~))? ((CPAs)) Licensees, including out-of-state individuals qualifying for practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(b), CPA-Inactive certificateholders, CPA firms, ((~~and~~)) nonlicensee firm owners, and employees of such persons must comply with rules, regulations, and professional standards promulgated by the appropriate bodies for each service undertaken. However, if the requirements found in the professional standards listed in this section differ((s)) from the requirements found in specific board rules, board rules prevail.

((~~Such appropriate~~)) Authoritative bodies include, but are not limited to, the Securities and Exchange Commission (SEC); the Public Company Accounting Oversight Board (PCAOB); the Financial Accounting Standards Board (FASB); the Governmental Accounting Standards Board (GASB); the Cost Accounting Standards Board (CASB); the Federal Accounting Standards Advisory Board (FASAB); the U.S. Governmental Accountability Office (GAO); the Federal Office of Management and Budget (OMB); the Internal Revenue Service (IRS); the American Institute of Certified Public Accountants (AICPA), and federal, state, and local audit, regulatory and tax agencies.

Such standards include:

- (1) Statements on Auditing Standards and related Auditing Interpretations issued by the AICPA;
- (2) Statements on Standards for Accounting and Review Services and related Accounting and Review Services Interpretations issued by the AICPA;
- (3) Statements on Governmental Accounting and Financial Reporting Standards issued by GASB;
- (4) Statements on Standards for Attestation Engagements and related Attestation Engagements Interpretations issued by AICPA;
- (5) Statements of Financial Accounting Standards and Interpretations, and Staff Positions issued by FASB, together with those Accounting Research Bulletins and Accounting Principles Board Opinions which are not superseded by action of the FASB;
- (6) Statement on Standards for Consulting Services issued by the AICPA;
- (7) Statements on Quality Control Standards issued by the AICPA;
- (8) Statements on Standards for Tax Services and Interpretation of Statements on Standards for Tax Services issued by the AICPA;
- (9) Statements on Responsibilities in Personal Financial Planning Practice issued by the AICPA;
- (10) Statements on Standards for Litigation Services issued by the AICPA;
- (11) Professional Code of Conduct issued by the AICPA including interpretations and ethics rulings;
- (12) Governmental Auditing Standards issued by the U.S. Governmental Accountability Office;

- (13) AICPA Industry Audit and Accounting Guides;
- (14) SEC Rules, Concept Releases, Interpretative Releases, and Policy Statements;
- (15) Standards issued by the PCAOB; and
- (16) IRS Circular 230.

If the professional services are governed by standards not included in subsections (1) through (16) of this section, ((you)) individuals and firms including persons qualifying for practice privileges under RCW 18.04.350(2) who offer or render professional services in this state or for clients located in this state and the firms rendering professional services in this state or for clients located in this state through such qualifying individuals must:

((~~Justify~~)) (a) Maintain documentation of the justification for the departure from the standards listed in subsections (1) through (16) of this section;

((~~Justify~~)) (b) Determine and document what standards are applicable; and

((~~Justify~~)) (c) Demonstrate compliance with the applicable standards.

((~~Copies of the above standards may be inspected at the board's office.~~))

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-640 What are the requirements concerning records and clients confidential information? (1) **Client:** The term "client" as used throughout this section includes former and current clients. For purposes of this section, a client relationship has been formed when confidential information has been disclosed by a prospective client in an initial interview to obtain or provide professional services.

(2) **Property of the licensee, CPA-Inactive certificateholder, and/or nonlicensee firm owner:** In the absence of an express agreement between ((the)) a licensee, CPA-Inactive certificateholder, and/or nonlicensee firm owner and the client to the contrary, all statements, records, schedules, working papers, and memoranda made by a licensee incident to or in the course of professional service to clients, except reports submitted by a licensee, are the property of the licensee.

(3) **Sale or transfer of client records:** No statement, record, schedule, working paper, or memorandum, including electronic records, may be sold, transferred, or bequeathed without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners, shareholders, or new partners or new shareholders of the licensee, partnership, limited liability company, or corporation, or any combined or merged partnership, limited liability company, or corporation, or successor in interest.

(4) **Confidential client communication or information:** ((A)) Licensees, CPA-Inactive certificateholders, nonlicensee firm owners, or employees of ((a licensee)) such persons must not without the consent of the client or the heirs, successors or personal representatives of the client disclose any confidential communication or information pertaining to the client obtained in the course of performing professional services.

This rule does not:

(a) Affect in any way (~~(a licensee's, CPA-Inactive certificateholder's, firm owner's, or employee of a licensee's)~~) the obligation of those persons to comply with a lawfully issued subpoena or summons;

(b) Prohibit disclosures in the course of a quality review of a licensee's attest, compilation, or other reporting services governed by professional standards;

(c) Preclude (~~(a licensee, CPA-Inactive certificateholder, firm owner, or employee of a licensee)~~) those persons from responding to any inquiry made by the board or any investigative or disciplinary body established by local, state, or federal law or (~~(formally)~~) recognized by the board (~~(-However, a licensee, CPA-Inactive certificateholder, firm owner, or employee of a licensee must not disclose or use to their own advantage any confidential client information that comes to their attention in carrying out their official responsibilities)~~) as a professional association; or

(d) Preclude a review of client information in conjunction with a prospective purchase, sale, or merger of all or part of (~~(a CPA's)~~) the professional practice of public accounting of any such persons.

(5) **Client records:** Licensees, CPA-Inactive certificateholders, (~~(and)~~) nonlicensee firm owners, and employees of such persons must furnish to their client or heirs, successors or personal representatives, upon request and reasonable notice:

(a) A copy of (~~(the licensee's, CPA-Inactive certificateholder's or firm owner's)~~) records, schedules, and electronic documents of those persons, to the extent that such records and schedules would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(b) Any accounting or other records belonging to, or obtained from or on behalf of, the client, that the licensee, CPA-Inactive certificateholder, or nonlicensee firm owner, or employees of such persons removed from the client's premises or received for the client's account, including electronic documents; but (~~(the licensee, CPA-Inactive certificateholder, or firm owner)~~) such persons may make and retain copies of such documents of the client when they form the basis for (~~(work done by the licensee, CPA-Inactive certificateholder, or firm owner)~~) the professional services offered or rendered by those persons.

(c) Licensees, CPA-Inactive certificateholders, (~~(and)~~) nonlicensee firm owners, and/or employees of such persons must not refuse to return client records, including electronic documents, pending client payment of outstanding fees.

(6) **Audit and review record retention requirements:** For a period of seven years after a licensee concludes an audit or review (~~(the licensee)~~) such persons must retain the following records and documents, including electronic records unless hard copies of such exist:

(a) Records forming the basis of the audit or review;

(b) Records documenting audit or review procedures applied;

(c) Records documenting evidence obtained including financial data, analyses, conclusions, and opinions related to the audit or review engagement; and

(d) Records documenting conclusions reached by the licensee in the audit or review engagement.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-650 What acts are considered discreditable? (~~(CPAs)~~) Licensees, CPA-Inactive certificateholders, ((CPA firms, and)) nonlicensee firm owners, and employees of such persons must not:

(*) (1) Commit, or allow others to commit in their name, any act that reflects adversely on their fitness to represent themselves as a CPA, CPA-Inactive certificateholder, CPA firm, or a firm owner;

(*) (2) Seek to obtain clients by the use of coercion, intimidation or harassing conduct; or

(*) (3) Permit others to carry out on their behalf, either with or without compensation, acts which violate the rules of conduct.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-660 What are the limitations on advertising and other forms of solicitation? (1) (~~(CPAs)~~) Licensees, CPA-Inactive certificateholders, ((CPA firms, and)) nonlicensee firm owners, and employees of such persons must not make false, fraudulent, misleading, deceptive or unfair statements or claims regarding their services. Examples of such statements or claims include, but are not limited to, statements or claims which:

(a) Contain a misrepresentation of fact;

(b) Fail to make full disclosure of relevant facts;

(c) Imply your professional services are of an exceptional quality, which is not supported by verifiable facts;

(d) Create false expectations of favorable results;

(e) Imply educational or professional attainments, specialty designations, or licensing recognition not supported in fact; or

(f) Represent that professional services will be performed for a stated fee when this is not the case, or do not disclose variables that may reasonably be expected to affect the fees that will be charged.

(2) If you are a licensee, firm owner, or person qualified for practice privileges under RCW 18.04.350(2) offering or rendering professional services in this state or for clients located in this state or a firm rendering professional services in this state or for clients located in this state through such qualifying individuals, and/or using the CPA title to perform or solicit services via a web site, you must either include a statement on the web site that you hold a current Washington state license, are licensed in a substantially equivalent state to perform such services and are therefore legally authorized to render such services in this state, or provide a name and contact information for an individual in your organization who will respond to inquiries regarding (~~(individual)~~) license information within seven business days. The required information must be clearly visible and prominently displayed.

(3) If you are a CPA-Inactive certificateholder using the CPA-Inactive title to perform or solicit services via a web site you must clearly, visibly, and prominently display the following on the web site:

(a) That you hold a current Washington state CPA-Inactive certificate;

(b) That you do not hold a license to practice public accounting in this state; and

(c) That Washington state law does not allow a CPA-Inactive certificateholder to offer or provide accounting, auditing, attest, reports on financial statements, tax preparation or advisory, management advisory, consulting or similar services to the public in association with the use of the title "CPA," "Certified Public Accountant," "CPA-Inactive," or "Certified Public Accountant-Inactive."

(4) If you are an out-of-state person qualified only for restricted services by law or board order and are offering such restricted professional services either within in this state or for clients located in this state or a firm offering such restricted professional services through such restricted qualifying individuals within this state or for clients located in this state, the web site must clearly, visibly, and prominently display the following:

(a) That such persons offering to perform such services hold a restricted license by the named state in which they have their principal place of business limiting their services to those services enumerated in the restriction of the persons' license;

(b) That such persons are subject to the personal and subject matter jurisdiction of the Washington state board of accountancy and the disciplinary authority of the Washington state board;

(c) That such persons do not hold a license to practice public accounting in this state; and

(d) That Washington state law does not allow such persons to offer or provide any services other than those permitted by the state of licensure and enumerated on the web site.

(5) If you are a ((resident)) nonlicensee firm owner ((of a firm licensed by the board)) and you perform or solicit services in association with the firm via a web site, you must clearly, visibly, and prominently display a statement that you are a nonlicensee owner registered with the Washington state board of accountancy or provide a name and contact information for an individual in your organization who will respond to inquiries regarding registration information within seven business days.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-670 What enforcement actions must be reported to the board? (1) A licensee, CPA-Inactive certificateholder, or nonlicensee firm owner must notify the board, ~~((on a form and))~~ in the manner prescribed by the board ((policy)), within **thirty days** of the issuance of:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee, CPA-Inactive certificateholder, or nonlicensee firm owner com-

mitted a prohibited act that would be a violation of board ethical or technical standards.

(2) ~~((Sole practitioners))~~ Individual licensees and sole proprietors are to report action pursuant to subsection (1) of this section taken against the ~~((sole practitioner, the sole practitioner's))~~ individual's ~~((CPA license, the CPA firm, or the CPA firm))~~ license and/or the license of the sole proprietorship.

(3) Licensed CPA firms with more than one licensed owner are not required to report on action taken against owners, principals, partners, or employees.

(4) If you hold a license or CPA-Inactive certificate issued through the foreign reciprocity provisions of the act, you must notify the board of any investigations undertaken, or sanctions imposed, by a foreign credentialing body against your foreign credential within thirty days of ~~((your))~~ receiving notice that an investigation has begun or a sanction was imposed.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-735 How does a CPA-Inactive certificateholder apply for licensure? CPA-Inactive certificateholders are ~~((natural persons))~~ individuals who held a valid certificate on June 30, 2001, but did not hold a valid Washington state license to practice public accounting on that date. Individuals who did not hold a valid certificate on June 30, 2001 and licensees are not eligible for CPA-Inactive certificateholder status.

(1) If you are a CPA-Inactive certificateholder you:

(a) May not "practice public accounting" as that term is defined in WAC 4-25-410;

(b) Must meet the CPE requirements of WAC 4-25-830(1) and supporting documentation requirements of WAC 4-25-833;

(c) Must comply with the act and board rules;

(d) Must meet the renewal requirements of WAC 4-25-790; and

(e) Must use the title CPA-Inactive and print or display the word "Inactive" immediately following the initials CPA or certified public accountant whenever the initials CPA or certified public accountant is printed on a business card, letterhead, or other document including documents published or transmitted through electronic media, in exactly the same font and font size as the initials CPA or certified public accountant.

(2) If you are a CPA-Inactive certificateholder, to qualify for licensure you must:

(a) Meet the experience requirements of WAC 4-25-730 or have had an approved experience affidavit on file with the board on or before June 30, 2001; and

(b) Meet the CPE requirements of WAC 4-25-830(5).

(3) ~~((To apply for a license you must use the form(s) provided by the board. An application is not complete and cannot be processed until all fees, required documentation, required information, and other documentation deemed necessary by the board are received by the board.))~~ To apply for a license, you must submit to the board a certification that

you meet the requirements of subsection (2) of this section and:

(a) ~~(A complete application form(s) including your certification, under the penalty of perjury, that you have:~~

~~((i)) Have not held out in public practice during the time in which you were a CPA-Inactive certificateholder; and~~

~~((ii) Met the CPE requirements in WAC 4-25-830(5); and)~~

(b) Other required documentation ~~(, required)~~ or information ~~(, and other documentation)~~ deemed necessary by the board.

Board forms are available on the board's web site or upon request for your use.

~~(4) (Upon approval of) An initial application is not complete and cannot be processed until all fees, required information, required documentation, or other documentation or information the board may deem necessary is received by the board. When your application is approved, your license will be mailed to ((the last address you provided to the board)) your address of record.~~

~~(5) Your CPE reporting period and your renewal cycle will remain the same.~~

~~(6) You may not use the title "CPA" or "Certified Public Accountant" until ((you receive notice from the board that your license has been granted. With the exception of out-of-state sole practicing CPAs holding valid practice privileges in Washington state under WAC 4-25-756, attest services may only be offered or provided in a CPA firm licensed by the board and meeting the requirements of WAC 4-25-750)) the date the approval of your license is posted in the board's licensee data base and, therefore, made publicly available for confirmation.~~

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-745 How do I apply for an initial individual CPA license? (1) To qualify to apply for an initial license you must meet the:

~~((1)) (a) Good character requirements of RCW 18.04.105 (1)(a);~~

~~((2)) (b) Education requirements of WAC 4-25-710;~~

~~((3)) (c) Examination requirements of WAC 4-25-720;~~

~~((4)) (d) Experience requirements of WAC 4-25-730;~~

and

~~((5)) (e) If more than four years have lapsed since you passed the examination, you must meet the CPE requirements of WAC 4-25-830 (1)(a) within the thirty-six month period immediately preceding submission of your license application and must include four CPE hours in ethics meeting the requirements of WAC 4-25-830(3) which must be completed within the six month period immediately preceding submission of your license application.~~

~~(2) To apply for an initial license you must ((use the application form(s) provided by the board. You must fully complete the form(s) and submit the form(s), all applicable fees, and all required documentation to the board's office)) fully provide the information above.~~

~~((An initial)) Board form(s) are available on the board's web site or upon request for your use.~~

~~(3) Processing of your application ((is not complete and)) cannot ((be processed)) begin until all ((fees,)) the required information, applicable fees, and required documentation or other documentation or information the board may deem necessary is received by the board. When the processing of your application is complete, your license will be mailed to ((the last address you provided to)) your address of record with the board.~~

~~(4) Your initial license will expire on June 30 of the third calendar year following initial licensure.~~

~~(5) You may not use the title CPA until ((you receive notice from the board that your Washington state CPA license has been approved. With the exception of out-of-state sole practicing CPAs holding valid practice privileges in Washington state under WAC 4-25-756, attest services may only be offered or provided in a CPA firm licensed by the board and meeting the requirements of WAC 4-25-750)) the date the approval of your license is posted in the board's licensee data base and, therefore, made publicly available for confirmation.~~

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-746 How do I apply for a Washington state CPA license if I hold a valid CPA license in another state? Pursuant to RCW 18.04.180 and 18.04.215(6) the board may issue ~~((a)) an individual~~ license through interstate reciprocity if you hold a CPA license to practice public accounting issued by another state provided your state of licensure makes similar provisions for granting reciprocity to holders of a valid certificate or license in this state.

~~(1) To qualify to apply for ((a)) an individual Washington state ((CPA)) license entitling you to use the title CPA and/or offer or render compilation, or other professional services for which a report expressing assurance is prescribed by professional standards in Washington state under the interstate reciprocity provisions you must:~~

~~((1)) (a) Meet the good character requirements of RCW 18.04.105 (1)(a);~~

~~((2)) (b) Meet the CPE requirements in WAC 4-25-830; and~~

~~((3)) (c) You must have:~~

~~((a)) (i) Passed the examination required for issuance of your certificate or license in the other state with grades that would have been passing grades at that time in this state and:~~

~~((b)) (ii) Met all current requirements for licensure at the time you apply; or~~

~~((c)) (iii) Met, at the time of the issuance of your license in the other state, all the requirements applicable at that time to obtain a license in this state; or~~

~~((d)) (iv) Had five years of experience in the practice of public ((accountancy)) accounting within the ten years immediately preceding your filing an application for licensure in this state; or~~

~~((e)) (v) Had three years of experience in the practice of public ((accountancy)) accounting within the five years immediately preceding your filing an application for licensure in this state; or~~

~~((b))~~ (2) The board may accept NASBA's designation of the applicant as substantially equivalent to national standards as meeting the requirements of ~~((a))~~ subsection (1)(c) of this (subsection) section.

(3) To apply for a ~~((Washington state CPA))~~ license under the ~~((interstate))~~ reciprocity provisions you must ~~((use the application form(s) provided by))~~ submit to the board's office information that you are qualified for reciprocity as outlined in subsections (1) and (2) of this section, including a certification that you:

(a) Have not held out in public practice during any time prior to submitting your application unless expressly permitted by board rule then existing; and

(b) Have met the CPE requirements in WAC 4-25-830. ((You must fully complete the form(s) and submit the form(s), all applicable fees, and all required documentation to the board's office:))

Board form(s) are available on the board's web site or upon request for your use.

(4) An initial application is not complete and cannot be processed until all fees, required information, required documentation, or other documentation or information the board may deem necessary is received by the board. ~~((When the processing))~~

(5) At date of approval of your application ((is complete, notification)), it will be posted in the board's licensee data base and, therefore, made publicly available for confirmation.

(6) Your license will be mailed to the ((last)) address ((you provided to)) of record with the board provided at the time of your application, or subsequently changed by formal notice to the board.

~~((Your Washington state CPA license will expire on June 30 of the third calendar year following initial licensure:))~~

(7) Provided no sanctions or investigations by other jurisdictions are in process and you have met the requirements for applying for licensure through interstate reciprocity, upon filing a completed application with the board, you may use the CPA title in Washington state.

~~((With the exception of out-of-state sole practicing CPAs holding valid practice privileges in Washington state under WAC 4-25-756, attest services may only be offered or provided in a CPA firm licensed by the board and meeting the requirements of WAC 4-25-750.~~

~~If you are granted a license under these reciprocity provisions:))~~ (8) Your initial license will expire on June 30 of the third calendar year following initial licensure.

(9) You must notify the board within thirty days if your license or certificate issued by the other jurisdiction has lapsed or otherwise become invalid.

NEW SECTION

WAC 4-25-747 Must a nonresident individual holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state? No. Nonresident individuals holding valid licenses to practice public accounting issued by a substantially equivalent state, may hold out and practice within

Washington state and/or provide public accounting services in person, by mail, telephone, or electronic means to clients residing in Washington state without notice or payment of a fee.

As a condition of this privilege, the nonresident individual is deemed to have consented to:

(1) The personal and subject matter jurisdiction and disciplinary authority of this state's board;

(2) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules, chapter 4-25 WAC;

(3) Cease offering or rendering professional services in this state if the license from the individual's principal place of business becomes invalid;

(4) The appointment of the state board which issued the certificate or license as their agent upon whom process may be served in any action or proceeding by this state's board against the certificateholder or licensee;

(5) Render attest services for a client with a home office in this state only through a firm that has obtained a license from this state (RCW 18.04.195, 18.04.205 and WAC 4-25-750);

(6) Not render any professional services in this state unless the nonresident individual is licensed to render such services in the state of licensure upon which the privilege is contingent;

(7) Cease offering or performing professional services in this state, individually and/or on behalf of a firm, if the license from the state of the individual's principal place of business is no longer valid; and

(8) Cease offering or performing specific professional services in this state, individually and/or on behalf of a firm, if the license from the state of the individual's principal place of business is restricted from offering or performing such specific professional services.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-750 What are the CPA firm licensing requirements? ~~((With the exception of out-of-state sole practicing CPAs holding valid practice privileges in Washington state under WAC 4-25-756, attest services may only be offered or performed in a CPA firm licensed by the board and meeting the requirements of this section. An entity wishing to use "CPA(s)" or "certified public accountant(s)" in the firm name must first obtain a license from the board:))~~ (1)

How may a CPA firm be organized? A CPA firm may be organized as:

(a) A proprietorship;

(b) A partnership;

(c) A professional corporation (PC) or professional service corporation (PS);

(d) A limited liability company (LLC);

(e) A limited liability partnership (LLP); or

(f) Any other form of legal entity authorized by statute for use by a CPA firm.

(2) **What happens when a CPA firm alters its legal form?** A change in the legal form of a firm constitutes a new

firm. Accordingly, the new entity must first obtain a CPA firm license from the board.

(3) What are the ownership requirements for a CPA firm?

- (a) All owners of a licensed CPA firm are required to:
- (i) ~~((Be natural persons;~~
 - ~~((ii)))~~ Fully comply with the provisions of chapter 18.04 RCW; and
 - ~~((iii)))~~ (ii) Be subject to discipline by the board for violations of chapter 18.04 RCW or 4-25 WAC;
- (b) A simple majority of the ownership of the licensed firm in terms of financial interests and voting rights of all partners, owners, or shareholders must be:
- (i) Licensees in this state or holders of a valid license to practice public accountancy issued by another state;
 - (ii) Entitled to practice public accounting in Washington state; and
 - (iii) Principally employed by the corporation or actively engaged in its business.
- (c) At least one general partner of a partnership, one shareholder of a corporation, and one ~~((manager))~~ member of a limited liability company must be a licensee.
- (d) Each CPA proprietor, partner, shareholder or ~~((manager))~~ member who is either a resident or is entering the state and practicing public accountancy in this state must hold a valid Washington state license or practice privileges.
- (e) The principal partner of the partnership and any partner having authority over issuing reports on financial statements must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accounting in this state.
- (f) The principal officer of the corporation and any officer or director having authority over issuing reports on financial statements must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accountancy in this state.
- (g) The ~~((principal manager or))~~ managing member of a limited liability company and any member having authority over issuing reports on financial statements must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accountancy in this state.
- (h) A nonresident CPA owner must be licensed to practice public accountancy in at least one state.
- (i) A nonlicensee owner must:
 - (i) Be ~~((a natural person))~~ an individual;
 - (ii) Meet the good character requirements of RCW 18.04.105 (1)(a);
 - (iii) Comply with the act and board rules; and
 - (iv) Be an active individual participant in the licensed firm or affiliated entities as these terms are defined in WAC 4-25-410; and
 - (j) A resident nonlicensee firm owner must meet the requirements of WAC 4-25-752 and register with the board concurrent with submission of the firm license, or submission of an amendment to the firm license, to the board.
- (4) What are the requirements for the firm's main office and a branch office?** ~~((The))~~ A firm's main office

located in this state must be under the direct supervision of a resident licensee.

A branch office is an office of a licensed CPA firm which is physically separated from the main office. A branch office operates under the ~~((CPA firm))~~ license of the main office.

(5) How ~~((do I))~~ does a firm apply for an initial ~~((CPA))~~ firm license? To apply for an initial ~~((CPA))~~ firm license ~~((you must use the application form(s) provided by the board and))~~ an owner, or designee, must submit or, in the case of an out-of-state firm required to be licensed under RCW 18.04.195 (1)(a), an individual qualified for practice privileges in this state under RCW 18.04.350(2) who has been authorized by the applicant firm to make the application must submit the ~~((completed form(s)))~~ following information, all applicable fees, ~~((all required documentation including the following))~~ and such other information the board deems necessary to the board's office:

- (a) The firm name;
- (b) Address and telephone number of the main office and any branch offices of the firm;
- (c) Name of the managing licensee of the main office located and maintained in this state;
- (d) Resident licensee owners' names ~~((and the states in which they hold CPA licenses))~~;
- (e) Name(s) of all nonlicensee owners~~((;~~
- ~~((Complete registration form(s), including the appropriate fee, for each resident nonlicensee owner))~~; and
- (g) Type of legal organization under which the firm operates.

Board form(s) are available from the board's web site or upon request for your use.

An initial application is not complete and cannot be processed until all fees, required information described in subsection (5) of this section, ~~((and required))~~ or other documentation or information the board may deem necessary is received by the board. ~~((Upon completion of processing, a CPA firm license will be mailed to the main office at the last address provided to the board.))~~ On the date the application is approved, the firm's license will be included in the board's licensee data base and, therefore, made publicly available for confirmation. Confirmation of the approval of the firm's license will be mailed to the address of record with the board provided at the time of the application, or subsequently changed by formal notice to the board.

The initial CPA firm license will expire on June 30 of the third calendar year following initial licensure.

(6) How do I renew a CPA firm license? To renew a CPA firm license ~~((you must use the form(s) provided by the board. In January of the year of expiration, a renewal form(s) will be mailed to the main office at the last address provided to the board. You must submit a properly completed renewal form(s), all applicable fees and all required documentation to the board by April 30th of the year of expiration. Failure to file a complete renewal form for a firm license by April 30 of the year of expiration will result in late fees. The board may waive, reduce, or extend the due date of renewal and/or late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment))~~ an owner or designee or, in the case of an out-

of-state firm required to be licensed under RCW 18.04.195 (1)(a), an individual qualified for practice privileges in this state under RCW 18.04.350(2) who has been authorized by the applicant firm to make the application, must submit the information described in subsection (5) of this section that is current at the date the renewal application is submitted to the board. A renewal application is not complete and cannot be processed until all fees, required information, and required documentation ((is)), and other documentation deemed necessary by the board are received by the board. ((Upon completion of processing, the CPA firm license will be mailed to the main office at the last address provided to the board.))

Board form(s) are available from the board's web site or upon request for your use. Failure to file a complete application for renewal of a firm license by April 30 of the year of expiration will result in late fees. The board may waive, reduce, or extend the due date of renewal and/or late fees based on reasonable cause including, but not limited to, financial hardship, critical illness, or active military deployment.

On the date the renewal application is approved, the firm's license will be included in the board's licensee data base and, therefore, made publicly available for confirmation. Confirmation of the validity of the renewed firm's license status will be mailed to the address of record with the board provided at the time of the application, or subsequently changed by formal notice to the board.

The CPA firm license will expire on June 30 of the third calendar year following the date of renewal.

(7) When and how must ((F)) the firm notify the board of changes in the ((CPA)) licensed firm? ((A CPA)) An individual authorized by the firm must provide the board written notification ((of the following)) and other documentation deemed necessary by the board within ninety days of ((is)) any or all of the following occurrences:

- (a) Dissolution of ((a CPA)) the firm;
- (b) The occurrence of any event that would cause the firm to be in violation of RCW 18.04.195 or this rule; or
- (c) An event that requires an amendment to a firm license.

(8) What events require a firm amendment? ((A CPA)) An individual authorized by the firm must provide written notification to the board, by submitting ((a firm amendment form)) the following information and the appropriate amendment fee, within ninety days of the following ((events' occurrence)):

- (a) Admission or departure of an owner;
- (b) Any change in the name of the firm; or
- (c) Change in the resident managing licensee of the main office in this state.

(9) How long do I have to correct noncompliance with licensure requirements due to a change in ownership or an owner's credentials? ((A CPA)) An individual authorized by the firm must notify the board within ninety days of any change in ownership or lapse of an owner's license, certificate, registration or practice privilege that has caused the firm's license to be out of compliance with licensure requirements and must correct the noncompliance within ninety days of the lapse, unless the board grants a longer time period due to ((individual hardship)) reasonable cause including, but

not limited to, financial hardship, critical illness, or active military deployment.

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 02-04-064, filed 1/31/02, effective 3/15/02)

WAC 4-25-752 How do I initially register to be a resident nonlicensee owner of a licensed firm and with which rules must a nonlicensee firm owner comply? To qualify as a nonlicensee owner of a licensed ((CPA)) firm, you must:

- (1) Be ((a natural person)) an individual;
- (2) Meet the good character requirements of RCW 18.04.105 (1)(a);
- (3) Comply with the act and board rules;
- (4) Be an active individual participant in the licensed firm or affiliated entities as these terms are defined in WAC 4-25-410; and
- (5) If you are a resident of Washington state, you must:
 - (a) File a complete registration with the board; and
 - (b) Demonstrate a passing grade of ninety percent or better on the AICPA professional ethics examination.

((To register as a resident nonlicensee firm owner, you must use the form(s) provided by the board. You need to fully complete the form(s) and submit the form(s), all applicable fees, and all required documentation to the board's office.)) You must submit your registration concurrent with or prior to submission of the firm license application or firm license amendment, pursuant to WAC 4-25-750.

An initial registration is not complete and cannot be processed until all fees, required documentation, required information, and other ((documentation)) information deemed necessary by the board are received by the board. ((When the processing of your registration is complete, your registration will be mailed to the last address you provided to the board.))

If you are a Washington state resident, you may not hold ownership interest in a CPA firm licensed in Washington state until you receive written notice from the board of your Washington state registration number. On the date the registration is approved, your registration number will be included in the board's licensee data base and, therefore, made publicly available for confirmation. Confirmation of the approval of your initial registration will be mailed to the address of record with the board provided at the time of the application, or subsequently changed by formal notice to the board.

Your initial registration will expire on June 30 of the third calendar year following initial issuance of the registration.

((You must submit your registration concurrent with or prior to submission of the firm license application or firm license amendment, pursuant to WAC 4-25-750. If you are a Washington state resident, you may not hold ownership interest in a CPA firm licensed in Washington state until you receive written notice from the board of your Washington state registration number.))

All nonlicensee firm owners are subject to discipline for violation of the act or board rules.

NEW SECTION

WAC 4-25-753 Must a firm holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state? (1) A firm license must be obtained from the board if any of the following criteria apply:

(a) The firm has an office in this state and performs attest or compilation services for clients in this state;

(b) The firm has an office in this state and, by any means, represents the firm to the public that the firm is a firm of certified public accountants; or

(c) The firm is licensed in another state and performs audit or examination services for clients with a home office in this state.

(2) A firm license is not required to perform other professional services in this state, including compilation, review and other services for which reporting requirements are provided in professional standards, if the firm complies with the following:

(a) The firm performs such services through individuals with practice privileges under RCW 18.04.350(2) and WAC 4-25-747 or reciprocal license under RCW 18.04.180 and 18.04.183 and board rules;

(b) The firm is licensed to perform such services in the state in which the individuals with practice privileges have their principal place of business; and

(c) The firm meets the board's quality assurance program requirements, when applicable.

(3) As a condition of this privilege, the nonresident firm is deemed to have consented to:

(a) The personal and subject matter jurisdiction and disciplinary authority of this state's board;

(b) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules, chapter 4-25 WAC;

(c) Cease offering or rendering professional services in this state through a specific individual or individuals if the license(s) of the individual(s) through whom the services are offered or rendered becomes invalid;

(d) Cease offering or rendering specific professional services in this state through an individual or individuals if the license(s) from the state(s) of the principal place of business of such individual(s) is restricted from offering or performing such specific professional services;

(e) The appointment of the state board which issued the firm license as their agent upon whom process may be served in any action or proceeding by this state's board against firm licensee;

(f) Not render audit or examination services for a client with a home office in this state unless the firm that has obtained a license from this state (RCW 18.04.195 and 18.04.295) and this section; and

(g) Not render any professional services in this state through nonresident individual(s) who are not licensed to render such services by the state(s) in which the principal place of business of such individual(s) is (are) located.

AMENDATORY SECTION (Amending WSR 07-14-036, filed 6/26/07, effective 7/27/07)

WAC 4-25-820 What are the requirements for participating in quality assurance review (QAR)? (1) **Purpose.** The Washington state board of accountancy is charged with protection of the public interest and ensuring the dependability of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental. The purpose of the QAR program is to monitor licensees' compliance with ~~((attest))~~ audit, compilation and review, and other attestation standards.

(2) Out-of-state firms otherwise qualified for practice privileges under RCW 18.04.195 (1)(b) are responsible for compliance with this section. These firms are exempt from the registration requirements set forth in this section.

(3) Structure and implementation.

(a) The board will annually appoint a quality assurance review committee to perform the following functions:

(i) Review of financial statements and the reports of licensees thereon to assess their compliance with applicable professional standards;

(ii) Review of licensees' reports and information covered by those reports for conformity with applicable professional standards;

(iii) Improvement of reporting practices of licensees through education and rehabilitative measures; and

(iv) Such other functions as the board may assign to the committee.

(b) Once every three years the board ~~((will))~~ ~~((each))~~ a licensed firm with an office in this state to participate in the board's quality assurance review program. ~~((Participating firms will be notified by the board in January of the reporting requirement, and))~~ Participating firms will be required to submit a quality assurance review status form, along with the appropriate fee, by the following April 30th. Failure to submit a complete quality assurance review status form postmarked by the April 30th due date, will result in the assessment of late fees. The board may waive late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

(c) Each participating firm shall submit, for each of its offices, one licensee report and the information covered by that report, for each of the following types of service or any other service the board determines:

~~((★))~~ (i) Compilation report on historical financial statements;

~~((★))~~ (ii) Review report on historical financial statements;

~~((★))~~ (iii) Audit report on historical financial statements;

~~((★))~~ (iv) Agreed-upon procedures;

~~((★))~~ (v) Forecasts;

~~((★))~~ (vi) Internal controls;

~~((★))~~ (vii) Performance audits; and

~~((★))~~ (viii) Projections.

(d) A participating firm shall select these reports from all reports prepared during the twelve months preceding the date of board request or, if no reports have been issued within the last twelve months, from all reports during the preceding three years.

~~(e)~~ If reports issued by all offices of a firm are reviewed and issued in a controlled, centralized process, only one each of the type of licensee reports, including the information covered by the reports, specified above need be submitted by the firm as a whole.

~~((f))~~ ~~(f)~~ The board may exempt from the requirement of (c) of this subsection any firm that has participated in a board-approved peer review program within the three years immediately preceding the date of board request.

~~((g))~~ ~~(g)~~ Firms requesting exemption must submit a copy of an unmodified report, letter of comments, response to letter of comments, if applicable, and letter of acceptance from the reviewing organization. Firms that receive modified peer review reports may request exemption, but must submit copies of such reports and related correspondence, at the discretion of the board, for consideration on an individual basis.

~~((h))~~ ~~(h)~~ Any documents submitted in accordance with (c) of this subsection may have the name of the client, the client's address, and other identifying factors omitted, provided that the omission does not render the type or nature of the entity undeterminable. Dates may not be omitted.

~~((i))~~ ~~(i)~~ Reports submitted to the committee pursuant to (c) of this subsection and comments of reviewers, the committee and the board on such reports or workpapers relating thereto, shall also be preserved in confidence except to the extent that they are communicated by the board to the licensees who issued the reports or disclosure is required under administrative procedure rules or by direction of a court of law.

~~((j))~~ ~~(j)~~ The committee's review of the licensee reports and other information covered by those reports shall be directed toward the following:

(i) Presentation of the financial statements covered by the licensee reports and/or other information covered by those reports in conformity with applicable professional standards for presentation and disclosure;

(ii) Compliance by licensees with applicable reporting standards; and

(iii) Compliance by licensees with the rules of the board and other regulations relating to the practice of public accounting.

~~((k))~~ ~~(4)~~ If the board determines that a report and/or other information covered by the report referred to the board by the committee is substandard or seriously questionable with respect to applicable professional standards, the board may take one or more of the following actions:

~~((a))~~ ~~(a)~~ Send the licensee a letter of comment detailing the perceived deficiencies and require the licensee to develop quality control procedures to ensure that similar occurrences will not occur in the future;

~~((b))~~ ~~(b)~~ Require any licensee who had responsibility for issuance of a report, or who substantially participated in preparation of the report and/or related workpapers, to successfully complete specific courses or types of continuing education as specified by the board;

~~((c))~~ ~~(c)~~ Require that the licensee responsible for a substandard report submit all or specified categories of its reports to a preissuance review in a manner and for a duration prescribed by the board. The cost of the preissuance review will be at the firm's expense;

~~((d))~~ ~~(d)~~ Require the licensee responsible for a substandard report to submit to a peer review conducted in accordance with standards acceptable to the board. The cost of the peer review will be at the licensee's expense;

~~((e))~~ ~~(e)~~ Require the licensee responsible for substandard work to submit to on-site field review or other investigative procedures of work product and practices by board representatives in order to assess the degree or pervasiveness of substandard work. The board may assess the costs of such field review or procedures to the licensee if the results of such investigative efforts substantiate the existence of substandard work product;

~~((f))~~ ~~(f)~~ Initiate an investigation pursuant to RCW 18.04.295, 18.04.305, and/or 18.04.320.

~~((g))~~ ~~(5)~~ The board may solicit and review licensee reports and/or other information covered by the reports from clients, public agencies, banks, and other users of such information.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-830 What are the CPE requirements for individuals? (1) The following CPE is required for individuals during the three calendar year period prior to renewal:

(a) ~~((CPAs))~~ An individual licensed to practice in this state must complete 120 CPE credit hours which is limited to 24 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section;

(b) A CPA-Inactive certificateholder or a resident non-licensee firm owner must complete 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section; and

(c) Individuals holding practice privileges are exempt from the CPE requirements of this section.

(2) **CPE requirements for renewal of a license that was issued less than three years before the end of a CPA-Inactive certificate renewal cycle:** When you convert your status from a CPA-Inactive certificateholder to a licensee, your CPE reporting period (the three calendar year period prior to renewal) and renewal cycle will remain the same. The CPE requirements for renewal are as follows:

(a) If your license was issued during the first calendar year of your CPE reporting period, you must have completed 80 CPE credit hours which is limited to 16 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(b) If your license was issued during the second calendar year of your CPE reporting period, you must have completed 40 CPE credit hours which is limited to 8 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(c) If your license was issued during the third calendar year of your CPE reporting period, you must have completed 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(3) **Ethics and regulations applicable to practice in Washington state:** During each CPE reporting period all ~~((CPAs))~~ individuals licensed in this state, individual CPA-Inactive certificateholders in this state, and resident nonlicensee firm owners are required to complete four CPE credit hours in ~~((professional))~~ approved ethics and regulations with specific application to the practice of public accounting in Washington state ~~((; however, for CPE reporting periods beginning January 1, 2006, and later, during each CPE reporting period all CPAs, CPA-Inactive certificateholders, and resident nonlicensee firm owners are required to complete four hours in board approved ethics and regulations CPE))~~. In order to be approved by the board, the CPE sponsor or instructor must submit documentation associated with the ethics and regulations CPE to the board for approval and the sponsor or instructor must obtain written approval from the board. The ethics and regulations CPE must cover all of the following topics, and the ethics and regulations CPE must substantially address these topics:

(a) Chapter 18.04 RCW and chapter 4-25 WAC. The CPE must include general level information on the Public Accountancy Act, the board's rules, policies, and the rule-making process.

(b) WAC 4-25-521 How can I contact the board?

(c) WAC 4-25-550 Do I need to notify the board if I change my address?

(d) WAC 4-25-551 Must I respond to inquiries from the board?

(e) WAC 4-25-600 Series—Ethics and prohibited practices. The CPE must include detailed information on each rule and all related board policies.

(f) WAC 4-25-800 Series—Continuing competency. The CPE must include detailed information on each rule and all related board policies.

(g) WAC 4-25-910 What are the bases for the board to impose discipline?

(h) AICPA Code of Conduct: The CPE must include general level information on the AICPA Code of Conduct.

(i) Variances or key differences between Washington state law (chapter 18.04 RCW and chapter 4-25 WAC) and the AICPA Code of Conduct.

(j) Other topics or information as defined by board policy.

(4) **CPE requirements to renew a retired license or CPA-Inactive certificate:**

(a) In order to renew ~~((your))~~ a retired license you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the renewal application is received by the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your renewal application was received by the board.

(b) In order to renew ~~((your))~~ a retired CPA-Inactive certificate, you must meet the CPE requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your renewal application was received by the board.

(5) **CPE requirements for a CPA-Inactive certificate-holder to either qualify to apply for a license or return to**

their previously held status as a licensee: If you hold a valid CPA-Inactive certificate and you wish to apply for a license or you want to return to your previously held status as a licensee, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date your application is received by the board.

(6) **Reinstatement of a lapsed, suspended, or revoked license, certificate, or registration as resident nonlicensee firm owner:**

(a) If you seek to reinstate a lapsed, suspended, or revoked license, you must satisfy the requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the application for reinstatement was received by the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your application for reinstatement was received by the board.

(b) If you seek to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must satisfy the requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your application for reinstatement was received by the board.

(7) **Reciprocity:** If you are applying for an initial Washington state CPA license under the reciprocity provisions of the act, you must satisfy the requirements in subsection (1)(a) of this section within the thirty-six month period immediately preceding the date your application was received by the board. For purposes of initial licensure, you do not need to satisfy the ethics requirements of subsection (1)(a) of this section. Thereafter, in order to renew your Washington state license, you must comply with all the renewal requirements in subsection (1)(a) of this section.

(8) **CPE ~~((waiver))~~ extension request:** In order to renew your license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner you must complete the required CPE by the end of the CPE reporting period preceding your renewal unless you can demonstrate your failure to meet the CPE requirements was due to reasonable cause. The board may provide limited extensions to the CPE requirements for reasons of individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment. You must request such an extension in writing ~~((on the form(s) provided by the board))~~. The request must include justification for the request and identify the specific CPE you plan to obtain to correct your CPE deficiency.

A form useful for this purpose is available from the board's web site or will be provided to you upon request.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-910 What are the bases for the board to impose discipline? RCW 18.04.055, 18.04.295, ~~((and))~~ 18.04.305, and 18.04.350 authorize the board to revoke, suspend, refuse to issue, renew, or reinstate an individual or firm license, CPA-Inactive certificate, persons exercising practice privileges in this state, or registration as a resident nonlic-

ensee firm owner; impose a fine not to exceed thirty thousand dollars; recover investigative and legal costs; impose full restitution to injured parties; impose remedial sanctions; impose conditions precedent to renew; or prohibit a resident nonlicensee from holding an ownership interest in a firm licensed in this state for the specific acts listed below.

The following are specific examples of prohibited acts that constitute grounds for discipline under RCW 18.04.295 ~~(and)~~, 18.04.305, and 18.04.350. The board does not intend this listing to be all inclusive.

(1) Fraud or deceit in applying for the CPA examination, obtaining a license, registering as a resident nonlicensee firm owner, ~~((submitting notification of practice privileges,))~~ or in any filings with the board.

(2) Fraud or deceit in renewing or requesting reinstatement of a license, CPA-Inactive certificate, registration as a resident nonlicensee firm owner ~~((, or practices privileges))~~.

(3) Cheating on the CPA exam.

(4) Making a false or misleading statement in support of another ~~((s))~~ person's application or request to:

(a) Take the national uniform CPA examination ~~((, application for))~~;

(b) Obtain a license ~~((;))~~ or registration required by the act or board;

(c) Reinstate or modify the terms of a revoked or suspended license, certificate, or registration as a resident nonlicensee firm owner ~~((, submission of notification of))~~ in this state;

(d) Reinstate revoked or suspended practice privileges ~~((, renewal, or reinstatement))~~ of an individual or firm licensed in another state.

(5) Dishonesty, fraud, or negligence while representing oneself as a ~~((CPA))~~ licensee, CPA-Inactive certificateholder, ~~((CPA firm,))~~ or a resident nonlicensee firm owner including but not limited to:

(a) Practicing public accounting in Washington state prior to obtaining a license required by RCW 18.04.215 or 18.04.195;

(b) Offering or rendering public accounting services in this state by an out-of-state individual or firm not qualified for practice privileges under RCW 18.04.195 or 18.04.350 (2);

(c) Making misleading, deceptive, or untrue representations;

~~((e))~~ (d) Engaging in acts of fiscal dishonesty;

~~((d))~~ (e) Purposefully, knowingly, or negligently failing to file a report or record, or filing a false report or record, required by local, state, or federal law;

~~((e))~~ (f) Unlawfully selling unregistered securities;

~~((f))~~ (g) Unlawfully acting as an unregistered securities salesperson or broker-dealer;

~~((g))~~ (h) Discharging a trustee's duties in a negligent manner or breaching one's fiduciary duties; or

~~((h))~~ (i) Withdrawing or liquidating, as fees earned, funds received by a ~~((CPA))~~ licensee, ~~((CPA firm))~~ CPA-Inactive certificateholder, or a resident nonlicensee firm owner from a client as a deposit or retainer when the client contests the amount of fees earned, until such time as the dispute is resolved.

(6) The following shall be prima facie evidence that a ~~((CPA))~~ licensee, as defined in WAC 4-25-410, CPA-Inactive certificateholder, ~~((CPA firm, or))~~ a nonlicensee firm owner, or the employees of such persons has engaged in dishonesty, fraud, or negligence while representing oneself as a ~~((CPA))~~ licensee, as defined in WAC 4-25-410, CPA-Inactive certificateholder, ~~((CPA firm, or))~~ a nonlicensee firm owner, or an employee of such persons:

(a) An order of a court of competent jurisdiction finding that the ~~((CPA, CPA Inactive certificateholder, CPA firm, or the nonlicensee firm owner to have))~~ person or persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on ~~((a CPA's, CPA Inactive certificateholder's, CPA firm's, or nonlicensee firm owner's))~~ the person's fitness to represent himself ~~((or))~~, herself, or itself as a ~~((CPA))~~ licensee, as defined in WAC 4-25-410, CPA-Inactive certificateholder ~~((s, CPA firm))~~, or a nonlicensee firm owner;

(b) An order of a federal, state, local or foreign jurisdiction regulatory body, or ~~((the))~~ a PCAOB, finding that the ~~((CPA))~~ licensee, as defined in WAC 4-25-410, CPA-Inactive certificateholder, ~~((CPA firm,))~~ or nonlicensee firm owner ~~((to have))~~, or employee of such persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on ~~((a CPA's, CPA Inactive certificateholder's, the nonlicensee firm owner's, or CPA firm's))~~ the person's fitness to represent himself, herself, or itself as a ~~((CPA))~~ licensee, as defined in WAC 4-25-410, a CPA-Inactive certificateholder, or a nonlicensee firm owner ~~((, or a CPA firm))~~;

(c) Sanctions and orders entered against such persons by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee, CPA-Inactive certificateholder, or nonlicensee firm owner;

(d) Cancellation, revocation, suspension, or refusal to renew the right to practice as a ~~((CPA))~~ licensee, ~~((CPA Inactive))~~ certificateholder, or a nonlicensee firm owner by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state; or

~~((d))~~ (e) Suspension or revocation of the right to practice before any state agency, federal agency, or the PCAOB.

(7) Any state or federal criminal conviction or commission of any act constituting a crime under the laws of this state, or of another state, or of the United States.

(8) A conflict of interest such as:

(a) Self dealing as a trustee, including, but not limited to:

(i) Investing trust funds in entities controlled by or related to the trustee;

(ii) Borrowing from trust funds, with or without disclosure; and

(iii) Employing persons related to the trustee or entities in which the trust has a beneficial interest to provide services to the trust (unless specifically authorized by the trust creation document).

(b) Borrowing funds from ~~((a client))~~ an individual residing in this state, not-for-profit organization, or nongovernmental commercial client required to register with the appropriate Washington state agency to conduct business in this state unless the client is in the business of making loans of the

type obtained by the ~~((CPA))~~ licensee, as defined in WAC 4-25-410, CPA-Inactive certificateholder, ~~((CPA firm,))~~ or nonlicensee firm owner and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness.

(9) A violation of the Public Accountancy Act or failure to comply with a board rule contained in chapter 4-25 WAC, by a licensee, defined in WAC 4-25-410, CPA-Inactive certificateholder, or employees of such persons of this state or a licensee of another substantially equivalent state qualified for practice privileges, including but not limited to:

(a) An individual exercising the practice privileges authorized by RCW 18.04.350(2) when not qualified;

(b) Submission of an application for firm license on behalf of a firm licensed in another state and required to obtain a license under RCW 18.04.195 (1)(a)(iii) by an individual not qualified under RCW 18.04.350(2) or authorized by the firm to make such application;

(c) Failure of an individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing professional services in this state, individually or on behalf of a firm, when the license from the state of the individual's principal place of business is no longer valid;

(d) Failure of an individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing specific professional services in this state, individually or on behalf of a firm, when the license from the state of the individual's principal place of business has been restricted from performing those specific services;

(e) Failure of a firm not licensed in this state to cease offering or performing professional services in this state through one or more individuals whose license from the state of those individuals' principal place(s) of business is (are) no longer valid or is (are) otherwise restricted from performing the specific engagement services;

(f) Failure of a licensed firm to comply with the ownership requirements of RCW 18.04.195 within a reasonable time period, as determined by the board;

(g) Failure of a firm licensed in this state or another state to comply with the board's quality assurance program requirements, when applicable.

(10) Violation of one or more of the rules of professional conduct included in chapter 4-25 WAC ~~((~~¶~~))~~.

(11) Concealing another's violation of the Public Accountancy Act or board rules.

~~((H))~~ (12) Failure to cooperate with the board by failing to:

(a) Furnish any papers or documents requested or ordered to produce by the board;

(b) Furnish in writing a full and complete explanation related to a complaint as requested by the board;

(c) Respond to an inquiry of the board;

(d) Respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding.

~~((I))~~ (13) Failure to comply with an order of the board.

~~((13))~~ A CPA's, CPA-Inactive certificateholder's, or nonlicensee firm owner's) (14) Adjudication of a licensee, as defined by WAC 4-25-410, CPA-Inactive certificateholder,

or a nonlicensee firm owner as mentally incompetent is prima facie evidence that the ~~((CPA, CPA-Inactive certificateholder, or nonlicensee firm owner))~~ person lacks the professional competence required by the rules of professional conduct.

~~((14))~~ (15) Failure of a licensee, as defined by WAC 4-25-410, CPA-Inactive certificateholder, ~~((~~¶~~))~~ nonlicensee firm owner, or person exercising practice privileges authorized by RCW 18.04.195 and 18.04.350 to timely notify the board, ~~((on a form and))~~ in the manner prescribed by the board ~~((policy, within thirty days))~~, of any of the ~~((issuance ~~¶~~))~~ following:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; ~~((~~¶~~))~~

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee, CPA-Inactive certificateholder, or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards.

WSR 08-12-083

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 4, 2008, 8:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-109.

Title of Rule and Other Identifying Information: The department is amending WAC 388-414-0001 Do I have to meet all eligibility requirements for Basic Food?

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

Date of Intended Adoption: Not earlier than July 9, 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 schilse@dshs.wa.gov, fax (360) 664-6185, on July 8, 2008, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by July 1, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current rule describes the circumstances where a Basic Food assistance

unit does not have to meet all eligibility requirements for Basic Food because they meet requirements for another program. The proposed amendment extends categorical eligibility to households with income up to the monthly value of 200% of the federal poverty guidelines to implement a legislative directive to the department under section 207 (e)(13) of HB 2687. This change, in effect, increases the gross and net income for the Basic Food program to 200% of the federal poverty guidelines to the maximum extent allowable under federal law.

Reasons Supporting Proposal: The proposed changes are necessary to implement a legislative directive to the department under section 207 (e)(13) of HB 2687 for Basic Food as allowed under federal regulations for the food stamp program.

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

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.2(j), 7 C.F.R. 273.8(a), 7 C.F.R. 273.9(a), 7 C.F.R. 273.10.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Camp, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it establishes which assistance units are categorically eligible for Basic Food and do not have to meet the normal gross and net income test for the food stamp program. The proposed change extends the gross and net income test for Basic Food to the maximum extent allowable under federal law. This directly impacts household's eligibility for benefits through the Washington Basic Food program.

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

May 29, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-081, filed 11/15/05, effective 1/1/06)

WAC 388-414-0001 Do I have to meet all eligibility requirements for Basic Food? (1) What is "categorically eligible" (CE)?

(a) Being categorically eligible (CE) means that you have already met requirements for the program. If you are CE, you do not have to meet every program requirement to be eligible for Basic Food.

(b) If your assistance unit (AU) is CE, you automatically meet the following requirements for Basic Food:

(i) Residency under WAC 388-468-0005;

(ii) Countable resource limit under WAC 388-470-0005;

(ii) Maximum gross monthly income under WAC 388-478-0060; and

(iv) Maximum net monthly income under WAC 388-478-0060.

(c) If your AU is CE and the information is available from another program, you do not need to provide the following for Basic Food:

(i) Social Security number information under WAC 388-476-0005; and

(ii) Sponsored alien information under WAC 388-450-0155.

(d) Being CE does not mean that your AU is guaranteed to get Basic Food benefits. If your AU is CE:

(i) You must still meet the other Basic Food program requirements under WAC 388-400-0040; and

(ii) If you meet the other program requirements, we must budget your AU's income to determine the amount of benefits your AU will receive.

(2) Who is categorically eligible for Basic Food?

Your Basic Food AU is CE when(=) your AU's income that we do not exclude under WAC 388-450-0015 is at or under two hundred percent of the federal poverty guidelines we use for department programs.

(a) ~~((Every member of your AU gets either general assistance (GA), Alcohol and Drug Abuse Treatment Support Act (ADATSA), or Supplemental Security Income (SSI) cash benefits on their own behalf;))~~ The federal government publishes the federal poverty guidelines on the health and human services website. These are currently posted at <http://aspe.hhs.gov/poverty/index.shtml>.

(b) ~~((Any member of your AU gets or is authorized to get payments from the following programs because we have determined that the entire AU benefits from someone receiving the assistance:~~

~~(i) Temporary assistance for needy families (TANF) cash assistance;~~

~~(ii) State family assistance (SFA); or~~

~~(iii) Diversion cash assistance (DCA). You are CE for the month you receive DCA and the three following months as long as you have one adult relative caretaker with a dependent child in the Basic Food AU.~~

~~(c) Your AU's income that we don't exclude under WAC 388-450-0015 is not over the maximum gross monthly income under WAC 388-478-0060. If your income is not over the gross monthly income limit, we provide your AU information about department programs and referral to resources in the community.)~~ The department uses the monthly value of the income guidelines for the current year beginning the first of April every year.

~~(c) If your income is not over two hundred percent of the federal poverty guidelines, we provide your AU information about the department programs and resources in the community.~~

(3) Who is not CE even if my AU meets the above criteria?

(a) Even if your AU is CE, members of your AU are not eligible for Basic Food if they:

(i) Are not eligible because of their alien or student status;

- (ii) Were disqualified from Basic Food under WAC 388-444-0055 for failing work requirements;
 - (iii) Are not eligible for failing to provide or apply for a Social Security number;
 - (iv) Receive SSI in a cash-out state (state where SSI payments are increased to include the value of the client's food stamp allotment); or
 - (v) Live in an institution not eligible for Basic Food under WAC 388-408-0040.
- (b) If a person in your AU is not eligible for Basic Food, we do not include them as an **eligible member** of your CE AU.
- (c) Your AU is not CE if:
- (i) Your AU is not eligible because of striker requirements under WAC 388-480-0001;
 - (ii) Your AU is ineligible for knowingly transferring countable resources in order to qualify for benefits under WAC 388-488-0010;
 - (iii) Your AU refused to cooperate in providing information that is needed to determine your eligibility;
 - (iv) The head of household for your AU failed to meet work requirements; or
 - (v) Anyone in your AU is disqualified because of an intentional program violation under WAC 388-446-0015.

WSR 08-12-084
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 4, 2008, 8:03 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: The department is amending WAC 388-310-1600 WorkFirst—Sanctions and 388-310-1800 WorkFirst—Post employment services.

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

Date of Intended Adoption: Not earlier than July 9, 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 July 8, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by July 1, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is

proposing to change the WAC reference related to working connections child care. The department of early learning (DEL) has recently changed the title number of chapter 388-290 WAC, Working connections child care to chapter 170-290 WAC.

Reasons Supporting Proposal: These changes are necessary to update working connections child care references and to provide accurate information to the public. This amendment does not change rules' effect.

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

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Olga Walker, 712 Pear Street S.E., Olympia, WA 98501, (360) 725-4641.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed changes do not have an economic impact on small businesses; it only provides updated and accurate information to the public.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328(5):

Subsection (b)(ii) Rules relating only to internal governmental operations that are not subject to violation by a non-governmental party;

Subsection (b)(iv) Rules that only correct ... name changes...without changing its effect; and

Subsection (b)(vii): "[t]his section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

May 30, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-09-081, filed 4/17/07, effective 6/1/07)

WAC 388-310-1600 WorkFirst—Sanctions. (1)
What WorkFirst requirements do I have to meet?

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) What happens if I don't meet WorkFirst requirements?

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do.

(b) You will have ten days to contact us so we can talk with you about the situation. You can contact us in writing, by phone, by going to the appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation. We will use existing information to decide whether:

- (i) You were unable to do what was required; or
- (ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an IRP to help you with your situation, including referrals to appropriate services.

(e) Before you are placed in sanction:

(i) We will have a case staffing which is a meeting with you, your case manager and other people involved in your case to review your situation and make plans. At your case staffing, we will ensure you were offered the opportunity to participate, discuss what happens if you stay in sanction, discuss how participation helps you and your family and discuss how to end your sanction. You will be notified when your case staffing is going to happen so you can attend. You can invite anyone you want to come with you to your case staffing.

(ii) Effective September 1, 2006, supervisory staff will review your case and must approve the sanction.

(f) If you are sanctioned, we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

(3) What is considered a good reason for not being able to do what WorkFirst requires?

You have a good reason if it was not possible to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter ~~(388-290)~~ 170-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(iv) You could not locate other care services for an incapacitated person who lives with you and your children.

(d) You had an immediate legal problem, such as an eviction notice; or

(e) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(4) What if we decide that you did not have a good reason for failing to meet WorkFirst requirements?

If we decide that you did not have a good reason for failing to meet WorkFirst requirements, we will send you a letter that tells you:

- (a) What you failed to do;
- (b) That you are in sanction status;
- (c) Penalties that will be applied to your grant;
- (d) When the penalties will be applied;
- (e) How to request a fair hearing if you disagree with this decision; and
- (f) How to end the penalties and get out of sanction status.

(5) What is sanction status?

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't comply and you can't prove that you had a good reason, you do not qualify for your full grant. This is called being in WorkFirst sanction status.

(6) Are there penalties when you or someone in my household goes into sanction status?

(a) When someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements.

(b) Your grant is reduced by the person(s) share or forty percent, whichever is more.

(7) How do I end the penalties and get out of sanction status?

To stop the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days).

(c) When you leave sanction status, your grant will be restored to the level for which you are eligible beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

(8) What if I reapply for TANF or SFA and I was in sanction status when my case closed?

(a) If your case closes while you are in sanction status and is reopened in six months or less, you will start out in sanction.

(b) Effective September 1, 2006, if you come back in sanction, you will start out where you left off in sanction.

(That is, if you left off in month three of sanction, you will come back on in month four of sanction.)

(c) If your case has been closed for more than six months, you will not be in sanction status if your case is reopened.

(9) What happens effective September 1, 2006 if I stay in sanction status? Effective September 1, 2006, if you stay in sanction status:

(a) Unless you are a dependent child age sixteen or older, your case manager will review your record after you have been in sanction for at least three months in a row to make sure:

- (i) You knew what was required;
- (ii) You were told how to end your sanction;
- (iii) We tried to talk to you and to encourage you to participate; and
- (iv) You were given a chance to tell us if you were unable to do what we required.

(b) Your case manager will invite you to a noncompliance sanction case staffing.

(i) You will be notified when your noncompliance sanction case staffing is going to happen so you can attend.

(ii) Your case manager will also invite other people who are working with your family to your noncompliance sanction case staffing, like representatives from tribes, community or technical colleges, employment security, the children's administration or limited-English proficient (LEP) pathway providers.

(iii) You can invite anyone you want to come with you to your case staffing.

(c) At your noncompliance sanction case staffing, we will discuss with you:

- (i) How you and your family benefit when you participate in WorkFirst activities;
- (ii) How you can participate, and get out of sanction;
- (iii) That if you continue to refuse to participate, without good cause, a sanction review panel may review your case, and decide to close your case after you have been in sanction status for six months in a row.

(iv) How you plan to care for and support your children if a sanction review panel closes your case. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and

(v) How to reapply if a sanction review panel closes your case.

(d) If you do not come to your noncompliance sanction case staffing, we will make a decision based on the information we have. We will also attempt to visit you at your home so you have another chance to talk to us about the benefits of participation and how to end your sanction.

(e) If we decide you are refusing to participate without a good reason:

- (i) We will send you information about resources you may need if a sanction review panel closes your case;
- (ii) We will send information to a sanction review panel with a recommendation to close your case. We will only do this after a community services office administrator reviews your case to make sure the sanction is appropriate and we tried to reengage you in the program; and

(iii) The sanction review panel will review your case and make the final decision.

(10) What is a sanction review panel?

(a) The sanction review panel is a small group of people who are independent of your local community services office and do a thorough, objective review of your sanction.

(b) The sanction review panel makes the final decision about whether to close your case after receiving a recommendation from your case manager and reviewing your case to make sure the original sanction was appropriate and we made attempts to reengage you in the program.

(11) What happens when a sanction review panel decides to close my case?

When a sanction review panel decides to close your case, we will send you a letter to tell you:

- (a) What you failed to do;
- (b) When your case will be closed;
- (c) How to request a fair hearing if you disagree with this decision;
- (d) How to end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (12).

(12) What if I reapply for TANF or SFA after a sanction review panel closed my case?

(a) If a sanction review panel closes your case and you apply within six months, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

(b) You will not be required to participate for four weeks in a row before you receive cash if you apply after your case has been closed for six months or longer.

(13) What if my TANF or SFA is closed by a sanction review panel, reopened and I go into sanction again?

(a) When a sanction review panel closes your case, and we reopen your case, we will follow all steps in subsection (9) of this section (like the case review and the noncompliance case staffing) during your second month of sanction.

(b) The sanction review panel may close your case after you are in sanction status for three months in a row.

(c) If your case is closed, and you reapply, we will follow the rules in subsection (12) of this section to reopen your case.

AMENDATORY SECTION (Amending WSR 03-21-154, filed 10/22/03, effective 10/27/03)

WAC 388-310-1800 WorkFirst—Post employment services. (1) What is the purpose of post employment services?

Post employment services help low-income parents who are working twenty hours or more a week keep and cope with their current jobs, look for better jobs, gain work skills for a career and become self sufficient.

(2) How do I obtain post employment services?

(a) You can obtain post employment services by:

(i) Asking for a referral from the local community service office;

(ii) Contacting community or technical colleges; or

(iii) Contacting the employment security department. Employment security department staff may also telephone you if you got a job while you were on TANF or SFA to see if you are interested in receiving these services.

(b) You may qualify for different services (from various state or federal programs) depending on whether you:

(i) Are a mandatory participant (that is, you currently receive TANF or SFA benefits);

(ii) Used to receive TANF or SFA benefits; or

(iii) Have never been on TANF or SFA.

(3) Who provides post employment services and what kind of services do they provide?

(a) The employment security department can help you increase your wages, increase your job skills or find a better job by providing you with:

(i) Employment and career counseling;

(ii) Labor market information;

(iii) Job leads for a better job (sometimes called job development);

(iv) On the job training;

(v) Help with finding a job that matches your interests, abilities and skills (sometimes called job matching); and

(vi) Help with finding a new job after job loss (sometimes called reemployment).

(b) Any Washington state technical and community college can approve a skill-training program for you that will help you advance up the career ladder. Their staff will talk to you, help you decide what training would work best for you and then help you get enrolled in these programs. The college may approve the following types of training for you at any certified institution:

(i) High school/GED,

(ii) Vocational education training,

(iii) Job skills training,

(iv) Adult basic education,

(v) English as a second language training, or

(vi) Preemployment training.

(4) What other services are available while you receive post employment services?

While you receive post employment services, you may qualify for:

(a) Working connections childcare if you meet the criteria for this program (described in chapter ~~((388-290))~~ 170-290 WAC).

(b) Other support services, such as help in paying for transportation or work expenses.

(c) Other types of assistance for low-income families such as food stamps, medical assistance or help with getting child support that is due to you and your children.

(5) Who is eligible for post employment service, support services and childcare?

You may qualify for post employment services, support services and child care if you are working twenty hours or more a week, and:

(a) You are current TANF or SFA recipient. You qualify for:

(i) All types of post employment services, unless you are in sanction status;

(ii) Tuition assistance from the community and technical college system;

(iii) WorkFirst support services; and

(iv) Working connections childcare.

(b) You are a former TANF or SFA recipient. You qualify for:

(i) Employment retention services (help with keeping a job) for up to twelve months after exiting TANF or SFA.

(ii) Wage and skill progression services (help with finding a better job and/or obtaining better wages) for up to twelve months after exiting TANF or SFA.

(iii) Tuition assistance or preemployment training from the community and technical college system;

(iv) Working connections childcare assistance; and/or

(v) WorkFirst support services for up to six months after exiting TANF or SFA.

(c) You are a low wage earner (that is, your family income does not exceed one hundred seventy-five percent of the federal poverty level) who has never received TANF or SFA benefits, and are in a community or technical college-approved skill training program. You may qualify for:

(i) Tuition assistance or preemployment training from the community and technical college system; or

(ii) Working connections child care while you are in training or school for up to a total of thirty six months.

(6) What if I lose my job while I am receiving post employment services?

If you now receive or used to receive TANF or SFA, help is available to you for up to four weeks so that you can find another job and continue in your approved post employment.

(a) The employment security department will provide you with reemployment services.

(b) At the same time, your case manager can approve up to four weeks of support services and childcare for you.

WSR 08-12-086

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket A-072162—Filed June 4, 2008, 8:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-24-081 and 08-07-083.

Title of Rule and Other Identifying Information: Chapter 480-07 WAC, Procedural rules.

Hearing Location(s): Commission Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on August 14, 2008, at 1:30 p.m.

Date of Intended Adoption: August 14, 2008.

Submit Written Comments to: Carole J. Washburn, Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-

7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by July 9, 2008.

Assistance for Persons with Disabilities: Contact Mary De Young by August 11, 2008, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes to "clean up" certain procedural rules in chapter 480-07 WAC including the agency's open meeting and delegation rules to allow for a more efficient open meeting process and to address some concerns in the delegation rules in order to promote efficiency in the conduct of business before the commission. The detailed changes are shown in legislative format on the commission's web site at www.utc.wa.gov/072162.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Ann E. Rendahl, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1144; Implementation and Enforcement: Carole J. Washburn, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not result in or impose an increase in costs. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

June 4, 2008

Carole J. Washburn
Executive Secretary

AMENDATORY SECTION (Amending Docket A-050802, General Order R-536, filed 7/27/06, effective 8/27/06)

WAC 480-07-110 Exemptions from and modifications to commission rules; conflicts involving rules. (1) **Exceptions and modifications.** The commission may grant an exemption from or modify the application of its rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes. The commission may modify the application of procedural rules in this chapter during a particular adjudication consistent with other adjudicative decisions, without following the process identified in subsection (2) of this section.

(2) **Process.**

(a) **How to request an exemption to or modification of a rule.** To request a rule exemption or modification, a person must file with the commission a written petition identifying the rule for which an exemption is sought, and provide a full explanation of the reason for requesting the exemption. Tele-

communications companies, gas companies or electric companies filing petitions for exemption under this section shall provide a copy of the request with the public counsel section of the attorney general's office by mail or e-mail, within one business day of the day the request is filed with the commission.

(b) **Commission process.** The commission will assign the petition a docket number, if it does not arise in an existing docket, and will schedule the petition for consideration at one of its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an adjudication. The commission will notify the person requesting the exemption, and other interested persons, of the date of the open meeting or hearing when the commission will consider the petition.

(c) **Standard for consideration.** The standard for consideration is the public interest standard. Factors the commission may consider include whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule.

(d) **Disposition.** The commission will enter an order granting or denying the petition, or setting it for hearing.

(3) **Conflicts involving rules.** In the event of conflict between these rules and statutes, or rules in other chapters of Title 480 of the Washington Administrative Code, applicable to specific types of companies regulated by the commission or to others who may conduct business with the commission, or to particular proceedings, those statutes or special rules govern.

(4) **Emergency situations.** In the event of a state of emergency, and for good cause shown, the commission may enter an order on its own motion, or upon the motion of any person or public service company affected by the rule, exempting public service companies, the commission and all affected persons, from complying with the requirements of specific rules in this title.

AMENDATORY SECTION (Amending Docket A-050802, General Order R-536, filed 7/27/06, effective 8/27/06)

WAC 480-07-125 Physical address; telephone; fax; web portal; e-mail; internet. The information included in this section is current at the time of rule adoption, but may change. Current information and additional contact information are available on the commission's internet site, in person at the commission offices, or by a telephone call to the commission's main public number.

Location and mailing address:	Washington Utilities and Transportation Commission 1300 S. Evergreen Park Drive S.W. P.O. Box 47250 Olympia, WA 98504-7250
Telephone: Public number Records center number	360-664-1160 ((360-586-1234)) 360-664-1234

Consumer inquiries, comments and informal complaints	1-800-562-6150
Fax: Public and records center	360-586-1150
Web portal	((www.wute.wa.gov/e-filing)) www.utc.wa.gov/e-filing
Records center e-mail	((records@wute.wa.gov)) records@utc.wa.gov
Internet web site	((www.wute.wa.gov)) www.utc.wa.gov

AMENDATORY SECTION (Amending Docket A-050802, General Order R-536, filed 7/27/06, effective 8/27/06)

WAC 480-07-140 Communicating with the commission. (1) **Scope of rule.** This rule includes general requirements for effective communication with the commission.

The commission encourages use of the commission's records center web portal for filing and submitting documents with the commission. Customers of regulated companies who have a complaint about their service provider are encouraged to contact the commission as described in WAC 480-07-910. Anyone wishing to comment on a matter before the commission may submit comments by telephone, letter, fax, e-mail or by using the comment form available on the commission's web site.

(a) **Electronic filing, limitations.** You may *file* documents electronically using the commission's records center web portal (see WAC 480-07-125) if you are submitting documents that are not part of an adjudicative proceeding. Examples include registration applications, tariffs, contracts, (~~price lists~~) rule-making comments, and comments on open meeting items. Electronic filing means the commission accepts the electronic version of the document as the official filing and does not require a paper copy of the documents.

(b) **Electronic submission, adjudications.** You may *submit* documents electronically using the commission's records center web portal (see WAC 480-07-125) or e-mail if you are submitting documents in an adjudicative proceeding. Electronic submission means the commission allows submission of electronic versions of documents, but requires a paper copy of the document as the official filing. Except for testimony and exhibits filed in general rate cases, parties may submit one paper copy of documents of less than twenty-five pages, but must follow the filing requirements in WAC 480-07-510(1) (nineteen copies) and WAC 480-07-150 (3)(a) (twelve copies) for documents exceeding twenty-five pages.

(c) **Electronic filing of public records requests.** You may file requests for public records electronically using the commission's records center web portal (see WAC 480-07-125). You do not have to file a paper copy of the public records request if it is filed electronically.

(d) **Use of e-mail for electronic filing or submission.** The commission encourages you to use its records center web portal for filing or submitting electronic documents, because it is more reliable and secure than e-mail. If you are unable to

use the records center web portal to file or submit documents, the commission will accept a filing or submission received via e-mail addressed to the records center.

(e) You must also comply with other requirements when submitting certain documents, as shown below.

Submissions in these dockets or filings:	Must comply with these rules:
Rule-making dockets	This rule, WAC 480-07-143, and Part II of this chapter
Adjudicative dockets	This rule, WAC 480-07-145, and Part III of this chapter, <i>plus</i> any requirements in the specific adjudication
Utility tariffs and (telecommunications price lists and) contracts	This rule, chapter 480-80 WAC, and WAC (480-07-14X) <u>480-07-141</u>
Transportation tariffs and time schedules	This rule, WAC (480-07-14X) <u>480-07-141</u> ; and
(i) For auto transportation companies	Chapters 480-30 and 480-149 WAC;
(ii) For commercial ferry companies	Chapters 480-51 and 480-149 WAC;
(iii) For solid waste collection companies	Chapter 480-70 WAC
For public records requests	Chapter (42-17) <u>42-56</u> RCW and chapter 480-04 WAC

(2) **Content of letters and e-mail messages to the commission.** Letters and e-mail messages to the commission should include only one subject.

(3) **Where to send letters and e-mail messages.** WAC 480-07-125 includes the commission's mailing address and other contact information current at the time of rule publication. Persons who communicate with the commission are encouraged to do so by e-mail to the commission's records center. The commission's internet site includes current and additional contact information.

(4) **Cover letters.** Persons submitting or filing documents with the commission must include a cover letter with the filing, unless the letter or document is one page and includes the information identified in subsection (5) of this section.

(5) **Identification of sender; identification of permit, license, or certificate; identification of proceeding.** The following requirements will make sure your message to the commission is delivered promptly to the person or persons who need to receive it, and to allow a prompt response. If you do not include the necessary information, we may not be able to promptly handle your message or provide a prompt response.

(a) **Identification of sender.** All persons who communicate with the commission must provide their full name and

are asked to provide a mailing address, telephone, fax, and e-mail address to assist the commission in responding. Persons who communicate with the commission on behalf of a business, organization, or other entity must state their name and title or position, and the name of the entity on whose behalf the communication is sent, in addition to the contact information described above.

(b) **Identification of permit, license, or certificate held by sender.** Any person or entity that holds a commission-issued permit, license, or certificate must identify the permit, license, or certificate number (if any), including the exact name under which the authority is held, when communicating with the commission concerning the permit, license, or certificate.

(c) **Identification of proceeding.** Persons who communicate with the commission concerning a formal commission proceeding (e.g., rule-making or adjudication) must identify the proceeding to the best of their ability, including the docket number and name of the proceeding, if known.

(6) **Electronic file format requirements.** The commission requires electronic versions of all documents filed with the commission, including confidential versions of documents that include confidential information.

(a) **Acceptable media.** You may submit documents electronically through the commission's records center web portal, by e-mail file attachment addressed to the commission's records center, or submitted to the records center on a 3 1/2 inch IBM formatted high-density disk or compact disc (CD) labeled with the docket number of the proceeding, if a number has been assigned, the name of the entity and the name of the individual submitting the document, and a description of the contents (e.g., "direct evidence," "motion to dismiss," etc.).

(b) **Acceptable format.** Electronic versions of all documents, including confidential versions of documents that include confidential information, must be filed in .pdf (Adobe Acrobat) format, supplemented by a separate file in .doc, .docx, .docm (MS Word), (.wpd (WordPerfect)), .xls, .xlsx, .xlsm (Excel), or .ppt, .pptx, .pptm (Power Point) formats, so that spreadsheets displaying results of calculations based on formulas include all formulas, and do not include locked, password protected or hidden cells.

(i) The following documents are exempt from the requirement in (b) of this subsection for formatting other than .pdf (Adobe Acrobat):

(A) Documents not created by, for, or on behalf of a party to or a witness in the proceeding for which no version in the required formatting is available; and

(B) Published, copyrighted material and voluminous material not originally prepared in the required format.

(ii) Any person who requests a document to be provided in a format other than .pdf (Adobe Acrobat), whose request is denied, may request relief from the commission.

(iii) **Confidential and redacted versions.**

(A) **Parties must separately submit and clearly identify electronic versions of confidential and redacted documents when submitting documents via e-mail or the commission's web portal.**

(B) Redacted versions of electronic documents that mask confidential information should be filed exclusively in .pdf

format. Parties who cannot create Adobe Acrobat files directly must provide a copy of the document converted to Adobe Acrobat via scanning or other available technology.

(c) **File naming conventions.** Electronic files must be named in a way that describes the file contents. Parties should use the format identified in the following examples, identifying the docket number, the nature of the document, and the party submitting it:

Testimony	UE-010101 Smith direct (name of party) (date) UT-020202 Jones rebuttal attachment 1 (name of party) (date)
Motions	UG-030303 motion to dismiss (name of party) (date) UW-040404 answer to motion to dismiss (name of party) (date)
Correspondence	TG-010203 (name of party) request for continuance (date)

(d) **Acceptable organization.** Each party must submit all files to meet a single deadline at the same time and in the same message or diskette. When a party submits two or more files at the same time, the files must be organized into folders, and the party must provide a printed index. The index may be included in a cover letter or provided as an attachment to a cover letter. The index also must be provided in the form of an electronic file.

Example:

Folder and diskette name	I. U-020304 (name of party) direct evidence (date)
Subfolders	A. U-020304 (name of party) (name of witness) direct (date) B. U-020304 (name of party) (name of witness) direct (date)
Files	1. U-020304 (name of witness) direct (name of party) (date) 2. U-020304 (name of witness) direct att 1 (name of party) (date)

AMENDATORY SECTION (Amending Docket A-050802, General Order R-536, filed 7/27/06, effective 8/27/06)

WAC 480-07-145 Filing documents in adjudicative proceedings. (1) **Scope of rule.** This section governs communications to the commission by parties in adjudicative proceedings. These rules are in addition to the general rules for communicating with the commission in WAC 480-07-140 and any requirements in a specific adjudication.

(2) **Mail or hand delivery service is required for all documents.** Parties to adjudicative proceedings before the commission must file original, signed documents and paper copies by mail or hand delivery (e.g., courier delivery service) as provided in this rule to satisfy official filing requirements and meet the commission's administrative needs. The commission (~~may~~) provides for the expedited exchange of documents among parties and the commission by e-mail and

fax transmission (~~(when necessary for process requirements in individual)~~) in adjudicative proceedings.

(a) **When deemed received/ filed.** A document submitted in an adjudicative proceeding is officially received for filing only when the original document, including the required certificate of service under subsection (6) of this section, and the required number of copies, are physically received at the commission's records center by mail or in-hand delivery and stamped with the date and time. The date-stamped time will determine whether a document meets any deadline that applies and will determine the timing of any later deadlines based on filing. Documents that are delivered to the commission's records center after 5:00 p.m. are not considered officially received or filed until the next business day when they are stamped with the date and time.

(b) **Exception for documents offered and received at hearing.** When authorized by the presiding officer in an adjudicative proceeding before the commission, a document may be officially received for purposes of the proceeding when the presiding officer receives the document for the record at hearing. The presiding officer may also require that a copy be filed in the commission records center.

(c) **Where to mail/deliver.** All written communications mailed or hand-delivered to the commission must be addressed to the commission's secretary at the address specified in WAC 480-07-125.

(d) **Filings must be supplemented by an electronic version of the document.** Parties filing pleadings, motions, pre-filed testimony and exhibits, and briefs must supplement their filing by submitting the document in electronic form, as specified in WAC 480-07-140(5), unless excused from the obligation by the presiding officer.

(3) Number of copies; failure to file sufficient number of copies.

(a) **Number of copies.** Unless the commission specifies a different number of copies, every pleading, motion, response, and brief submitted to the commission by mail or courier must be filed with twelve copies. A party for whom providing the required number of copies would be a hardship may describe the hardship and request permission to file fewer copies.

(b) **Failure to file sufficient number of copies.** If a person files fewer than the required number of copies of a document, the commission may reject the filing or the commission may make the additional copies for distribution and processing within the commission. If the commission makes copies to meet the total number required, the commission will bill the filing person at a rate of thirty cents per page, plus sales tax. This rate compensates for the loss of the worker's attention to assigned duties, the unscheduled use of equipment, and the cost of materials.

(4) **Filing and service are separate requirements.** Filing documents with the commission under this rule and service of the documents to parties under WAC 480-07-150 are both required in all adjudicative proceedings. Filing a document with the commission does not constitute service upon the assistant attorney general or any other party. Likewise, service upon the assistant attorney general does not constitute a filing with the commission.

(5) **Service and certificate of service are required.** Filing a pleading, motion, response, or brief with the commission in an adjudicative proceeding is not complete unless service has been made upon all parties to the proceeding pursuant to WAC 480-07-150. Service must be confirmed by submitting with the filing a valid certificate of service, or its equivalent, as provided in WAC 480-07-150(9).

(6) Web portal, e-mail or fax transmission may be used to expedite the filing process(~~(when authorized)~~).

(a) ~~((When permitted))~~ **Paper copy required.** ~~((The presiding officer may, at a prehearing conference or by notice or order, provide a one-day extension of the paper filing requirement by authorizing submission))~~ Parties may submit documents to the commission electronically through the web portal, e-mail or fax (~~(for delivery of documents)~~) on the date established for paper filing under the procedural schedule in an adjudicative proceeding, subject to the following conditions:

(i) **Timing.** Electronic submissions must be completed by 3:00 p.m. on the date established for filing. The commission encourages the use of the web portal rather than via e-mail or fax.

(ii) **Paper copy required.** The commission must physically receive the original and required number of copies by 12:00 noon on the first business day following the filing deadline established under the procedural schedule.

(iii) **Exact copy is required.** The original and paper copies of the document delivered to the commission on the day following the filing deadline must conform exactly in form and content to the electronic version or the document will not be considered to have been timely filed and may be rejected on that basis.

(iv) ~~((Authorization for electronic submission must be indicated. If you submit electronic documents to the commission through the commission's records center web portal, by e-mail message or by fax transmission on a filing deadline date without providing the original document by that date, you must include an electronic message or fax cover sheet that states the authority to submit the document electronically through the web portal, by e-mail, or fax transmission without simultaneously filing a paper copy.~~

~~(v))~~ **Simultaneous delivery to all parties and presiding officer is required.** All electronic documents submitted to the commission through the web portal, by e-mail message or fax transmission on a filing deadline date must be simultaneously delivered to all parties by e-mail or fax. ~~((At the discretion of the presiding officer, you may be required to))~~ You must also provide courtesy copies via e-mail to the presiding officer(~~(commission staff, or others)~~). Service by other required means is not excused, subject to the requirements of WAC 480-07-150.

(b) **Where to send web portal or e-mail message or fax transmission.** Persons using the commission's records center web portal to submit filings electronically should access the following web page: www.wutc.wa.gov/e-filing. All e-mail and fax transmissions made under this rule should be directed to the commission's records center. Courtesy or informational copies may be sent to other e-mail addresses for the presiding officer or other individual commission employees. When a person submits a document through the web portal, by e-mail

or fax, the document should not be sent more than once except to cure transmission or receiving errors.

(c) **When deemed received.** A document submitted through the commission's records center web portal is deemed received only when the sender receives notification from the commission that the document has been received. A document submitted by e-mail or fax is deemed received when the entire document successfully reaches the commission's records center electronic mailbox or fax machine. Documents submitted electronically are not considered officially received or filed until the commission receives the original and paper copies the next business day, when they are stamped with the date and time received.

(7) **Additional rules regarding adjudicative proceedings.** Rules relating to general rate proceedings (subpart B of this chapter) and abbreviated adjudicative proceedings (subpart C of this chapter) govern filing requirements in those proceedings.

AMENDATORY SECTION (Amending Docket A-050802, General Order R-536, filed 7/27/06, effective 8/27/06)

WAC 480-07-160 Confidential information. The commission will provide special handling and limited access to confidential information submitted in compliance with this rule. This rule applies to any information submitted under a claim of confidentiality under RCW 80.04.095. Title 81 RCW does not contain a similar statute. See also, WAC 480-07-420 regarding protective orders in adjudicative proceedings.

(1) **Implementation.**

(a) **Designated official.** The commission's secretary is the designated official responsible for the commission's compliance with the Public Records Act, chapter ((42-17)) 42.56 RCW, and for the implementation of this rule. The secretary may designate one or more persons to serve as public records officer to assist in the implementation and application of this rule.

(b) **Provider.** Any person who submits information to the commission or commission staff under a claim of confidentiality pursuant to this rule is a "provider," as that term is used in this rule.

(c) **Requester.** Any person who submits a request for public records under the Public Records Act, chapter ((42-17)) 42.56 RCW, or a data request in an adjudicative proceeding is a "requester," as that term is used in this rule.

(2) **Confidential information defined.** Confidential information is information that meets any of the following criteria:

(a) Information protected from inspection or copying under an exemption from disclosure requirements under the Public Records Act, chapter ((42-17)) 42.56 RCW.

(b) Information protected under the terms of a protective order in an adjudicative proceeding.

(c) Valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, as provided in RCW 80.04.095.

(3) **How to designate and seek protection of confidential information under this section.** A provider may claim

the protection of this rule only by strict compliance with the following requirements. Any failure to comply with these requirements may result in the submission not being accepted as one including confidential information.

(a) **Contents.** The provider must submit the claim of confidentiality in writing, in the same form (i.e., paper or electronic) and at the same time the information claimed to be confidential is submitted. The provider must state the basis upon which the information is claimed to be confidential under this rule, and must identify any person (other than the provider) that might be directly affected by disclosure of the confidential information.

(b) **Marking.**

(i) **Paper copies.** When the document is in paper format, and there is no protective order in place, the provider must clearly mark each copy with the designation "confidential per WAC 480-07-160." The provider must place this mark on the first page of a multipage document and each specific page where the provider claims there is confidential information.

(ii) **Electronic copies.** When the document is in electronic format, such as an e-mail message, or a word processing or spreadsheet file, the "confidential per WAC 480-07-160" mark must be inserted in the e-mail message or on the disk or diskette, on the first page in the file and on each page that the provider claims contains confidential information. The provider must follow the requirements in (c) of this subsection and the format requirements in WAC 480-07-140(6) for submitting electronic documents. Specifically, parties must separately submit and clearly identify electronic versions of confidential and redacted documents when submitting documents via e-mail or the commission's web portal.

(iii) **Protective order, if any, must be cited.** If the provider submits confidential information under the provisions of a protective order, the "confidential" identification on the disk, diskette, or e-mail, on the first page of the document and each page that includes confidential information must state: "Confidential per protective order in WUTC Docket [insert docket number]." When the provider submits confidential information in an electronic format, the provider must mark the document as with a paper copy and follow the format requirements in WAC 480-07-140(6) for submitting electronic documents.

(c) **Unredacted version under seal; redacted version.** The provider must submit ((a)) an original and the required number of complete copies of the version of the document as to which confidentiality is claimed (unredacted version) and ((a)) an original and one complete copy of the version of the document with the information claimed to be confidential masked (redacted version). If the provider submits a document under a claim that the entire document is confidential, the provider may submit only the first page of the redacted version if the page indicates that the entire document is claimed to contain confidential information.

(i) **Sealing and labels.** The redacted version must be so labeled and submitted along with a set of any confidential documents. The confidential unredacted version must be so labeled and submitted in a sealed envelope or similar wrapping. A party submitting multiple confidential documents must collate the documents into sets and, to the extent feasible, must enclose each set of confidential documents in a sep-

arate envelope and each set of highly confidential documents for filing in a separate envelope.

(ii) *Marking.* Each page of the unredacted version that includes information claimed to be confidential must be printed on yellow or canary paper with the confidential information clearly designated (e.g., by highlighting text with no more than twenty percent grey shading, outlining the confidential information in a box or border, or setting the text off with asterisks). Similarly, each page of the unredacted version that contains information designated highly confidential under a protective order, must be printed on light blue paper with the highly confidential information clearly designated (e.g., by highlighting text with no more than twenty percent grey shading, outlining the highly confidential information in a box or border, or setting the text off with asterisks). The redacted version will be available for public disclosure if requested. The redacted and unredacted versions must have the same pagination and line numbering.

(iii) *Number of copies.* The provider must submit an original and ~~((three))~~ one redacted ~~((copies))~~ copy of each confidential or highly confidential document and an original and twelve copies of the unredacted version of each confidential or highly confidential document, unless the commission has required a different number of copies to be filed. If a document includes both confidential and highly confidential information, the provider ~~((may))~~ must submit unredacted copies including both the confidential and highly confidential information in the same document.

(4) **Challenges to claims of confidentiality.** The commission or a party to a proceeding in which a provider submits a document with a claim of confidentiality may challenge the claim. When a challenge is made, the commission will provide an opportunity to respond before ruling on the challenge. If a confidential designation is challenged, the provider of the confidential information bears the burden to show that part or all of a document should be protected from disclosure under chapter ~~((42.17))~~ 42.56 RCW, RCW 80.04.-095, or a protective order. The commission may express its ruling orally on the record in an adjudicative proceeding, or in a written order.

(5) **Requests for "confidential" information.** Subject to subsections (6) and (7) of this section, the commission will release information designated confidential in response to a request properly filed under the following requirements:

(a) The requester must submit a written request to the commission's secretary on a form provided by the commission or in a letter containing equivalent supporting information, including the requester's name and address and the name and address of any organization on whose behalf or for whose benefit the request is being made. The requester must state whether the information sought is to be used for a commercial purpose.

(b) The request must be sufficiently specific to allow the secretary to readily identify the document or other material that contains the requested information. Following receipt of a request for confidential information, the secretary will notify the requester of any deficiency in the request. The requester is required to correct the request and resubmit it pursuant to this rule. The commission will take no action pending resubmission.

(c) If a requester wants copies of any documents identified in response to a request, the requester must make arrangements with the commission's secretary to pay the designated copying fees, if any.

(6) **Informal resolution.** When the secretary and the requester agree that the secretary can satisfy the requester's need for information without disclosing confidential information, the secretary will make the information available.

(7) **Notice of request for information designated confidential; release of information designated confidential.** The commission will provide written notice of any request for information designated confidential to the provider and any person identified by the provider as a person who might be directly affected by release of the information. This is to permit any person asserting confidentiality or who might be affected by the release of the information to invoke the statutory procedures for securing a court order to protect the records from disclosure or to take similar steps in compliance with a protective order in an adjudicative proceeding. The commission will issue such notice not more than two days after the requested materials are located and it determines that they contain information claimed to be confidential. The commission will send a copy of the notice to the requester at the same time it sends a copy to the provider.

If the provider consents in writing to the release of the information, or does not restrain disclosure by way of court order within ten days following notice, the commission will consider the information public, remove the confidential designation from its files, and release the information to the requester.

(8) **Judicial intervention by the commission.** The commission need not assist any person in seeking or resisting judicial intervention, but may participate in any such proceeding.

(9) **Designation or redesignation of confidential information in adjudications.** At the conclusion of an adjudication in which confidentiality was asserted as to documents or portions of the record, the party originally asserting confidentiality must, no later than the time for filing briefs or, if no briefs are filed, within ten days after the close of the record, do the following:

(a) Verify the accuracy of all confidential designations in the record and in the exhibit list for the proceeding, and submit any proposed corrections or changes. Absent a statement of proposed corrections or changes, the designations in the record and in the exhibit list are final and will be changed only if the party asserting confidentiality voluntarily removes, or is required to remove, a confidential designation. If there is conflict between designations, the designation that is least restrictive to public access will be adopted.

(b) File a redacted and unredacted copy of any document as to which confidentiality was asserted during the proceeding but which is not reflected in the record or exhibit list as a document designated confidential.

(c) File an unredacted version of any document designated as confidential during the proceeding, but as to which the party claiming confidentiality wishes to remove the confidential designation, or as to which the confidential designation was terminated by order. In the case of briefs, testimony,

and similar documents, the authoring party must file the unredacted version.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-180 Incorporated and referenced materials in commission rules and orders. Any document that is incorporated by reference in a commission rule or order is available for public inspection at the commission unless exempt from the public disclosure requirements in chapter ((42-17)) 42.56 RCW, or under a protective order in an adjudicative proceeding. The commission's secretary will provide a copy of a referenced document upon request, allowing reasonable time for any necessary copying, subject to any pertinent charge, and subject to copyright restrictions or statutory exemptions from public disclosure. The commission incorporates or references the version of the incorporated or referenced material that is current on the day the commission adopts a rule or enters an order that makes the incorporation or reference, unless the commission specifies another version or unless another version is apparent from the reference. In most instances, such information is available to the public on the commission's web site (see WAC 480-07-125).

AMENDATORY SECTION (Amending Docket A-050802, General Order R-536, filed 7/27/06, effective 8/27/06)

WAC 480-07-395 Pleadings, motions, and briefs—Format requirements; citation to record and authorities; verification; errors; construction; amendment. (1) **Format.** All pleadings, motions, and briefs must meet the following format requirements:

(a) **Paper size; legibility; margins.** All pleadings, motions, and briefs must be:

- Submitted on three-hole punched (oversize holes are preferred) 8 1/2 x 11 inch paper.
- Presented in double-spaced, 12-point, palatino, times new Roman, or an equally legible serif font, with footnotes in the same font and of at least 10-point type.
- Presented with paragraphs numbered.
- Printed with margins at least one inch from each edge of the page.

Documents that are electronically filed must meet these requirements when printed.

(b) **Length.** Pleadings, motions, and briefs must not exceed sixty pages (exclusive of exhibits, appended authorities, supporting affidavits and other documents). The presiding officer may alter the page limit, either shortening or lengthening the number of pages allowed, considering the number and complexity of the issues.

(c) **Organization.** Every pleading, motion, and brief must be organized as follows:

(i) **Caption.** At the top of the first page must appear the phrase, "before the Washington utilities and transportation commission." On the left side of the page, the caption of the proceeding must be set out or, if no caption exists, the follow-

ing: "In the matter of the (complaint, petition, motion, etc.) of (name of the pleading party) for (identify relief sought)." On the right side of the page, opposite the caption, the pleading party must include the docket number if one has been assigned, identify the name of the document (e.g., petition, motion, answer, reply, etc., of (role of party: E.g., petitioner, respondent, protestant, etc., and name of the party if more than one party has the same role in the proceeding)). The caption also must briefly state the relief sought (e.g., "petition for an accounting order"; "motion for continuance").

(ii) **Body of pleading.** The body of the pleading must be set out in numbered paragraphs. The first paragraph must state the pleading party's name and address and if it is the party's initial pleading, the name and address of its representative, if any. The second paragraph must state all rules or statutes that the pleading puts in issue. Succeeding paragraphs must set out the statement of facts relied upon in a form similar to complaints in civil actions before the superior courts of this state. The concluding paragraphs must state the relief the pleading party requests.

(iii) **Body of motion.** A motion must include the following information:

(A) **Relief requested.** A statement of the specific relief the commission is requested to grant or deny.

(B) **Statement of facts.** A succinct statement of the facts that the moving party contends are material to the requested remedy.

(C) **Statement of issues.** A concise statement of the legal issue or issues upon which the commission is requested to rule.

(D) **Evidence relied upon.** Any evidence on which the motion or opposition is based must be specified. Any affidavits, depositions or portions of affidavits or depositions relied upon must be specified. If a party relies on affidavits, deposition transcripts, or documentary evidence, the party must quote the cited material verbatim or attach a photocopy of relevant pages to an affidavit that identifies and verifies the documents. Parties should highlight or otherwise clearly identify the portions of the cited evidence upon which they place substantial reliance.

(iv) **Body of brief.** Unless excused by the presiding officer, the parties must include in their briefs a table of contents in outline format. The commission may require parties to organize their briefs according to a common outline. The presiding officer, in consultation with the parties, will establish the elements of any common outline taking into account the issues in the proceeding, the parties' preferences, and the commission's needs.

(v) **Citation to record.** Portions of the record relied on or quoted in the body of a brief must be cited using footnotes.

(A) **Transcript.** Transcript references should be as follows: [witness's surname], TR. [page]: [line(s)]. If the transcript reference spans multiple pages, the reference should be as follows: [witness's surname], TR. [page]: [line] - [page]: [line]. Examples: Smith, TR. 21:5-14; Jones, TR. 356:4 - 357:21.

(B) **Exhibits.** Exhibit references should be as follows: Exh. No. [insert number assigned at hearing]. In the case of prefiled testimony offered or received as an exhibit, page number(s), line number(s), and the witness's surname should

be added following the style specified in this section for transcript references. In other exhibits, references to page(s), line(s) for text, row(s) and column(s) for tables, or other specific references may be added to clarify the information cited.

(vi) *Citation to authority.* Parties must use the citation formats specified in the current edition of the style sheet of the Washington supreme court reporter of decisions. The presiding officer may require parties to file copies of the text of authorities that are cited in parties' briefs and upon which parties place substantial reliance. Unless excused by the presiding officer, parties must include a table of cited authorities, with the full citation of each reference and its location in the brief.

(vii) *Attachments or appendices.* If a party attaches more than two attachments or appendices to a pleading, the party must individually separate the attachments by blank sheets with tabs.

(2) **Verification.** All pleadings and motions, except complaints brought by the commission or matters raised by the commission on its own motion must be dated and signed by at least one attorney or representative of record in his or her individual name, stating his or her address, or by the party, if the party is not represented. Parties who are not represented by an attorney must include a statement in any pleading that the facts asserted in the pleading are true and correct to the best of the signer's belief. Parties who bring certain complaints under RCW 80.04.110 or 81.04.110 that challenge the reasonableness of the rates or charges of jurisdictional utilities must provide additional verification as specified in those statutes.

(3) **Errors in pleadings or motions.** The commission may return a pleading or motion to a party for correction when the commission finds the pleading or motion to be defective or insufficient. The commission may disregard or correct obvious typographical errors, errors in captions, or errors in spelling of names of parties.

(4) **Liberal construction of pleadings and motions.** The commission will liberally construe pleadings and motions with a view to effect justice among the parties. The commission, at every stage of any proceeding, will disregard errors or defects in pleadings, motions, or other documents that do not affect the substantial rights of the parties.

(5) **Amendments.** The commission may allow amendments to pleadings, motions, or other documents on such terms as promote fair and just results.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Docket A-050802, General Order R-536, filed 7/27/06, effective 8/27/06)

WAC 480-07-510 General rate proceedings—Electric, natural gas, pipeline, and telecommunications companies. General rate proceeding filings for electric, natural gas, pipeline, and telecommunications companies must include the information described in this section. The commission may reject a filing that fails to meet these minimum requirements, without prejudice to the company's right to refile its request in conformance with this section. ~~((The company must provide:))~~ For purposes of this rule, "file with the

commission," means filed with the commission's executive secretary under WAC 480-07-140 at the time the company files its general rate case; whereas "serve" or "provide" to commission staff or another party, means delivery to such persons, not filed with the commission.

(1) **Testimony and exhibits.** The company must file with the commission nineteen paper copies of all testimony and exhibits that the company intends to present as its direct case if the filing is suspended and a hearing held, unless the commission preapproves the filing of fewer copies. In addition, the company must provide one electronic copy of all filed material in the format identified in WAC 480-07-140(6). Material that the company has not produced under its direction and control and that is not reasonably available to it in electronic format, such as generally available copyrighted published material, need not be provided in electronic format. The company must serve a copy of the materials filed under this section on public counsel at the time of filing with the commission in any proceeding in which public counsel will appear. The utility must provide an exhibit that includes a results-of-operations statement showing test year actual results and the restating and pro forma adjustments in columnar format supporting its general rate request. The utility must also show each restating and pro forma adjustment and its effect on the results of operations. The testimony must include a written description of each proposed restating and pro forma adjustment describing the reason, theory, and calculation of the adjustment.

(2) **Tariff sheets.** The company must file with the commission and provide to public counsel a copy of the proposed new or revised tariff sheets in legislative format, with strike-through to indicate any material to be deleted or replaced and underlining to indicate any material to be inserted, in paper and electronic format, unless already provided as an exhibit under subsection (1) of this section. The company must also ~~((provide))~~ file with the commission copies of any tariff sheets that are referenced by new or amended tariff sheets.

(3) **Work papers and accounting adjustments.** ~~((Three copies))~~

(a) At the time the company makes its general rate case filing, the company must provide one copy of all supporting work papers of each witness to public counsel and three copies to staff in a format as described in ~~((b) of))~~ this subsection ~~((must be filed with the utility's general rate request)).~~ ~~((Parties))~~ Staff and each other party must ((file)) provide work papers to all other parties within five days after the filing of each subsequent round of testimony filed (e.g., response, rebuttal). If the testimony, exhibits, or work papers refer to a document, including, but not limited to, a report, study, analysis, survey, article or decision, that document must be ~~((provided))~~ included as a work paper unless it is a reported court or agency decision, in which case the reporter citation must be provided in the testimony. If a referenced document is voluminous, it need not be provided ~~((with the filing)),~~ but the company must identify clearly the materials that are omitted and their content. Omitted materials must be provided or made available if requested. The following information is required for work papers ~~((that accompany the company's filing and all parties' testimony and exhibits)):~~

~~((a))~~ (b) Organization. Work papers must be plainly identified and well organized, and must include an index and tabs. All work papers must be cross referenced and include a description of the cross referencing methodology.

(c) Electronic documents. Parties must provide all electronic files supporting their witnesses' work papers. The electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support the exhibits and work papers must be provided using logical file paths, as necessary, by witness, and using identifying file names. A party may file a document with locked, hidden or password protected cells only if necessary to protect the confidentiality of the information within the cells or proprietary information in the document. The party shall designate that portion of the document as confidential under RCW 80.04.095, WAC 480-07-160, and/or a protective order, and the party shall provide it to any person requesting the password who has signed an appropriate confidentiality agreement.

(d) A detailed portrayal of the development of any capital structure and rate of return proposal and all supporting work papers in the format described in ~~((b)-of))~~ this subsection.

~~((b))~~ (e) Restating and pro forma adjustments. Parties must ~~((file))~~ provide work papers that contain a detailed portrayal of restating actual and pro forma adjustments that the company uses to support its filing or that another party uses to support its litigation position, specifying all relevant assumptions, and including specific references to charts of accounts, financial reports, studies, and all similar records relied on by the company in preparing its filing, and by all parties in preparing their testimony and exhibits. All work papers must include support for, and calculations showing, the derivation of each input number used in the detailed portrayal and for each subsequent level of detail. The derivation of all interstate and multiservice allocation factors must be provided in the work papers. ~~((Work papers must be plainly identified and well organized, and must include an index and tabs. All work papers must be cross referenced and include a description of the cross referencing methodology. Parties must file all electronic files supporting their witnesses' work papers. The electronic files must be fully functional and include all formulas and linked spreadsheet files. Electronic files that support the exhibits and work papers must be submitted using logical file paths, as necessary, by witness, and using identifying file names.))~~

(i) Change in methodologies for adjustments. If a party proposes to calculate an adjustment in a manner different from the method that the commission most recently accepted or authorized for the company, it must also present a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission, and a brief narrative describing the change. Commission approval of a settlement does not constitute commission acceptance of any underlying methodology unless so specified in the order approving the settlement.

~~((+))~~ (ii) "Restating actual adjustments" adjust the booked operating results for any defects or infirmities in actual recorded results that can distort test period earnings. Restating actual adjustments are also used to adjust from an

as-recorded basis to a basis that is acceptable for rate making. Examples of restating actual adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period.

~~((+))~~ (iii) "Pro forma adjustments" give effect for the test period to all known and measurable changes that are not offset by other factors. The ~~((filing))~~ work papers must identify dollar values and underlying reasons for each proposed pro forma adjustment.

~~((+))~~ (f) A detailed portrayal of revenue sources during the test year and a parallel portrayal, by source, of changes in revenue produced by the filing, including an explanation of how the changes were derived.

~~((+))~~ (g) If the public service company has not achieved its authorized rate of return, an explanation of why it has not and what the company is doing to improve its earnings in addition to its request for increased rates.

~~((+))~~ (h) A representation of the actual rate base and results of operation of the company during the test period, calculated in the manner used by the commission to calculate the company's revenue requirement in the commission's most recent order granting the company a general rate increase.

~~((+))~~ (i) Supplementation of the annual affiliate and subsidiary transaction reports as provided in rules governing reporting requirements for each industry, as necessary, to include all transactions during the test period. The company is required to identify all transactions that materially affect the proposed rates.

(4) **Summary document.** The company must file with the commission a summary document that briefly states the following information on an annualized basis, if applicable. In presenting the following information, the company must itemize revenues from any temporary, interim, periodic, or other noncontinuing tariffs. The company must include in its rate change percentage and revenue change calculations any revenues from proposed general rate change tariffs that would supersede revenue from noncontinuing tariffs. The summary document must also include:

(a) The date and amount of the latest prior general rate increase authorized by the commission, and the revenue realized from that authorized increase in the test period, based on the company's test period units of revenue.

(b) Total revenues at present rates and at requested rates.

(c) Requested revenue change in percentage, in total, and by major customer class.

(d) Requested revenue change in dollars, in total, and by major customer class.

(e) Requested rate change in dollars, per average customer, by customer class, or other representation, if necessary to depict representative effect of the request. ~~((Filings))~~ The summary document must also state the effect of the proposed rate increase in dollars per month on typical residential customers by usage categories.

(f) Most current customer count, by major customer class.

(g) Current authorized overall rate of return and authorized rate of return on common equity.

(h) Requested overall rate of return and requested rate of return on common equity, and the method or methods used to calculate rate of return on common equity.

(i) Requested capital structure.

(j) Requested net operating income.

(k) Requested rate base and method of calculation, or equivalent.

(l) Requested revenue effect of attrition allowance, if any is requested.

(5) **Required service of summary document.** The company must serve the summary document on public counsel and mail the summary document ((required)) described in subsection (4) of this section to the persons designated below on the same date it files the summary document with the commission:

(a) ~~((Public counsel;~~

~~((b)))~~ All intervenors on the commission's master service list for the company's most recent general rate proceeding;

~~((c)))~~ (b) All intervenors on the master service list for any other rate proceeding involving the company during the five years prior to the filing, if the rates established or considered in that proceeding may be affected in the company's proposed general rate filing;

~~((d)))~~ (c) All persons who have informed the company in writing that they wish to be provided with the summary document required under this section. The company must enclose a cover letter stating that the prefiled testimony and exhibits and the accompanying work papers, diskettes, and publications specified in this rule are available from the company on request or stating that they have been provided. This provision does not create a right to notice in persons named to receive the summary.

(6) **Cost studies.** The company must ~~((include))~~ file with the commission any cost studies it performed or relied on to prepare its filing, identify all cost studies conducted in the last five years for any of the company's services, and describe the methodology used in such studies.

(7) **Other.** The company must ~~((include))~~ file with the commission its most recent annual report to shareholders, if any, and any subsequent quarterly reports to shareholders; the most recent FERC Form 1 and FERC Form 2, if applicable; and the company's Form 10K's, Form 10Q's, any prospectuses for any issuances of securities, and quarterly reports to stockholders, if any, for the most recent two years prior to the filing date.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

WAC 480-07-630 Telecommunications companies— Arbitration under the Telecommunications Act of 1996.

(1) **Scope.** This rule implements the arbitration provisions of sections 251 and 252 of the Telecommunications Act of 1996, 47 U.S.C. §§ 251 and 252.

(2) **Nature of the proceeding.** Arbitrations that the commission conducts pursuant to 47 U.S.C. § 252 are subject to judicial review. Arbitration under this section, however, is not an adjudicative proceeding under the Washington Administrative Procedure Act, chapter 34.05 RCW. Arbitration decisions are binding only upon the parties to the arbitra-

tion. Arbitration under this section should be characterized by fairness, cooperation and openness between or among the parties, and is designed to resolve disputes efficiently and economically.

(3) **Intervention; public counsel.** Arbitrations typically involve only the parties to the negotiation. Others may ask to participate but will be allowed to do so only upon a showing of compelling public interest. The public counsel section of the office of attorney general may elect to participate pursuant to RCW 80.04.510.

(4) **Filing and service of a petition for arbitration.**

(a) **When allowed.** During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under 47 U.S.C. § 252 (b)(1), any party to the negotiation may petition the commission to arbitrate all issues that remain unresolved. Parties may continue to negotiate in good faith and may continue to participate in mediation to resolve the disputed issues after arbitration is requested.

(b) **Filing.** Parties must file petitions for arbitration under section 252 (b)(2) as provided for other petitions under WAC 480-07-145, and must follow the format requirements for pleadings in WAC 480-07-395.

(c) **Service.** A party that files a petition for arbitration must deliver a complete copy of the petition and all accompanying documentation to the other party or parties to the negotiation on the same day that the petition is filed with the commission.

(5) **Contents of petition and documentation.** A petition for arbitration filed under this section must:

(a) State the date on which the original request for negotiation was received, and the dates one hundred thirty-five days and one hundred sixty days after the request was received;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the petitioner;

(d) State any conditions that the petitioning party requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. §§ 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents the petitioner relies on to support

its positions or that it intends to introduce as exhibits at the hearing.

(6) Filing and service of an answer to a petition for arbitration.

(a) **When allowed.** Any party to the negotiation may respond to a petition for arbitration and may file with the commission such additional information as it wishes within twenty-five days after the petition is filed.

(b) **Filing.** Answers to petitions for arbitration under section 252 (b)(2) must be filed with the commission in the manner provided for answers to other petitions under WAC 480-07-145, and must follow the format requirements for pleadings under WAC 480-07-395.

(c) **Service.** A party responding to a petition for arbitration must deliver to the petitioner and any other party or parties to the negotiation a complete copy of the answer and all accompanying documentation on the same day that the response is filed with the commission.

(7) Contents of answer and required documentation. An answer to a petition for arbitration filed under this section must:

(a) State whether the respondent disputes the date the petitioner asserts was the date on which the respondent received the original request for negotiation, or disputes any subsequent dates stated in the petition in conformance with subsection (5)(a) of this section;

(b) Include a brief statement of each unresolved issue and a summary of each party's position with respect to each issue;

(c) State all proposed rates or charges, if prices are in dispute, and all relevant cost studies and related supporting materials that are available to the respondent;

(d) State any conditions that the responding party requests be imposed;

(e) Recommend any information that the arbitrator should request from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B), including an explanation of why the information is necessary for the arbitrator to reach a decision on the unresolved issues; and

(f) Be accompanied by all relevant documentation including:

(i) A current draft of the interconnection agreement, if available and different from any draft agreement submitted with the petition, with all agreed provisions in standard typeface and all unresolved issues in bold typeface;

(ii) A legal brief that addresses the disputed issues, including discussion of how the parties' positions, and any conditions requested, meet or fail to meet the requirements of 47 U.S.C. §§ 251 and 252, any applicable FCC regulations, and any applicable regulation, order, or policy of this commission; and

(iii) Any other documents relevant to the dispute, including copies of all documents the respondent relies on to support its positions or that it intends to introduce as exhibits at the hearing.

(8) Verification. The petition, answer, and all documentation filed must be verified as provided by WAC 480-07-395, or submitted by affidavit or declaration.

(9) Confidentiality; protective order. Petitions, answers, and any documents a party provides to the commis-

sion pursuant to a request under section 252 (b)(4)(B) are subject to Washington's public disclosure laws, including chapter ((42-17)) 42.56 RCW and RCW 80.04.095. Confidential information submitted with a petition for arbitration or answer is subject to the protections and procedures set out in WAC 480-07-160. A party may include in its petition or response a request that the commission enter a protective order.

(10) Discovery. Parties must cooperate in good faith in the voluntary, prompt and informal exchange of all documents and other information relevant to the disputed issues, subject to claims of privilege or confidentiality. A party's failure to cooperate in discovery may be treated as a failure to negotiate in good faith. The arbitrator will schedule a discovery conference for a date ten days after the deadline for responses to the petition for arbitration, subject to rescheduling or cancellation if all parties agree. During the conference, the arbitrator will review the asserted need for any additional discovery, including requests for information by the arbitrator pursuant to 47 U.S.C. § 252 (b)(4)(B). Parties may submit to the arbitrator any discovery requests not responded to by the time of the conference and request that the arbitrator order the discovery. The arbitrator or the commission may request information from the parties pursuant to 47 U.S.C. § 252 (b)(4)(B) at any time.

(11) Appointment and authority of arbitrator.

(a) **Appointment.** One or more commissioners, one or more commission employees appointed by the commission, or one or more persons under contract with the commission may be designated as arbitrator(s) when a petition for arbitration is filed. The commission will not appoint an arbitrator who previously mediated a dispute between the same parties concerning the same interconnection agreement, unless the parties consent in writing or no other arbitrator is available to the commission. The commission will advise the parties of the appointment by entry of an order on arbitration procedure. The commission, in its discretion, may permit parties to comment on the selection of the arbitrator.

(b) **Authority.** Arbitrators will exercise all authority reasonable and necessary to conduct arbitration under the provisions of this rule, the commission's orders on arbitration procedure, and other provisions of law. Other members of the commission's staff may assist an arbitrator, but a staff member who has acted as a mediator with respect to the same interconnection agreement between the same parties may not be consulted. The arbitrator will issue the arbitrator's report within one hundred ten days after the date on which the petition for arbitration was filed. The arbitrator's report satisfies the commission's responsibility to resolve the disputed issues under 47 U.S.C. § 252 (b)(4)(C).

(12) Consolidation. The commission or an arbitrator may consolidate arbitration proceedings to reduce burdens on telecommunications carriers, parties to arbitration proceedings, and the commission.

AMENDATORY SECTION (Amending Docket A-050802, General Order R-536, filed 7/27/06, effective 8/27/06)

WAC 480-07-900 Open public meetings. (1) **Regular meetings.** The commission will hold regular meetings to

conduct business under chapter 42.30 RCW, the Open Public Meetings Act. The commission generally schedules two business meetings per month, usually on ~~((Wednesday))~~ Thursday at 9:30 a.m. in the commission's office in Olympia, Washington. The specific time and place of each business meeting are published, as required, in the *Washington State Register* and on the commission's internet web site. The commission may cancel a meeting or change the time or place of a meeting and will publish a notice of these changes on its web site.

(2) **Special meetings.** The commission may convene special meetings under RCW 42.30.080.

(3) **Recessed meetings.** The commission may recess a regular or special meeting and reconvene it at a different time or location.

(4) **Agenda.** The commission will distribute an agenda for each regular business meeting. The commission will make its best effort to compile and publish a complete agenda. It may amend its agenda after it is published and may take up matters that do not appear on its published agenda. The agenda and any addendum are posted to the commission's internet site. The commission will provide a copy of the agenda via U.S. mail on request.

(a) **"Discussion" agenda.** The discussion agenda includes items that are scheduled for discussion and action by the commissioners. This part of the agenda is further divided into "utilities" and "transportation" sections.

(b) **"No action" agenda.** The no-action agenda includes items that appear to be noncontroversial and, by law, may take effect without action by the commission. Any item on the no-action agenda will be moved to the discussion agenda at the request of any commissioner. The commission may take such action on the item as it deems appropriate.

(c) **"Consent" agenda.** The consent agenda includes items that appear to be noncontroversial and, by law, require action by the commission to take effect. Any item on the consent agenda will be moved to the discussion agenda at the request of any commissioner. The commission will act on the items on the consent agenda by a single motion and a single vote of the commission.

(5) **Deadlines and schedules.**

(a) The commission generally schedules items for consideration at the last regular business meeting before the item would take effect by law. The commission generally schedules items without a stated effective date, such as petitions, for consideration thirty days after filing.

(b) If a company makes a filing and requests action by the commission before the statutory or required notice period is complete, the commission will schedule consideration of the request at its next regular business meeting, if the request is filed and complete at least ~~((five))~~ seven business days before the meeting. Items filed less than ~~((five))~~ seven business days before a meeting will generally be scheduled for the second business meeting after the filing.

(c) All written comments in response to an open meeting item must be filed with the commission three business days in advance of the meeting. Persons are not required to file written comments about an open meeting item to make oral comments at the meeting.

~~((d))~~ (d) The commission will publish the agenda for each regular business meeting two business days before the meeting.

~~((e))~~ (e) The commission may publish an addendum to the agenda prior to the beginning of the meeting.

(6) **Staff contact.** For each item on the discussion agenda, the commission designates a staff member who is assigned to analyze and present a recommendation to the commission at the open meeting. The staff person and a contact number are identified in the agenda. Persons interested in open meeting agenda items may discuss them with staff, subject to time availability.

(7) **Public comment.** The commission will provide an opportunity at the beginning of each business meeting for members of the public to request that items on the consent or no-action sections of the agenda be moved to the discussion section. The commission will provide an opportunity for public comment on each discussion agenda item before taking action on that item.

(8) **Orders.** The commission may direct the secretary to enter any order or sign any document necessary to implement an open meeting decision by the commissioners.

(9) **Modifications.** The commission may exercise its discretion to modify the procedures in this section when appropriate to the conduct of its business.

AMENDATORY SECTION (Amending Docket A-060357, General Order No. R-538, filed 8/21/06, effective 9/21/06)

WAC 480-07-904 Delegation of authority to the executive secretary to decide certain matters. (1) The commission delegates the following matters to the executive secretary for decision. The executive secretary's decision shall take effect immediately on entry of an order or on a later date specified in the order, without prior notice. The executive secretary may set any particular matter for decision by the commission through either the open meeting process or an administrative process the commission otherwise employs. Upon request, the commission will review the matter under subsection (3) of this section at a commission open meeting.

(a) Applications for funding highway-railroad grade crossing improvements under the grade crossing protection fund for applications under WAC 480-62-405 (1)(a).

(b) Petitions for approval of changes to existing highway-railroad grade crossings, including installation or modification of signals; reconstruction of the crossing; or implementation of changes in design or construction.

(c) Applications by water companies for removal from regulation or for the commission to exercise regulation under RCW 80.04.010.

(d) Applications for approval of:

(i) Fully negotiated telecommunications interconnection agreements; and

(ii) Adoptions of existing interconnection agreements.

(e) Applications for less than statutory notice approval of transportation company fuel surcharges and requests for rate increases limited to passing through costs that are authorized for pass-through, such as tipping fees.

(f) Requests for a commission order establishing that a securities filing complies with RCW 80.08.040.

(g) Requests for assignment or management of telephone number resources.

(h) Petitions for mitigation of penalties when the petitioner does not request a hearing, or when commission staff supports the request for mitigation.

(i) Requests for approval of service area agreements.

(j) ~~((Requests))~~ Petitions for exemption to allow extensions of time to make filings under deadlines set by rule or order, not including deadlines established in an adjudication.

(k) Requests for registration as a telecommunications company in Washington.

(l) Requests for authorization of transfers of property by telecommunications companies under WAC 480-120-379 (Transfers of property), limited to applications for the disposal of property that has a market value that exceeds either one percent of the company's rate base, last established by commission order, or two hundred thousand dollars, whichever is greater.

(2) **Notice.** The commission will post on its internet web site for at least fourteen days a listing of all matters decided pursuant to subsection (1) of this section, showing the docket number, date of entry of decision, company name and last date for a request for review to be filed. The commission will regularly publish electronic notice of listings to persons requesting such notice. Any person may request notice by alternative means.

(3) **Opportunity for review.**

(a) Delegated matters, generally. Any affected person may ask the commission to review any matter delegated under subsection (1) of this section. A person seeking review must file his or her request for commission consideration no later than the fourteenth day after the date of the posting. The commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. The commission will provide a form for this purpose on the commission's web site. The commission will schedule a request for review promptly for consideration and will notify the affected company, and any person requesting review, of the time and place of the open meeting at which review will be taken.

(b) Orders suspending or canceling permits. Carriers seeking review of orders suspending or canceling a permit for failure to maintain evidence of required insurance coverage, or for other circumstances specified in WAC 480-07-905, must request an adjudicative or brief adjudicative proceeding under WAC 480-07-610.

AMENDATORY SECTION (Amending Docket A-060357, General Order No. R-538, filed 8/21/06, effective 9/21/06)

WAC 480-07-905 Delegation of authority to executive secretary to enter *ex parte* orders. The commission authorizes the executive secretary to enter the following *ex parte* orders in the name of the commission in nonadjudicative matters. Notice of the order will be published, and responses must follow the procedure outlined, in WAC 480-07-904 (2) and (3), except that carriers seeking review of orders suspending or canceling a permit for failure to maintain evidence of required insurance coverage, or other cir-

cumstance specified in subsections below, must request an adjudicative or brief adjudicative proceeding under WAC 480-07-610.

~~(1) ((Motor freight carriers, chapter 480-14 WAC, (excluding household goods carriers):~~

~~(a) Orders and permits authorizing intrastate transportation of general commodities, materials transported by armored car, or hazardous materials if the applicant satisfies the requirements of chapter 480-14 WAC.~~

~~(b) Orders and permits authorizing or reflecting change of carrier name and business structure if the carrier satisfies the requirements of chapter 480-14 WAC.~~

~~(c) Orders and permits reinstating previously held authority if the carrier meets the requirements of chapter 480-14 WAC.~~

~~(d) Orders suspending and/or canceling a permit if the carrier fails to show that it has the required level of insurance in effect for its operations. The order will inform the carrier:~~

~~(i) That the permit may be reinstated prior to cancellation if the carrier corrects conditions leading to suspension; and~~

~~(ii) That the carrier may contest the suspension and/or cancellation by requesting an adjudication or brief adjudication.~~

~~(e) Orders permanently canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request an adjudication or brief adjudication.~~

~~(f) Orders permanently canceling permit authority or dismissing an application by request of carrier or applicant.~~

~~(g) Orders dismissing an application after notice to the applicant of failure to meet the requirements of chapter 480-14 WAC.~~

~~(2)) **Household goods carriers, chapter 480-15 WAC.**~~

~~(a) ((Permit authority granted by a commission order authorizing)) Orders granting authority and permits for permanent, provisional or temporary intrastate transportation of household goods.~~

~~(b) ((Orders and permits authorizing permanent intrastate transportation of household goods if the applicant satisfies the requirements of chapter 480-15 WAC.~~

~~(c)) Orders and permits authorizing or reflecting change of a carrier's permit name, corporate name, trade name, or addition of a trade name.~~

~~((d)) (c) Orders authorizing voluntary suspension of permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.~~

~~((e)) (d) Orders reinstating voluntarily suspended permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.~~

~~((f)) (e) Orders permanently canceling permit authority or dismissing application by request of carrier or applicant.~~

~~((g)) (f) Orders suspending ((and/or canceling)) a permit if the carrier fails to maintain evidence of required cargo and/or liability insurance coverage. Such orders will inform the carrier that a permit may be reinstated if the carrier corrects conditions leading to suspension and that the carrier may contest the suspension ((and/or cancellation)) by requesting an adjudicative or brief adjudicative proceeding.~~

~~((h)) (g) Orders vacating suspension of a permit if the commission receives the insurance filing during the suspen-~~

sion period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

~~((4))~~ (h) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

~~((5))~~ (i) Orders reinstating previously canceled permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

~~((6))~~ (j) Orders rejecting or denying applications for temporary authority if WAC 480-15-285 applies.

~~((7))~~ (k) Orders rejecting or denying applications for permit authority under WAC 480-15-320 or 480-15-330, or canceling a permit if the carrier does not satisfy conditions for granting authority, or for good cause under WAC 480-15-450.

(2) Solid waste collection companies—Specialized, chapters 81.77 RCW and 480-70 WAC.

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by any existing carrier.

(b) Orders and permits authorizing change of carrier's corporate name, trade name, or addition of a trade name.

(c) Orders and permits approving unprotested applications to transfer or lease certificate.

(d) Orders suspending a permit if the carrier fails to maintain evidence of the required liability insurance coverage. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting an adjudication or brief adjudicative proceeding.

(e) Orders vacating suspension of permit if the commission receives the carrier's insurance filing during the suspension period and orders of abeyance if the carrier requests ~~((an adjudication))~~ a hearing or brief adjudicative proceeding.

(f) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-70 WAC and in the order of cancellation are met.

(h) Orders dismissing application or canceling permit authority by request of applicant or carrier.

~~((4))~~ **(3) Solid waste collection companies—Traditional, chapters 81.77 RCW and 480-70 WAC.**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by an existing carrier.

(b) Orders and permits authorizing change of carrier's name, trade name or addition of a trade name.

~~((5))~~ (c) Orders suspending a permit if the carrier fails to maintain evidence of the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(d) Orders vacating suspension of a permit if the commission receives the carrier's insurance filing during the sus-

pension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(e) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(f) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-70 WAC and in the order of cancellation are met.

(g) Orders dismissing application or canceling permit authority by request of applicant or carrier.

(4) Private, nonprofit transportation providers, chapter 480-31 WAC.

(a) Orders and permits authorizing intrastate transportation of persons with special needs.

(b) Orders and permits authorizing sale, assignment, lease, acquisition or transfer.

(c) Orders suspending a permit if the carrier fails to maintain evidence on file that it has the required level of insurance in effect for its operations. The order must inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(d) Orders vacating suspension of a permit if the commission receives an insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

~~((6))~~ (e) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(f) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-31 WAC and in the order of cancellation are met.

(g) Orders dismissing application or canceling permit authority by request of applicant or carrier.

(5) Charter and excursion busses, chapter 480-40 WAC.

(a) Orders and permits authorizing intrastate transportation of passengers by charter or excursion.

(b) Orders suspending permit if the carrier fails to show that it has the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(c) Orders vacating suspension of permit if the commission receives an insurance filing during the suspension period or orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(d) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension and fails to request a hearing or brief adjudicative proceeding during the suspension period.

(e) Orders canceling permit authority or dismissing an application by request of the carrier or applicant.

(f) Orders dismissing application after due notice to applicant for failure to meet the requirements of chapter 480-40 WAC.

(g) Orders authorizing lease, assignment, or transfer of permit authority.

~~((7))~~ **(6) Auto transportation companies, chapter 81.68 RCW.**

(a) Orders and permits authorizing intrastate, intercity transportation of passengers involving unopposed applications to serve routes not served by any existing carrier and that do not fall within the boundaries of a transit district.

(b) Orders and permits involving name changes, including trade names.

~~((8))~~ **(c) Orders authorizing lease, assignment, or transfer of permit authority.**

(d) Orders suspending a permit if the carrier fails to maintain evidence on file that it has the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(e) Orders vacating suspension of a permit if the commission receives an insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(f) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 81.68 RCW and in the order of cancellation are met.

(h) Orders dismissing application or canceling permit authority by request of applicant or carrier.

(7) Commercial ferries, chapter 480-51 WAC.

(a) Orders suspending a certificate if the carrier fails to maintain the required insurance coverage. The order will inform the carrier that the certificate may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest suspension by requesting a brief adjudication or an adjudication.

(b) Orders vacating suspension of a certificate if the carrier corrects conditions leading to suspension and orders of abeyance if the respondent requests a brief adjudication or an adjudication.

(c) Orders canceling a previously suspended certificate if the carrier fails to correct conditions leading to suspension and fails to timely request an adjudication or brief adjudication.

~~((9))~~ **(8) Temporary transportation authority.** The commission delegates to the executive secretary decisions in applications for temporary motor carrier or solid waste authority. The decision takes effect immediately on entry of an order without prior notice of delegation. An applicant whose application is denied, in whole or in part, may obtain review by requesting an adjudication within twenty days following entry of the order. Commission review of delegated decisions under this provision will be *de novo*.

(9) Cancellation for failure to file annual reports or pay regulatory fees. The commission delegates to the executive secretary notices to regulated companies concerning their failure to timely file annual reports and pay regulatory

fees, as well as orders scheduling hearings and canceling registrations or permit authority for failure to comply with commission rules governing annual reports and regulatory fees.

WSR 08-12-087

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed June 4, 2008, 8:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-108.

Title of Rule and Other Identifying Information: Chapter 16-108 WAC, Washington state egg seals and assessments, WAC 16-108-010 Rate, this change affects egg handlers or dealers that pay monthly egg assessments in lieu of egg seals or facsimile egg seals imprinted on egg containers.

Hearing Location(s): Natural Resources Building, 2nd Floor, Room 205, 1111 Washington Street S.E., Olympia, WA 98504-2560, on July 9, 2008, at 2:00 p.m.

Date of Intended Adoption: July 23, 2008.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., July 10, 2008.

Assistance for Persons with Disabilities: Contact WSDA receptionist by July 2, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state department of agriculture (WSDA) food safety program is proposing changes to chapter 16-108 WAC, Washington state egg seals and assessments, WAC 16-108-010 Rate. The purpose is to suspend collection of the egg assessment for three months.

Reasons Supporting Proposal: This change has been recommended by industry.

Statutory Authority for Adoption: Chapters 69.25 and 34.05 RCW.

Statute Being Implemented: Chapter 69.25 RCW.

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

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Jerry Buendel, Olympia, (360) 902-1888; Implementation and Enforcement: Claudia Coles, Olympia, (360) 902-1905.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule change does not impose any costs on the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

June 4, 2008

Jerry Buendel

Assistant Director

AMENDATORY SECTION (Amending WSR 99-12-076, filed 5/28/99, effective 6/28/99)

WAC 16-108-010 Rate. (1) A fee of (~~(\$0.0026 cents effective June 30, 1999;)~~) \$0.00268 cents effective July 1, 1999, per dozen eggs is hereby established for every egg handler or dealer who pays assessments monthly in lieu of seals and for Washington state egg seals and facsimile type Washington state egg seals imprinted on egg containers.

(2) The imposition of the assessment, whether paid monthly in lieu of seals or by purchase of Washington state egg seals or facsimile type Washington state egg seals imprinted on egg containers, is suspended effective September 1, 2008, and reinstated effective December 1, 2008, at the rate stated in subsection (1) of this section. The reporting requirements of WAC 16-108-030 and labeling requirements of WAC 16-108-040 remain in effect.

WSR 08-12-088
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed June 4, 2008, 8:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-034.

Title of Rule and Other Identifying Information: WAC 220-77-090 Ballast water management and control—Reporting and sampling requirements and 220-77-095 Interim ballast water standard approval process.

Hearing Location(s): Embassy Suites Hotel, 20610 44th Avenue West, Lynnwood, WA 98036, on August 8-9, 2008, at 8:45 a.m.

Date of Intended Adoption: September 5-6, 2008.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, phone (360) 902-2930, fax (360) 902-2155, by August 5, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager by August 1, 2008, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to implement E2SSB 5923 (chapter 350, Laws of 2007), "aquatic invasive species," which revised and added new ballast water management statutes under chapter 77.120 RCW.

Specific impacts on WAC 220-77-090 include: Subsection (1), clarify which vessels are affected and who they must submit reports to; subsection (2), implement the department form letter for a waiver that must be signed; subsection (4), delete expired requirement to file interim report for exchange management; replace with new subsection on how/when to claim safety exemption; subsection (5), add a new subsection on department review of safety exemption claims, including determining if a compliance plan or alternative strategy are required, and imposing a minimum \$500 administrative filing fee; and subsection (6), add a new subsection providing

the process for assessing civil penalties up to a new maximum of \$27,500.

Specific impacts on WAC 220-77-095 include: Subsection (2), add language to clarify intent; subsection (3), add a new subsection by splitting former subsection (2) to delete the treatment technology evaluation process; replace requirements for approval; subsection (3)(b), add a new paragraph identifying the department of ecology's role in approvals; subsection (3)(e), revise the language to simplify determination options; and subsection (3)(i)(iv), add a new paragraph for a savings clause.

Statutory Authority for Adoption: RCW 77.120.030, 77.120.040, 77.120.070.

Statute Being Implemented: RCW 77.120.030, 77.120.040, 77.120.070.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Allen Pleus, 1111 Washington Street, Olympia, (360) 902-2724; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: **No new reporting or record keeping is required.** One previously required report has been deleted: The previous WAC 220-77-090(4) - Interim report for implementing 2007 ballast water exchange program. The remaining required reports - Ballast water reporting form (BWRf), request for BWRf waiver, and interim treatment technology approval process - are carry-overs from the previous requirement.

New compliance plan and alternative strategy documents MAY be required at department discretion for minor number of vessels claiming safety exemptions. Out of an average 4,000 vessel visits per year, only three per year claimed safety exemptions. Out of these three, only two are due to the type of vessel design limitations or equipment failure that would may require the vessel operator to submit a compliance plan or alternative strategy document.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: **Compliance plans MAY benefit from contracting with a marine engineer to rectify equipment limitation or failure issues in those circumstances.**

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: **New fees for filing a safety exemption.** The department must assess a minimum \$500 fee on vessels claiming a safety exemption. As stated in #1 above, however, incidences of vessels claiming this exemption are extremely low. These filing fees are pursuant to RCW 77.120.030 (4)(a).

No new costs for equipment, supplies, or labor expected.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? **No new impacts to sales or revenue are expected.** Current laws require that vessels arriving from out of state exchange ballast water at least fifty nautical miles from the nearest shore. This may increase voyage time, affecting fuel costs and overall schedules.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

- (a) Cost per employee; **None.**
- (b) Cost per hour of labor; or **None.**
- (c) Cost per one hundred dollars of sales. **None.**

The \$500 fee for safety exemptions is a small cost based on infrequency of anticipated application and as compared to overall shipping business expenses.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: The department developed proposed rules in consultation with its ballast water work group, which consists of state and federal agencies, tribal governments, affected industries, environmental organizations, academia, and technical interests. The department did this to reduce the costs and overall impacts of the rule on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department will continue to consult with the ballast water work group to minimize small business impacts.

8. A List of Industries That Will Be Required to Comply with the Rule: The shipping industry - vessels weighing equal to or more than three hundred gross tons.

A copy of the statement may be obtained by contacting Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.wa.gov.

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

June 4, 2008

Loreva M. Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 06-35, filed 3/2/06, effective 4/2/06)

WAC 220-77-090 Ballast water management and control—Reporting and sampling requirements. (1) Vessels ~~((which))~~ that are subject to chapter 77.120 RCW ~~((and which intend to discharge ballast water into Washington state waters))~~ must report ballast water management information at least twenty-four hours prior to entering Washington waters by filing a ballast water ~~((report))~~ reporting form pursuant to Title 33 C.F.R. Part 151.2045 ~~((with the department's designated agents as follows:~~

(a)). Forms must be submitted in electronic format (preferred) or by fax to:

(a) The department, at ballastwater@dfw.wa.gov or 360-902-2845, for any vessel entering state waters at any location; or

(b) The Marine Exchange of Puget Sound in Seattle, at waballast@aol.com or 206-443-3839, for vessels bound for

Puget Sound or coastal ports ~~((must file their ballast water reporting form with the Marine Exchange of Puget Sound in Seattle. Forms must be submitted by fax or in electronic format:~~

~~((b)))~~; or

(c) The Merchants Exchange of Portland, at Marine.Room@pdxmex.com or 503-295-3660, for vessels bound for Washington ports on the Columbia River ((must file their ballast water reporting form with the Merchants Exchange of Portland. Forms must be submitted by fax or in electronic format)).

(2) Vessels not intending to discharge ballast water into Washington state waters shall notify the department in one of the following ways:

(a) ~~((Vessel operators))~~ Owners or operators of one or more vessels who do not wish to file a ballast water reporting form may send a signed form letter, as provided by the department and at least thirty days prior to entering Washington waters, to the department by e-mail at ballastwater@dfw.wa.gov; by fax at 360-902-2845; or by U.S. mail to the state ANS coordinator((-) at Department of Fish and Wildlife, 600 Capitol Way No., Olympia, WA 98501-1091((- which)). The signed letter must include((s)) the following information:

(i) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or U.S. Coast Guard registry number), owner, agent, and vessel type(s); and

(ii) A statement that the vessel will not discharge ballast water into Washington state waters; and

(iii) The signature of the owner, operator, or other authorized representative.

(b) Vessels that would normally discharge ballast water, but will not discharge on ~~((any given))~~ a particular trip, may ((continue to)) file the ballast water reporting form, at least twenty-four hours prior to entering Washington waters, with "not discharging" written in the ballast water history section.

(3) The department, or designated representatives, may at reasonable times and in a reasonable manner, during a vessel's scheduled stay in port, take samples of ballast water and sediment, may examine ballast water management records, and may make other appropriate inquiries to assess the compliance of vessels with ballast water reporting and control requirements.

~~((4))~~ Interim report for implementing 2007 ballast water exchange program:

(a) All vessels subject to chapter 77.120 RCW that enter Washington waters after July 1, 2007, will be prohibited from discharging ballast water under the safety exemptions to the ballast water exchange program. In order to implement the 2007 program, vessel information is required to be on file with the department prior to July 1, 2006.

(b) All vessels subject to chapter 77.120 RCW that enter Washington waters after July 1, 2006, are required, prior to July 1, 2006, to file a Washington State Interim Ballast Water Management Report Form on the report form provided in (d) of this subsection.

(c) A vessel subject to chapter 77.120 RCW that enters Washington waters after July 1, 2006, and for which the vessel owner has not submitted a Washington State Interim Bal-

last Water Management Report Form is subject to a five hundred dollar reporting penalty.

(d) Washington State Interim Ballast Water Management Report Form and Instructions:

**Completion Instructions For:
Washington State Interim Ballast Water Management Report Form**

(Please type in English)

SECTION 1. OWNER/OPERATOR

Vessel(s) Owner Information: Write in the name of the registered owner(s) of the vessel. If under charter, enter Operator name. Also provide mailing address.

Responsible Party Information: Print the person's name, company and contact information (current phone number and e-mail) of the person responsible for administering the management plan described below.

SECTION 2. FLEET INFORMATION

Vessel Name: Print the name of each vessel covered by this management report. A separate report is required for vessels that will use different methods of ballast management. For example: Five vessels may be listed in one report that are going to use the same type of ballast treatment system. A separate report would be required for another five vessels that intend to use ballast exchange and retaining ballast onboard as a management option.

Existing Vessel or New Build: Fill in "Existing Vessel" if this is an existing vessel currently in operation. Fill in "New Build 1," "New Build 2" etc., for vessels that are in a design or new construction phase, but not yet in operation.

IMO Number: Fill in identification number of the vessel used by the International Maritime Organization.

Type: List specific vessel type. Use the following abbreviations: Bulk (bc), ro-ro (rr), container (cs), tanker (ts), passenger (pa), oil/bulk ore (ob), general cargo (gc), reefer (rf). Write out any additional vessel types.

GT: What is the Gross Tonnage of the vessel?

Ballast Capacity: What is the maximum volume of ballast water used when no cargo is on board? **Please include volume units in m³.**

SECTION 3. BALLAST MANAGEMENT COMPLIANCE PLAN (2007)

a. Retaining ballast: Check yes or no to indicate if the vessel's ballast management plan considers retaining some or all ballast on board when in Washington state waters.

b. Local waters: Check yes or no to indicate if the vessel's ballast management plan includes the discharge of water that originated solely within local waters.

c. Ballast exchange: Check yes or no to indicate whether the vessel's ballast management plan will include ballast exchange.

d. If unable to exchange: Safety exemptions will no longer be an acceptable management option in Washington state waters after July 1, 2007. Vessel operators that are using ballast exchange should describe how they will manage ballast discharges into Washington state waters if unable to conduct a safe exchange at sea.

e. Ballast Treatment System: Vessel operators that intend to use a ballast treatment system as a ballast management option should complete subsections **f.** through **l.**

Note: Dates supplied within subsections **h.** through **k.** can be estimated. **Additional Comments** under subsection **l.** are optional.

FOOTER. SIGNATURE AND DATE

Signature of Responsible Party: Forms submitted by fax or mail require the signature of the responsible party. Forms submitted by e-mail do not require a signature; however, the responsible party sending the form by e-mail is certifying that all information contained is complete and accurate. If you choose to send the PDF version of the form by e-mail, a message will inform you that "you are sending a data file only; not the form;" This is the correct submittal process.

Date of Submission: Provide date on which form was submitted.

1. Owner/Operator	Vessel(s) Owner Information:	Responsible Party Information:
	Name _____	Name _____
	Address _____	Address _____
	City, State/Province Zip _____	City, State/Province Zip _____
	Country _____	Country _____
	Telephone Number _____	Telephone Number _____
	E-mail _____	E-mail _____

2. Fleet Information						
	Vessel Name	Existing Vessel, or New Build	IMO#	Type	GT	Ballast Capacity
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

	Vessel Name	Existing Vessel, or New Build	IMO#	Type	GT	Ballast Capacity
11						
12						
13						
14						
15						

Notes:
 1. If you need to list additional vessels, make sure cursor is in last row of table, select "Table" on the menu bar, choose "Insert," then select "Rows Below."
 2. Use one reporting form for each ballast water management plan.
 3. See attached instruction form.

3. Ballast Management Compliance Plan (2007)

a. Does this management plan include **retaining ballast** on board? **Yes** **No**

b. Does this management plan include the discharge of water that originated solely within **"local waters"?** **Yes** **No**

c. Does this management plan include **ballast exchange?** **Yes** **No**

d. If considering ballast exchange: How will you handle ballast **if unable to exchange** at sea?

e. Does this management plan include a **ballast treatment system?** If yes, complete f- through i. **Yes** **No**

f. Vendor Company

g. Vendor Contact

h. Final System Selection Date j. System Purchase Date

i. System Installation Date k. System Operational Date

l. Additional Comments

Responsible Party Signature: _____ **Date:** _____

By submitting this form by e-mail, the responsible party is certifying that all information provided is complete and accurate.)

(4) Vessel operators claiming a safety exemption under RCW 77.120.030(4) must notify the department of their intent to do so on the ballast water reporting form as required in subsection (1) of this section. Notification requires writing the words "SAFETY EXEMPTION" on the form where it asks "If no ballast treatment conducted, state reason why not:" and stating the cause as either "ADVERSE WEATHER," "VESSEL DESIGN LIMITATION," "EQUIPMENT FAILURE," or "EXTRAORDINARY CONDITION."

(a) No safety exemption request is required if the vessel does not intend to discharge unexchanged or untreated ballast water and follows the requirements under subsection (2) of this section.

(b) Vessel operators may rescind a safety exemption claim by filing an amended ballast water reporting form and notifying the department as required in subsection (1) of this section.

(5) The department will review safety exemption claims as noted in subsections (3) and (4) of this section.

(a) The department will determine whether a compliance plan and alternative strategy are required. Compliance plans and alternative interim strategies will be established to minimize discharge of future unexchanged ballast water until compliance with this section can be met.

(b) The department will assess a safety exemption fee using the following as guidance:

(i) Minimum five hundred dollar fee for administrative costs to assess compliance; and

(ii) Larger fees may be assessed by the department based on vessel history, risk, and degree of failure to implement prior compliance plans and alternative strategies.

(6) The department may impose civil penalties ranging from a warning letter up to twenty-seven thousand five hundred dollars for violation of the requirements of this section pursuant to RCW 77.120.070. Each day of a continuing violation constitutes a separate violation. The department will assess civil penalties based on elements that include, but are not limited to:

(a) Degree and nature of failure in meeting reporting requirements;

(b) Degree and nature of failure in allowing reasonable department inspection of a vessel's ballast water management records or allowing samples to be taken from ballast tanks;

(c) Degree and nature of failure in preventing or stopping discharge upon request by department;

(d) Volume and risk of introducing invasive species based on the source of unexchanged or untreated discharge;

(e) Discharge of treated water using a technology that has not been approved for use in waters of the state; and

(f) Vessel and operator violation history.

AMENDATORY SECTION (Amending Order 02-185, filed 8/9/02, effective 9/9/02)

WAC 220-77-095 Interim ballast water discharge standard approval process. (1) The Washington state interim ballast water discharge standard is inactivation or removal of ninety-five percent of zooplankton organisms and ninety-nine percent of phytoplankton and bacteria organisms.

(2) Vessels subject to chapter 77.120 RCW that have not adequately exchanged their ballast water must treat their ballast ~~to meet or exceed the state's discharge standards~~ prior to ~~((discharge))~~ discharging ballast water into Washington waters, after July ~~((+)) 22, ((2004)) 2007.~~

(3) An interim approval process shall be used to ~~((evaluate ballast water treatment technologies and))~~ provide approval for ~~((certain))~~ ballast water treatment technologies that are determined to meet, or have the potential to meet, the Washington state interim ballast water discharge standard. Only ballast water treatment technologies that are approved through this process may be used on specified vessels to discharge treated ballast water into Washington waters ~~((following the guidelines identified within the approval process. Ballast water treatment technology vendors or vessel owners may submit ballast treatment technology for evaluation through the following process:~~

(a) ~~Applications for approval will be accepted by the director or the director's designee).~~

(a) Approval for use of a technology in waters of the state must meet one or more of the following criteria:

(i) The technology was previously approved by the department for use in waters of the state for the term as specified in their approval letter;

(ii) The technology was approved by the U.S. Coast Guard for use in national waters;

(iii) The vessel was enrolled in the U.S. Coast Guard STEP program;

(iv) The technology was approved by the state of California for use in their state waters;

(v) The technology was approved by the International Maritime Organization (IMO) and authorized by the U.S. State Department and U.S. Coast Guard for use in national waters; or

(vi) The vessel was enrolled in the IMO approval process and authorized by the U.S. State Department and U.S. Coast Guard for use in national waters.

(b) Technologies using chemicals or that produce chemical by-products upon discharge will be evaluated by the department of ecology for meeting state water quality standards before acceptance.

(c) Technologies may be approved for use on specific vessels in state waters for up to five years.

(d) The director or the director's designee will accept applications for approval at any time. The applicant is to be notified of the department's receipt of the application package within ten working days. If the application package is incomplete, the application will be returned to the applicant with an explanation of the deficiencies or, if the deficiencies are minimal, held for thirty days to allow the applicant to correct the deficiencies. Formal reviews of supporting records and water quality data ~~((and proposed study plans))~~ will be completed

within forty-five days of receipt of the complete application package.

~~((b)) Formal reviews will be conducted by a science advisory panel and a maritime advisory panel. Panel members will be appointed by the director or the director's designee. The science advisory panel will provide recommendations to the director or the director's designee regarding the ability of each technology to meet the Washington state interim ballast water discharge standard, the adequacy of the proposed study plan, and determine if such technology should be evaluated as a promising technology that could be considered as a "best available technology." The maritime advisory panel will provide recommendations to the director or the director's designee regarding the ability of each technology to meet the practical needs of the maritime industry, including safety, practicality and cost effectiveness, and determine if such technology should be evaluated as a promising technology that could be considered as a "best available technology."~~

~~((e))~~ (e) The director, or the director's designee, shall ~~((take into consideration the findings of the scientific advisory panel, and the maritime advisory panel and))~~ make one of the following determinations:

~~((i))~~ (i) ~~((That))~~ Approval - The ballast water treatment technology ~~((has been approved by the United States Coast Guard or a state agency and is an))~~ is approved ~~((system))~~ for use in Washington state; or

~~((ii))~~ (ii) ~~((To grant general approval to a technology meeting the Washington state interim ballast water discharge standard for a period of five years with stipulations for scientific evaluation. Approval may be revoked if new information shows the technology to be grossly inadequate and incapable of being retrofitted to correct the inadequacy;~~

~~((iii))~~ (iii) ~~To grant conditional approval for use on a specific number of vessels for further full-scale testing; or~~

~~((iv))~~ (iv) ~~Deny approval - The ballast water treatment technology is not approved for use in Washington state.~~

~~((d))~~ (f) Criteria for review. Applications for interim approval of a ballast water treatment system shall be evaluated on the completeness of the following:

~~((i))~~ (i) ~~((A letter of commitment from the technology vendor, the vessel owner installing the technology, and the principal investigators conducting the tests, stating their intents to carry out all components of the study plan for which they are responsible. Principal investigators must be qualified independent researchers. Applications for a treatment system to be used within a specified port must include a letter from the port authority in which the system is to be operated, granting authority for testing or use within the port.))~~ Documentation verification that the technology and vessel(s) meet one of the criteria noted in (a) of this subsection;

~~((ii))~~ (ii) ~~Documentation~~ ~~((stating))~~ verifying that the residual concentrations of any primary treatment chemicals or chemicals that occur as by-products of the treatment meet all applicable regulatory requirements~~((:)); and~~

~~((iii))~~ (iii) ~~((All available))~~ Documentation describing the technical, operational, and installation characteristics of the system.

~~((iv))~~ (iv) ~~Documentation from preliminary experiments that demonstrate the potential of the system to meet the Washing-~~

ton state interim ballast water discharge standard. Indicator species may be used to evaluate the technologies' effectiveness. Technologies may be approved that do not currently meet this criteria, but show promise for improvement or are considered to be a "best available technology." The technology should include easily verifiable indicators to ensure the system is operational and effectively treating ballast at the time of treatment.

(v) The discharge from a technology must be environmentally sound and in compliance with existing water quality discharge laws.

(e) Each proposed technology must include a detailed study plan that:

(i) Is organized according to a department approved standardized format.

(ii) Evaluates the effectiveness of the treatment system over a range of operational conditions during operations, including the cumulative hours of operation, volumes treated, times since the tanks were last cleaned of sediment, abundance of organisms, organic and inorganic load, temperature and salinity of water.

(iii) Identifies limiting conditions such as water quality attributes that may affect the performance of the equipment, length of time for adequate treatment, or other factors that may render the technology as inadequate to meet the interim ballast water discharge standard.

(iv) Assures that samples are representative of the flow or volume from which they are taken.

(v) Contains a detailed quality assurance and/or quality control plan.

(3)) (g) Conditions of approval((-

(a))):

(i) Approval of a technology shall be withdrawn ((after one year if the system is not installed or the testing begun as proposed.

(b) Systems approved under the interim approval process shall be considered to meet all ballast water treatment requirements promulgated by the department for a period of five years. In the event subsequent work reveals adverse effects on ecology or human health, approval of the system will be withdrawn unless the treatment system can be repaired to address the system's inadequacies.

(e)) if the technology or vessel is no longer enrolled in the U.S. Coast Guard STEP or IMO approval process, is no longer approved for use in California waters, or has not been approved for use by the U.S. Coast Guard in national waters or by the IMO in international waters;

(ii) Systems approved under the interim process will be subject to all subsequent standards and regulations upon the expiration of the interim approval period((-

(d) Interim approval is contingent on adherence to the detailed study plan described in the application and agreed upon by the applicant and the department.

(e) The principal scientist and engineers responsible for conducting and analyzing the tests shall submit a report documenting the performance of the equipment and results of the testing to the department within twelve months after installation. Further testing may or may not be required based upon the test results.

(f))):

(iii) Vessels or technologies receiving interim approval shall be subject to inspections by the department or the department's designated representative to verify adherence with the terms of this interim approval agreement and the operation of the treatment systems; and

(iv) Nothing in these rules, ballast water legislation, or laws authorizes the discharge of other pollutants or assures that the technology is safe to operate or that it meets other state, federal, and international laws governing business, marine applications, or other elements.

WSR 08-12-089

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed June 4, 2008, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-058.

Title of Rule and Other Identifying Information: WAC 220-56-156 Possession and delivery of Canadian-origin food fish and shellfish.

Hearing Location(s): WDFW Region 6 Office, 48 Devonshire Road, Montesano, WA 98563, on Tuesday, July 15, 2008, at 10:00 a.m.

Date of Intended Adoption: On or after July 15, 2008.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by July 8, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager, TTY at (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to comply with fishing regulations adopted by the Department of Fisheries and Oceans, Canada.

Reasons Supporting Proposal: Absent these modifications to the current state regulations, our state regulations would be more liberal than Canadian regulations.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

Statute Being Implemented: RCW 77.04.020 and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Heather Reed, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1202; Implementation: Lew Atkins, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules apply to recreational fishermen, not commercial fishermen.

A cost-benefit analysis is not required under RCW 34.05.328. These rules do not involve or affect hydraulics.

June 4, 2008

Loreva M. Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 06-23, filed 2/14/06, effective 5/1/06)

WAC 220-56-156 Possession and delivery of Canadian-origin food fish and shellfish. (1) Canadian license required. It is unlawful to possess in marine waters or deliver into Washington shellfish or food fish taken for personal use from Canadian waters unless the person ~~((that))~~ who possesses or delivers the shellfish or food fish possesses a valid Canadian sport fishing license and catch record card, if one is required, for the shellfish and food fish taken.

(2) Canadian-origin rockfish restrictions: It is unlawful to possess yelloweye or canary rockfish taken for personal use from Canadian waters.

(3) Canadian-origin halibut restrictions:

(a) The daily limit of halibut is one daily limit, regardless of the origin of the halibut. ~~((The daily limit is two halibut if taken from Canadian waters or one halibut if taken from Washington waters.))~~

(b) The possession limit is two halibut if at least one halibut was taken from Washington waters ~~((and three halibut if all three halibut were taken from Canadian waters))~~. It is unlawful to possess in excess of the Canadian possession limit of halibut for the time and area fished if all halibut were taken from Canadian waters.

(c) It is unlawful to possess more than one daily limit of halibut aboard the fishing vessel.

(4) Canadian-origin salmon restrictions:

(a) It is unlawful to possess in marine waters or deliver into Washington any fresh salmon taken for personal use from Canadian waters unless such salmon meet current salmon regulations for the waters of the applicable department of fish and wildlife catch record card area ~~((-except))~~. However, if the vessel operator has a valid Canadian customs clearance number obtained while the vessel was moored at a Canadian government dock in Ucluelet, Victoria, Sydney, White Rock, or Bedwell Harbour, British Columbia, fishers aboard the vessel may deliver Canadian-origin salmon into Washington that are lawfully taken in Canada, regardless of whether the salmon meet the current salmon regulations for the area where delivered.

(b) It is unlawful to fish for any species in state or offshore waters from a vessel having Canadian-origin salmon aboard that do not meet the current salmon regulations for the waters being fished.

(c) It is unlawful for a fisher to fish for any species in state or offshore waters if the fisher possesses in the field any salmon that do not meet the current salmon regulations for the waters being fished.

(5) "Delivery" of Canadian-origin fish into Washington defined. For the purposes of this section, "delivery" means transportation by a private or commercial recreational fishing vessel ~~((and))~~. Delivery in Washington is complete when, within the state, the vessel anchors, moors, ties to a float or

pier, or is placed or attempted to be placed on a boat trailer. "Delivery" is also complete if the fish or shellfish are off-loaded from the vessel within state waters.

WSR 08-12-090

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 4, 2008, 9:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-100.

Title of Rule and Other Identifying Information: WAC 392-140-970 through 392-140-974, Finance—Special allocations—Salary bonus for teachers who attain certification by the National Board for Professional Teaching Standards.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on July 14, 2008, at 9:00 a.m.

Date of Intended Adoption: July 15, 2008.

Submit Written Comments to: Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, by July 11, 2008.

Assistance for Persons with Disabilities: Contact Clarice Nnanubu by July 11, 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 will update guidance on the administration of the salary bonus for teachers and other certificated staff that hold current certification by the National Board for Professional Teaching Standards. These revisions will implement 2SHB 2262, as passed during the 2007 legislative session and codified as RCW 28A.405.415, provisions in the 2007-09 state operating budget, SHB 1128, section 513(41), and provisions in the 2008 state supplemental operating budget ESHB 2687, section 511(41).

Major rule revisions:

- Broaden the scope of those eligible for the bonus to include not only teachers, but other certificated instructional staff and principals.
- Broaden the scope of those eligible for the bonus to include employees of the Washington school for the deaf and Washington school for the blind.
- Include provisions to administer additional bonuses for teachers and other certificated staff with instructional assignments in challenging, high-poverty schools, including the definition of a high-poverty school.
- Include provisions to prorate the additional bonus for those staff who are assigned less than full-time or for less than a full-year to high-poverty schools.
- Beginning in the 2008-09 school year and thereafter, the salary bonus is included in the definition of "earnable compensation" for retirement purposes.
- Other "housekeeping" updates.

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

June 4, 2008

Dr. Terry Bergeson
Superintendent of
Public Instruction

Chapter 392-140 WAC

FINANCE—SPECIAL ALLOCATIONS(~~(INSTRUC-~~ ~~TIONS, AND REQUIREMENTS))~~

SALARY BONUS FOR TEACHERS AND OTHER CERTIFICATED INSTRUCTIONAL STAFF WHO (~~(ATTAIN))~~ HOLD CURRENT CERTIFICATION BY THE NATIONAL BOARD

AMENDATORY SECTION (Amending WSR 02-15-023, filed 7/9/02, effective 8/9/02)

WAC 392-140-970 Salary bonus for teachers and other certificated instructional staff who (~~(attain)) hold current certification by the national board~~—Applicable provisions—Authority. The provisions of WAC 392-140-970 through 392-140-974 govern administration of the salary bonus for teachers and other certificated instructional staff who (~~(attain)) hold current certification by the national board for professional teaching standards.~~ The authority for WAC 392-140-970 through 392-140-974 is the state Biennial Operating Appropriations Act, RCW 28A.405.415, and (~~(RCW))~~ 28A.150.290(1).

AMENDATORY SECTION (Amending WSR 02-15-023, filed 7/9/02, effective 8/9/02)

WAC 392-140-971 Salary bonus for teachers and other certificated instructional staff who (~~(attain)) hold current certification by the national board~~—Purpose. These rules determine eligibility for state funding and establish guidelines for the administration of the bonus.

AMENDATORY SECTION (Amending WSR 02-15-023, filed 7/9/02, effective 8/9/02)

WAC 392-140-972 Salary bonus for teachers and other certificated instructional staff who (~~(attain)) hold current certification by the national board~~—Definitions. As used in this chapter:

(1) "Form SPI 1525" means the form provided by the superintendent of public instruction on which districts may request payment of the salary bonus for teachers and other certificated instructional staff who (~~(attain)) hold current certification by the national board for professional teaching standards.~~

(2) "Teachers and other certificated instructional staff" (~~(means an employee))~~ includes employees assigned to one of the following duties as defined in the *S-275 Personnel Reporting Handbook*:

- (a) Elementary teacher, duty root 31;
 - (b) Secondary teacher, duty root 32;
 - (c) Other teacher, duty root 33;
 - (d) Long-term substitute teacher, duty root 52;
 - (e) Contractor teacher, duty root 63; or
 - (f) If the district certifies that the employee is assigned teaching responsibilities or serves as a mentor teacher:
 - (i) Other support personnel, duty root 40;
 - (ii) Library media specialist, duty root 41;
 - (iii) Counselor, duty root 42; (~~(or))~~
 - (iv) Occupational therapist, duty root 43;
 - (v) Social worker, duty root 44;
 - (vi) Speech-language pathologist or audiologist, duty root 45;
 - (vii) Psychologist, duty root 46;
 - (viii) Nurse, duty root 47;
 - (ix) Physical therapist, duty root 48;
 - (x) Reading resource specialist, duty root 49; or
 - (xi) Contractor educational staff associate, duty root 64;
- and excludes employees not assigned to the above duties. This excludes those employees whose duties consist entirely of the following:
- (g) Certificated administrative staff, duty roots 11 through 25;
 - (h) Extracurricular, duty root 51; or
 - (i) Classified staff, duty roots 90 through 99.

AMENDATORY SECTION (Amending WSR 02-15-023, filed 7/9/02, effective 8/9/02)

WAC 392-140-973 Salary bonus for teachers and other certificated instructional staff who (~~(attain)) hold current certification by the national board~~—Eligibility. Candidates who are eligible for the bonus shall be limited to those meeting the following requirements:

- (1) Hold current certification by the national board for professional teaching standards; and
- (2) Who are:
 - (a) Teachers and other certificated instructional staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210; or

(b) Teachers and other certificated instructional staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a); or

(c) Teachers and other certificated instructional staff employed full time or part time by the Washington school for the deaf or Washington school for the blind.

(3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated instructional staff shall be eligible for additional bonuses if the employee is in an instructional assignment in schools where at least seventy percent of the students qualify for the federal free or reduced-price lunch program, subject to the following conditions and limitations:

(a) For the 2007-08 school year, "schools where at least seventy percent of the students qualify for the federal free or reduced-price lunch program" shall be defined as schools where the prior year percentage of students eligible for the federal free or reduced-price lunch program was at least seventy percent, as determined by any of the following sources:

(i) The October 2006 count by the child nutrition section of the office of superintendent of public instruction; or

(ii) The October 2006 count by the core student records system of the office of superintendent of public instruction.

(b) For the 2008-09 school year, "schools where at least seventy percent of the students qualify for the federal free or reduced-price lunch program" shall be defined as schools in which either of the two prior years percentage of students eligible for the federal free or reduced-price lunch program was at least seventy percent, as determined by any of the following sources:

(i) The October 2006 or October 2007 count by the child nutrition section of the office of superintendent of public instruction; or

(ii) The October 2006 or October 2007 count by the core student records system of the office of superintendent of public instruction.

(c) For the 2009-10 school year and thereafter, "schools where at least seventy percent of the students qualify for the federal free or reduced-price lunch program" shall be defined as schools in which either of the two prior years percentage of students eligible for the federal free or reduced-price lunch program was at least seventy percent, as determined by the October count of the core student records system of the office of superintendent of public instruction.

(d) Teachers and other certificated instructional staff that meet the qualifications for additional bonuses under this subsection who are assigned for less than one full school year or less than full time for the school year shall receive the additional bonuses in a prorated manner, subject to the following conditions and limitations:

(i) The portion of the employee's assignment to schools where at least seventy percent of the students qualify for the federal free or reduced-price lunch program shall be determined as of either October 1 of the current school year or the employee's employment contract date for the current school year.

(ii) If the employee's assignment to schools where at least seventy percent of the students qualify for the federal free or reduced-price lunch program is less than 1.0 full-time

equivalent, the proration shall use the methodology in WAC 392-121-212 and shall be rounded to three decimal places.

AMENDATORY SECTION (Amending WSR 03-21-100, filed 10/17/03, effective 11/17/03)

WAC 392-140-974 Salary bonus for teachers and other certificated instructional staff who ((attain)) hold current certification by the national board—Administrative procedures. (1) School districts that employ teachers and other certificated instructional staff eligible for the salary bonus shall report those employees to the office of superintendent of public instruction by submitting Form SPI 1525 for each ((individual)) employee.

(2) Districts shall document each ((teacher's)) employee's eligibility by maintaining on file for audit a copy of the ((teacher's)) employee's national board certification notice and ((, if the teacher is not shown on Report S-275,)) evidence of employment and duties assigned. For employees eligible for additional bonuses pursuant to WAC 392-140-973(3), districts shall also document the employee's instructional assignments in schools where at least seventy percent of the students qualify for the federal free or reduced-price lunch program.

(3) Report forms received by the superintendent of public instruction by the 15th of the month shall be paid in that month's apportionment and displayed on Report 1197, in revenue account 4158.

(4) For each candidate, the superintendent of public instruction shall send the district the amount of the salary bonus set in the operating appropriations act plus an amount for the district's (employer) portion of ((social security)) mandatory fringe benefits.

(5) The district shall pay the bonus to the employee in a lump sum amount on a supplemental contract pursuant to RCW 28A.400.200.

(6) The salary bonus is excluded from the definition of "earnable compensation" under RCW 41.32.010(10) teachers' retirement.

**WSR 08-12-092
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed June 4, 2008, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-07-016.

Title of Rule and Other Identifying Information: WAC 220-56-250 Lingcod—Areas and seasons.

Hearing Location(s): WDFW Region 6 Office, 48 Devonshire Road, Montesano, WA 98563, on Tuesday, July 15, 2008, at 10:00 a.m.

Date of Intended Adoption: On or after July 15, 2008.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by July 8, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager, TTY at (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to comply with federal fishing regulations adopted by the National Marine Fisheries Service on December 29, 2006 (71 F.R. 78638). The intent of this rule is to set a state lingcod season date that conforms to the federal regulations.

Reasons Supporting Proposal: This rule incorporates the recommendations of the Pacific Fishery Management Council for the management of coastal bottomfish. Absent this modification to the current state regulations, state regulations would be more liberal than federal regulations.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

Statute Being Implemented: RCW 77.04.020 and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Heather Reed, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1202; Implementation: Lew Atkins, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules apply to recreational fishermen, not commercial fishermen. Also, the Pacific Fisheries Management Council and the National Marine Fisheries Service did a full economic analysis as part of National Environmental Policy Act requirements. A copy of the analysis is available on the council's web site <http://www.pcouncil.org/groundfish/gfspex/gfspex07-08.html>.

A cost-benefit analysis is not required under RCW 34.05.328. These rules do not involve or affect hydraulics.

June 4, 2008

Loreva M. Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 04-39, filed 3/4/04, effective 5/1/04)

WAC 220-56-250 Lingcod—Areas and seasons. It is unlawful to take, fish for, or possess lingcod for personal use except during the seasons and within the areas herein provided:

(1) Coastal area:

(a) Catch Record Card Areas 1 through 3 - the Saturday closest to March 16 through the (~~Sunday~~) Saturday closest to October 15(=);

(b) Catch Record Card Area 4 west of the Bonilla-Tatoosh line - April 16 through October 15, or the (~~Sunday~~) Saturday closest to October 15 if that (~~Sunday~~) Saturday is previous to October 15, whichever is earlier(=); and

(c) Catch Record Card Area 4 east of the Bonilla-Tatoosh line - April 16 through October 15.

(2) Catch Record Card Areas 5 through 13 - May 1 through June 15 by angling, and May 21 through June 15 by spear fishing.

WSR 08-12-100

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed June 4, 2008, 9:34 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-01-172 Family members, 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?, 357-31-100 Must an employer have a policy for requesting and approving leave?, 357-31-130 When can an employee use accrued sick leave?, 357-31-200 When must an employer grant the use of vacation leave?, 357-31-230 When can an employee use accrued compensatory time?, 357-31-327 Must an employer grant leave without pay for other miscellaneous reasons?, 357-31-373 Is an employee whose spouse is a member of the Armed Forces of the United States entitled to take leave from work when the military spouse has been called to active duty or when the military spouse is on leave from deployment?, 357-31-730 When an employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and the employee is seeking to use accrued leave or unpaid leave what documentation may the employee be required to submit?, 357-31-360 Must employees who have been ordered to active duty or active training duty be granted paid military leave?, 357-31-567 When must an employer grant the use of recognition leave?, 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?, 357-31-405 What documentation may an employee seeking shared leave be required to submit?, and 357-31-435 Must employees use their own leave before using shared leave?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on July 10, 2008, at 8:30 a.m.

Date of Intended Adoption: July 10, 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 July 3, 2008. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact Department of personnel by July 3, 2008, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes are due to the passage of SHB 2602, SB 6447, and SSB 6500. These bills passed during the 2008 legislative session.

SHB 2602 - allows an employee to take accrued paid leave or unpaid leave if the employee or the employee's fam-

ily member is a victim of domestic violence, sexual assault, or stalking.

SB 6447 - allows an employee whose spouse is in the military to take fifteen days of unpaid leave to be with the military spouse before deployment or when the military spouse is on leave from deployment. The employee may choose to use accrued leave in place of leave without pay.

SSB 6500 - adds being a victim of domestic violence, sexual assault, or stalking as a qualifying reason for an employee to receive shared leave.

Section 3 of SHB 2602 specifically states the reasons allowed for taking leave under this law, SSB 6500 does not. Therefore, we did not address the reasons in rule because we did not want two different standards.

The definition of "family member" found in WAC 357-01-172 is broader than the definition in SHB 2602. The definition in the bill includes "a person with whom the employee has a dating relationship." We decided to keep the current definition in WAC 357-01-172 and just add "a person with whom the employee has a dating relationship" for the purpose of SHB 2602.

SHB 2602 addresses the employer's ability to request verification from the employee and what would be acceptable forms of verification. SSB 6500 does not address this. The new rule being proposed (WAC 357-31-730) and the language being added to WAC 357-31-405 is so that there will not be two different standards in regards to verification.

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.

June 4, 2008
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

WAC 357-01-172 Family members. Individuals considered to be members of the family are parent, step-parent, sister, brother, parent-in-law, spouse, grandparent, grandchild, minor/dependent child, and child. For the purpose of WAC 357-31-730(2) family member also includes a person with whom the employee has a dating relationship as defined in RCW 26.50.010.

AMENDATORY SECTION (Amending WSR 07-03-054, filed 1/12/07, effective 2/15/07)

WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?

(1) An employer must approve the use of a personal holiday as long as:

- (a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;
- (b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and
- (c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for ~~((either))~~ any of the following reasons:

- (a) To care for a minor/dependent child with a health condition that requires treatment or supervision((-));
- (b) To care for a spouse, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition((-);

(c) If the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking as defined in section 2, chapter 286, Laws 2008. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730: or

(d) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse has been notified of an impending call or order to active duty, before deployment or when the military spouse is on leave from deployment.

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 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-100 Must an employer have a policy for requesting and approving leave?

Each employer must develop a leave policy which specifies the procedure for requesting and approving all leave, as provided in the civil service rules. The employer's policy must ~~((allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies, or for an emergency health condition as provided in WAC 357-31-200(2).))~~

(1) Allow an employee to use vacation leave without advance approval when the employee is requesting to use vacation leave to respond to family care emergencies, or for an emergency health condition as provided in WAC 357-31-200(2);

(2) Allow an employee to use accrued leave or unpaid leave when the employee is a victim, or has a family member, as defined in Chapter 357-01 WAC, who is a victim of domestic violence, sexual assault, or stalking as defined in section 2, chapter 286, Laws 2008; and

(3) Address advance notice from the employee when the employee is seeking leave under subsection (2) of this sec-

tion. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or the employee's designee must give notice to the employer no later than the end of the first day that the employee takes such leave.

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 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-130 When can an employee use accrued sick leave? The employer may require medical verification or certification of the reason for sick leave use in accordance with the employer's leave policy.

(1) Employers **must** allow the use of accrued sick leave under the following conditions:

(a) Because of and during illness, disability, or injury that has incapacitated the employee from performing required duties.

(b) By reason of exposure of the employee to a contagious disease when the employee's presence at work would jeopardize the health of others.

(c) To care for a minor/dependent child with a health condition requiring treatment or supervision.

(d) To care for a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or emergency health condition.

(e) For family care emergencies per WAC 357-31-290, 357-31-295, 357-31-300, and 357-31-305.

(f) For personal health care appointments.

(g) For family members' health care appointments when the presence of the employee is required if arranged in advance with the employing official or designee.

(h) When an employee is required to be absent from work to care for members of the employee's household or relatives of the employee/employee's spouse who experience an illness or injury, not including situations covered by subsection (1)(d) of this section.

(i) The employer must approve up to five days of accumulated sick leave each occurrence. Employers may approve more than five days.

(ii) For purposes of this subsection, "relatives" is limited to spouse, child, grandchild, grandparent or parent.

(i) If the employee or the employee's family member, as defined in Chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in section 2, chapter 286, Laws 2008. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(j) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse has been notified of an impending call or order to active duty, before deployment or when the military spouse is on leave from deployment.

(2) Employers **may** allow the use of accrued sick leave under the following conditions:

(a) For condolence or bereavement.

(b) When an employee is unable to report to work due to inclement weather in accordance with the employer's policy on inclement weather as described in WAC 357-31-255.

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 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-200 When must an employer grant the use of vacation leave? (1) An employee's request to use vacation leave must be approved under the following conditions:

~~((1))~~ (a) As a result of the employee's serious health condition.

~~((2))~~ (b) To care for a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition.

~~((3))~~ (c) To care for a minor/dependent child with a health condition that requires treatment or supervision.

~~((4))~~ (d) For parental leave as provided in WAC 357-31-460.

(e) If the employee or the employee's family member, as defined in Chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in section 2, chapter 286, Laws 2008. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(f) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse has been notified of an impending call or order to active duty, before deployment or when the military spouse is on leave from deployment.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) through (1)(f) above may be subject to verification that the condition or circumstance exists.

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 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-230 When can an employee use accrued compensatory time? (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider the work requirements of the department and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time maybe subject to verification that the condition exists.

~~(3) ((Compensatory time off may be scheduled by the employer during the final sixty days of a biennium-)) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in Chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in section 2, chapter 286, Laws 2008. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.~~

~~(4) ((Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave-)) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse has been notified of an impending call or order to active duty, before deployment or when the military spouse is on leave from deployment.~~

~~(5) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.~~

~~(6) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.~~

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-17-129, filed 8/20/07, effective 9/20/07)

WAC 357-31-327 Must an employer grant leave without pay for other miscellaneous reasons? ~~An employer must grant leave without pay ((when an employee who is a volunteer fire fighter is called to duty to respond to a fire, natural disaster, or medical emergency-)) under the following conditions:~~

~~(1) When an employee who is a volunteer fire fighter is called to duty to respond to a fire, natural disaster, or medical emergency:~~

~~(2) If the employee or the employee's family member, as defined in Chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in section 2, chapter 286, Laws 2008. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or~~

~~(3) In accordance with WAC 357-31-373, for an employee to be with a spouse who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse has been notified of an impending call or order to active duty, before deployment or when the military spouse is on leave from deployment.~~

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.

NEW SECTION

WAC 357-31-373 Is an employee whose spouse is a member of the Armed Forces of the United States entitled

to take leave from work when the military spouse has been called to active duty or when the military spouse is on leave from deployment? (1) During a period of military conflict, an employee who is a spouse of a member of the Armed Forces of the United States, National Guard, or Reserves who has been notified of an impending call or order to active duty or has been deployed is entitled to a total of fifteen days of unpaid leave per deployment. The employee is entitled to the fifteen days of unpaid leave after the military spouse has been notified of an impending call or order to active duty and before deployment or when the military spouse is on leave from deployment. The employee may choose to substitute accrued leave to which the employee is entitled for any part of the leave without pay.

(2) An employee who seeks leave under this section must provide the employer with notice:

(a) Within five business days of the employee's spouse receiving official notice of an impending call or order to active duty; or

(b) Within five business days of the employee's spouse receiving official notice of leave from deployment.

NEW SECTION

WAC 357-31-730 When an employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and the employee is seeking to use accrued leave or unpaid leave what documentation may the employee be required to submit? (1) When an employee or the employee's family member, as defined in Chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking, as defined in section 2, chapter 286, Laws 2008, and the employee is seeking to use their accrued leave or take leave without pay the employer may require that the request be supported by verification. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking;

(b) A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking;

(c) Evidence from the court or prosecuting attorney that the employee or the employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;

(d) An employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking; or

(e) Documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional.

(2) If the victim of domestic violence, assault, or stalking is the employee's family member, as defined in Chapter 357-

01 WAC, verification of the familial relationship between the employee and the victim may include but is not limited to: A statement from the employee; a birth certificate; a court document; or other similar documentation.

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 05-08-138, filed 4/6/05, effective 7/1/05)

WAC 357-31-360 Must employees who have been ordered to active duty or active training duty be granted paid military leave? (1) Employees must be granted military leave with pay not to exceed (~~fifteen~~) twenty-one working days during each year, beginning October 1st and ending the following September 30th, in order to report for active duty or to take part in active training duty in the Washington National Guard or the Army, Navy, Air Force, Coast Guard, or Marine Corps reserves of the United States or any organized reserve or armed forces of the United States.

(2) Military leave with pay is in addition to any vacation and sick leave to which an employee is entitled and does not reduce benefits, performance ratings, privileges, or pay.

(3) During paid military leave, the employee must receive the normal base salary.

(4) Employees required to appear during working hours for a physical examination to determine physical fitness for military service must receive full pay for the time required to complete the examination.

NEW SECTION

WAC 357-31-567 When must an employer grant the use of recognition leave? (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in Chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in section 2, chapter 286, Laws 2008. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; and

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse has been notified of an impending call or order to active duty, before deployment or when the military spouse is on leave from deployment.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and 1(b) above may be subject to verification that the condition or circumstance exists.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 08-07-063, filed 3/17/08, effective 4/18/08)

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.~~) 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 is likely to take leave without pay or terminate his or her employment because:

(1) The employee has been called to service in the uniformed services;

(2) The employee is volunteering with a governmental agency or a nonprofit organization when a state of emergency has been declared within the United States;

(3) The employee or a relative or household member is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition; or

(4) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655.

AMENDATORY SECTION (Amending WSR 08-07-063, filed 3/17/08, effective 4/18/08)

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(~~(-)~~); or

(d) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655.

(2) The illness, injury, impairment, condition, call to service, or emergency volunteer service, or consequence of

domestic violence, sexual assault, or stalking 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, 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, 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, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) or (1)(d) 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 07-17-126, filed 8/20/07, effective 9/20/07)

WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit? (1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition before the employer approves or disapproves the request.

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required absence before the employer approves or disapproves the request.

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a non-profit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 357-31-390 (1)(d), the employer may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault, or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault, or stalking;

(c) Evidence from the court or prosecuting attorney that the employee appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault, or stalking; or

(e) Documentation that the employee is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional.

AMENDATORY SECTION (Amending WSR 08-07-063, filed 3/17/08, effective 4/18/08)

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) and (1)(d) 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 08-12-101
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS**

(Securities Division)

[Filed June 4, 2008, 9:52 a.m.]

Supplemental Notice to WSR 08-10-103.

Preproposal statement of inquiry was filed as WSR 08-01-128.

Title of Rule and Other Identifying Information: The rule making will create rules for administering the securities prosecution fund.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Tumwater, WA 98501, on July 15, 2008, at 2 p.m.

Date of Intended Adoption: July 16, 2008.

Submit Written Comments to: Jill M. Vallely, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail jvallely@dfi.wa.gov, fax (360) 704-7035, by July 15, 2008.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey by July 14, 2008, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities prosecution fund was created by RCW 43.320.115. Fines collected by the Washington securities division are placed in a fund known as the securities prosecution fund. Funds may be made available for payment of costs, expenses and charges incurred in the prosecution of criminal charges arising under the Securities Act, the Commodities Transactions Act, the Franchise Investment Protection Act, and the Business Opportunity Fraud Act. The proposed rule making will codify the procedures to be followed by prosecuting attorneys who seek fund expenditures.

Reasons Supporting Proposal: The rule making will provide notice and guidance to prosecuting attorneys who may be eligible to request funds from the securities prosecution fund. The rules will provide additional information on the application procedure to be followed. The rules will also outline the record-keeping and reporting requirements for prosecuting attorneys who receive funds from the securities prosecution fund.

Statutory Authority for Adoption: RCW 43.320.115.

Statute Being Implemented: RCW 43.320.115.

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

Name of Proponent: Department of financial institutions, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Jill M. Vallely, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Scott Jarvis, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: Michael E. Stevenson, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposal does not impose additional costs on business.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328.

June 3, 2008
Scott Jarvis
Director

Chapter 208-705 WAC

PROCESSING APPLICATIONS FOR GRANTS FROM THE SECURITIES PROSECUTION FUND

NEW SECTION

WAC 208-705-010 Securities prosecution fund. (1) Pursuant to RCW 43.320.115, the department of financial institutions maintains a securities prosecution fund. Moneys from the securities prosecution fund may be available for payment of costs, expenses and charges incurred in the preparation, initiation and prosecution of criminal charges arising under the Securities Act, the Commodities Transaction Act, the Franchise Investment Protection Act, and the Business Opportunity Fraud Act. The attorney general or prosecuting attorney may apply to the director of the department of finan-

cial institutions for expenditures from the securities prosecution fund.

(2) Application process.

(a) An applicant shall complete an application form provided by the securities division of the department of financial institutions.

(b) If the director or his or her designee approves the application, the applicant may be required to complete and submit additional forms and information. If an application is denied, an applicant may submit a request for reconsideration, but the director or his or her designee's subsequent decision is final.

(c) The attorney general or prosecuting attorney requesting fund expenditures related to a criminal investigation or prosecution must maintain books, records, documents, and other evidence that sufficiently and accurately reflect those expenditures.

(d) At the closing of each case for which fund expenditures have been approved, the attorney general or prosecuting attorney must submit a closing report to the department of financial institutions. The closing report shall provide an accounting for fund expenditures, summarize the outcome of the case, and certify that all funds have been used for the purpose requested. The closing report shall be submitted within one hundred twenty days of the applicant's fiscal year end. If a closing report is not filed, or if the closing report indicates that funds were not used for the purpose requested, the attorney general or prosecuting attorney is required to repay the funds received from the securities prosecution fund.

WSR 08-12-103
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed June 4, 2008, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-04-070.

Title of Rule and Other Identifying Information: Amending the rules in chapter 208-630 WAC implementing the Check Cashers and Sellers Act, chapter 31.45 RCW.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA 98501, on July 10, 2008, at 1-3 p.m.

Date of Intended Adoption: August 5, 2008.

Submit Written Comments to: Elizabeth Stancil, P.O. Box 41200, Olympia, WA 98504-1200, e-mail estancil@dfi.wa.gov, fax (360) 586-5068, by July 9, 2008.

Assistance for Persons with Disabilities: Contact Elizabeth Stancil by June 27, 2008, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments are to the annual reporting requirements. The amendments clarify licensee reporting requirements and are technical changes to clarify or correct scrivener's errors.

Reasons Supporting Proposal: Clarification and consistency.

Statutory Authority for Adoption: RCW 43.320.040.

Statute Being Implemented: Chapter 31.45 RCW.

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

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cindy Fazio, 150 Israel Road, Olympia, WA, (360) 902-8800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

June 4, 2008

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-830 What are a licensee's annual ((financial and)) reporting requirements? ((Each licensee must submit the reports of its Washington activities described in this section, on a form prescribed and made available by the director, due not later than one hundred five days after the close of the calendar year (or fiscal year if a licensee has established a fiscal year different from the calendar year). Licensees must make each report for the prior calendar year or fiscal year, which shall be referred to in these rules as the "period." A consolidated annual report must contain:)) On or before April 15, each licensee must submit financial statements for the calendar year just ended. If the licensee has established a fiscal year different from the calendar year, the financial statements are due not later than one hundred five days after the close of the fiscal year.

(1) Annual financial statements. The financial statements must include at least a balance sheet and a statement of income prepared in accordance with generally accepted accounting principles.

(2) Annual assessment report (AAR). Each licensee must submit an AAR of its Washington activities, in a form prescribed by the director. The AAR must contain the following:

(a) The total dollar volume of checks cashed during the period, if applicable; and

(b) The total dollar volume of checks sold during the period, if applicable; and

(c) The total dollar volume of small loans made during the period, if applicable; and

(d) The annual assessment fee calculation. See WAC 208-630-400.

(3) Consolidated annual report (CAR). Each licensee must submit a CAR of its Washington activities, in a form prescribed by the director. The CAR must contain at least the following:

(a) For all licensees, the CAR must contain:

(i) The total number of employees and annual payroll during the period;

((2)) (ii) The total number and dollar volume of transactions during the period;

((3)) (iii) The total dollar amount of fees collected during the period;

((4)) (iv) The total number and dollar amount of undeposited checks taken or held in connection with check cashing and small loan endorsement business at the end of the period;

((5)) (v) The total number and dollar amount of returned (NSF) checks taken or held in connection with check cashing and small loan business at the end of the period, and the total dollar amount of fees collected for returned (NSF) checks during the period;

((6)) (vi) The total number and dollar amount of charge-offs (losses), net of any recoveries, for the period; and

((7)) (vii) The total dollar amount of net income before and after taxes earned under authority of this chapter.

(viii) Such other relevant information as the director may require, in a form prescribed by the director.

(b) For all licensees with a small loan endorsement, the CAR must contain:

(i) The total dollar volume of small loans made during the period, including payment plan loans;

(ii) The total number of loans made for the period;

(iii) The total number of borrowers for the period;

(iv) The number of borrowers whose accounts were referred to collection agencies;

(v) The number of loans rescinded during the period;

(vi) The number of borrowers entering into a payment plan;

(vii) The number of loans made to borrowers to be paid through an ACH (automated clearing house) or other electronic transaction;

(viii) The number of loans made to borrowers through other than a physical visit to the licensee's location (e.g., internet, telephone, etc.); and

(ix) The number of active military borrowers during the period.

(c) For all licensees with small loan endorsements and total loan volume of at least ten million dollars in principal for the reporting period, the CAR must contain the following:

(i) The number of loans per borrower for the period;

(ii) The number of loans per military borrower during the period; and

(iii) The number of loans with terms in each of the following categories for the period:

(A) One to seven days;

(B) Eight to fourteen days;

(C) Fifteen to twenty-one days;

(D) Twenty-two to thirty-one days; and

(E) Thirty-two or more days.

NEW SECTION

WAC 208-630-8301 What happens if a licensee is late filing the annual reports and paying the annual assessment? If a licensee does not file the financial statements, assessment report, consolidated annual report, and pay its

annual assessment fee by April 15 of each year, the director will send the licensee a notice of suspension and assess a late fee of twenty-five percent of the annual assessment fee. The licensee's reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after April 15, unless the department is not open for business on that date, then the licensee's reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the next day the department is open for business. If the reports and payment of both the annual assessment fee and any late fee do not arrive prior to such time and date, the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after April 15.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-630-410	What happens if a licensee is late with an annual assessment fee?
WAC 208-630-850	What information must a licensee have in the annual assessment report?
WAC 208-630-860	If licensee has a small loan endorsement, what other reports must be filed?
WAC 208-630-870	If a licensee has a loan volume of at least ten million dollars in principal in the year prior, what additional reports must the licensee file with the director?
WAC 208-630-900	What additional information must a licensee include with annual reports and financial statements?

WSR 08-12-105

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed June 4, 2008, 10:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-170.

Title of Rule and Other Identifying Information: Repealing WAC 246-310-262 Nonemergent interventional cardiology standards; and adding new sections WAC 246-310-700 Adult PCI—Purpose and applicability, 246-310-705 PCI definitions, 246-310-710 Concurrent review, 246-310-715 General requirements, 246-310-720 Hospital volume standards, 246-310-725 Physician volume standards, 245-310-730 Staffing requirements, 246-310-735 Partnering agreements, 246-310-740 Quality assurance, 246-310-745 Need forecast-

ing methodology, 246-310-750 Tiebreaker, and 246-310-755 Ongoing compliance with standards.

Hearing Location(s): Department of Health, Point Plaza East Conference Center, 310 Israel Road S.E., Tumwater, WA 98502, on July 8, 2008, at 9:30 a.m.

Date of Intended Adoption: July 15, 2008.

Submit Written Comments to: Yvette Fox, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by July 1, 2008.

Assistance for Persons with Disabilities: Contact Yvette Fox by July 7, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 440, Laws of 2007 (SHB 2304) requires the department of health to adopt rules establishing criteria for the issuance of a certificate of need for the performance of elective coronary interventions at hospitals that do not otherwise provide on-site cardiac surgery. The proposed rules will help maintain quality of care, cost containment and overall health system viability.

Reasons Supporting Proposal: The proposed rules are required by chapter 440, Laws of 2007 (SHB 2304). As required by statute, the department considered and used many of the recommendations of a legislatively required independent, evidence-based review of the circumstances under which elective percutaneous coronary interventions should be allowed in Washington in hospitals that do not otherwise provide on-site cardiac surgery.

Statutory Authority for Adoption: Chapter 440, Laws of 2007 (SHB 2304) codified as RCW 70.38.128.

Statute Being Implemented: Chapter 440, Laws of 2007 (SHB 2304) codified as RCW 70.38.128.

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 and Implementation: Bart Eggen, 310 Israel Road, Tumwater, WA 98502, (360) 236-2960; and Enforcement: Steven Saxe, 310 Israel Road, Tumwater, WA 98502, (360) 236-2902.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Per chapter 19.85 RCW no small business economic impact statement is required for rules that do not impose more than minor costs on small businesses within an industry affected by the rule. The proposed rules do not impact small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Yvette Fox, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-2928, fax (360) 236-2901, e-mail yvette.fox@doh.wa.gov.

June 4, 2008

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-310-700 Adult elective percutaneous coronary interventions (PCI) without on-site cardiac surgery. Purpose and applicability of chapter. Adult elective percutaneous coronary interventions are tertiary services as listed in WAC 246-310-020. To be granted a certificate of need, an adult elective PCI program must meet the standards in this section in addition to applicable review criteria in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240. This chapter is adopted by the Washington state department of health to implement chapter 70.38 RCW and establish minimum requirements for obtaining a certificate of need and operating an elective PCI program.

NEW SECTION

WAC 246-310-705 PCI definitions. For the purposes of this chapter and chapter 70.38 RCW, the words and phrases below will have the following meanings unless the context clearly indicates otherwise:

(1) "Concurrent review" the process by which applications competing to provide services in the same planning area are reviewed simultaneously by the department. The department compares the applications to one another and these rules.

(2) "Elective" one performed on a patient with cardiac function that has been stable in the days or weeks prior to the operation. Elective cases are usually scheduled at least one day prior to the surgical procedure.

(3) "Emergent" if a patient needs immediate PCI because, in the treating physician's best clinical judgment, delay would result in undue harm or risk to the patient, the situation is "emergent."

(4) "Percutaneous coronary interventions (PCI)" invasive but nonsurgical mechanical procedures and devices that are used by cardiologists for the revascularization of obstructed coronary arteries. These interventions include, but are not limited to:

- (a) Bare and drug-eluting stent implantation;
- (b) Percutaneous transluminal coronary angioplasty (PTCA);
- (c) Cutting balloon atherectomy;
- (d) Rotational atherectomy;
- (e) Directional atherectomy;
- (f) Excimer laser angioplasty;
- (g) Extractional thrombectomy.

(5) "PCI planning area" each individual geographic area designated by the department for which adult elective PCI program need projections are calculated. For purposes of adult elective PCI projections, planning area and service area have the same meaning. The following table establishes PCI planning areas for Washington state:

Planning Areas: Planning areas that utilize zip codes will be administratively updated upon a change by the United States Post Office, and are available upon request.	
1.	Adams, Ferry, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Whitman, Asotin

Planning Areas: Planning areas that utilize zip codes will be administratively updated upon a change by the United States Post Office, and are available upon request.	
2.	Benton, Columbia, Franklin, Garfield, Walla Walla
3.	Chelan, Douglas, Okanogan
4.	Kittitas, Yakima, Klickitat East (98620, 99356, 99322)
5.	Clark, Cowlitz, Skamania, Wahkiakum, Klickitat West (98650, 98619, 98672, 98602, 98628, 98635, 98617, 98613)
6.	Grays Harbor, Lewis, Mason, Pacific, Thurston
7.	Pierce
8.	King East (98001, 98002, 98003, 98004, 98005, 98006, 98007, 98008, 98010, 98011, 98014, 98019, 98022, 98023, 98024, 98027, 98028, 98029, 98030, 98031, 98032, 98033, 98034, 98038, 98039, 98042, 98045, 98047, 98051, 98052, 98053, 98055, 98056, 98058, 98059, 98065, 98072, 98074, 98075, 98077, 98092, 98224, 98288)
9.	King West (98040, 98070, 98101, 98102, 98103, 98104, 98105, 98106, 98107, 98108, 98109, 98112, 98115, 98116, 98117, 98118, 98119, 98121, 98122, 98125, 98126, 98133, 98134, 98136, 98144, 98146, 98148, 98155, 98158, 98166, 98168, 98177, 98178, 98188, 98198, 98199)
10.	Snohomish
11.	Island, San Juan, Skagit, Whatcom
12.	Kitsap, Jefferson, Clallam

NEW SECTION

WAC 246-310-710 Concurrent review. The department shall review new adult elective percutaneous coronary intervention (PCI) services using the concurrent review cycle according to the following table:

Concurrent Review Cycle:

Application Submission Period	Letters of Intent Due	First working day through last working day of November of each year.
	Receipt of Initial Application	First working day through last working day of December of each year.
	End of Screening Period	Last working day of January of each year.
	Applicant Response	Last working day of February of each year.
Department Action	Beginning of Review Preparation	March 1 through March 15

Concurrent Review Cycle:

Application Review Period	Public Comment Period (includes public hearing if requested)	60-Day Public Comment Period	Begins March 16 of each year or the first working day after March 16.
	Rebuttal Period	30-Day Rebuttal period	Applicant and affected party response to public comment.
	Ex parte Period	45-Day Ex parte period	Department evaluation and decision.

(1) The department will notify applicants fifteen days prior to the scheduled decision date if it is unable to meet the deadline for making a decision on the application. In that event, the department will establish and commit to a new decision date.

(2) The department will not accept new applications for a planning area if there are any pending applications in that planning area filed under a previous concurrent review cycle or applications submitted prior to the effective date of these rules that affect any of the new planning areas, unless the department has not made a decision on the pending applications within the review timelines of nine months for a concurrent review and six months for a regular review.

(3) The department may convert the review of an application that was initially submitted under a concurrent review cycle to a regular review process if the department determines that the application does not compete with another application.

NEW SECTION

WAC 246-310-715 General requirements. The applicant hospital must comply with the following:

(1) Hospitals applying must submit a detailed analysis of the impact that their new adult elective PCI services will have on the Cardiovascular Disease and Interventional Cardiology Fellowship Training programs at the University of Washington with an opportunity for the university to respond. New programs cannot reduce current volumes at the University of Washington fellowship training program.

(2) Applicant hospitals must submit a detailed analysis of the projected volume of adult elective PCIs that it anticipates it will perform in years one, two and three after it begins operations. All new elective PCI programs are to be in compliance with the state of Washington annual PCI volume standards (three hundred) by the end of year three. The projected volumes must be sufficient to assure that all physicians working only at the applicant hospital will be able to meet volume standards of seventy-five PCIs per year. Inability to meet annual volume standards may result in a review of certificate of need approval (see WAC 246-310-755 - Ongoing compliance with standards).

(3) Applicant hospitals must submit a plan detailing how they will be able to effectively recruit and staff their new program with qualified nurses, catheterization laboratory technicians, and interventional cardiologists without negatively

affecting existing staffing at PCI programs in the same planning area.

(4) Applicant hospitals must have one catheterization lab used primarily for cardiology. The lab must be a fully equipped cardiac catheterization laboratory with all appropriate devices, optimal digital imaging systems, life sustaining apparatus, intra-aortic balloon pump assist device (IABP), staffed by qualified, experienced nursing and technical staff with documented competencies in the treatment of acutely ill patients.

(5) Applicant hospitals must be prepared and staffed to perform emergent PCIs twenty-four hours per day, seven days per week in addition to the scheduled PCIs.

(6) If an existing CON approved heart surgery program relinquishes the CON for heart surgery, the facility must apply for an amended CON to continue elective PCI services. The applicant must demonstrate ability to meet the elective PCI standards in this chapter.

NEW SECTION

WAC 246-310-720 Hospital volume standards. The applicant hospital must comply with the following:

(1) A minimum of three hundred adult PCIs per year must be performed in hospitals with an elective PCI program by the end of the third year of operation and each year thereafter.

(2) The state need forecasting method must project unmet volumes sufficient to establish one or more programs within a planning area.

(3) The department will not grant a certificate of need to a new program within the identified planning area unless all existing PCI programs in that planning area are meeting or exceeding the minimum volume standard.

NEW SECTION

WAC 246-310-725 Physician volume standards. Physicians performing adult elective PCI procedures at the applying hospital must perform a minimum of seventy-five PCIs per year. Applicant hospitals must provide documentation that physicians performed seventy-five PCI procedures per year for the previous three years prior to the applicant's CON request.

NEW SECTION

WAC 246-310-730 Staffing requirements. The applicant hospital must comply with the following:

(1) The hospital must have a sufficient number of properly credentialed physicians on staff so that both emergent and elective PCIs can be performed.

(2) The applicant's catheterization laboratory must be staffed by a qualified, trained team of technicians experienced in interventional lab procedures.

(3) Nursing staff should have coronary care unit experience and have demonstrated competency in operating PCI related technologies.

(4) Staff should be capable of endotracheal intubation and ventilator management both on-site and during transfer if necessary.

NEW SECTION

WAC 246-310-735 Partnering agreements. The applicant hospital must have a signed written agreement with a hospital providing on-site cardiac surgery. This agreement will include, at minimum, provisions for:

(1) Coordination between the nonsurgical hospital and surgical hospital's availability of surgical teams and operating rooms. This provision does not require the hospital with on-site surgical services to maintain an available surgical suite twenty-four hours, seven days a week.

(2) The backup surgical hospital providing cardiac surgery during all hours that elective PCIs are being performed at the hospital without on-site surgery.

(3) All clinical data, including images and videos, being transferred with the patient to the backup surgical hospital.

(4) Communication between the physician(s) performing the elective PCI and the backup hospital cardiac surgeon(s) regarding the clinical reasons for urgent transfer and the clinical condition of the patient.

(5) All referred patients being accepted by the backup surgical hospital.

(6) The hospital providing a mode of emergency transport. The hospital must have a signed transportation agreement with a vendor who will expeditiously transport by air or land all patients who experience complications during elective PCIs that require transfer to a backup hospital with on-site cardiac surgery.

(7) Emergency transportation beginning within less than twenty minutes of the initial identification of a complication.

(8) Emergency transport staff having the necessary qualifications. Staff must be advanced cardiac life support (ACLS) certified and have the skills, experience, and equipment to monitor and treat the patient en route and to manage an intra-aortic balloon pump (IABP).

(9) The hospital documenting the transportation time from the decision to transfer the patient with an elective PCI complication to arrival in the operating room of the backup hospital. Transportation time must be less than one hundred twenty minutes.

(10) No less than two annual timed emergency transportation drills with outcomes reported to the hospital's quality assurance program.

(11) Patients signing informed consents for adult elective (and emergent) PCIs. Consent forms must explicitly communicate to the patients that the intervention is being performed without on-site surgery backup and address risks related to transfer, the risk of urgent surgery, and the established emergency transfer agreements.

(12) Conferences between representatives from the heart surgery program(s) and the elective coronary intervention program. These conferences must be held at least quarterly, in which a significant number of preoperative and post-operative cases are reviewed, including all transport cases.

(13) Addressing peak volume periods (such as joint agreements with other programs, the capacity to temporarily increase staffing, etc.).

NEW SECTION

WAC 246-310-740 Quality assurance. The applying hospital will submit a written quality assurance/quality improvement plan specific to the elective PCI program as part of their application. At minimum, the plan will include:

(1) A process for ongoing review of the outcomes of adult elective PCIs. Outcomes should be benchmarked against state or national quality of care indicators for elective PCIs.

(2) A system for patient selection that will result in outcomes that are equal to or better than the benchmark standards in the applicant's plan.

(3) A process for formalized case reviews with partnering surgical backup hospital(s) of preoperative and post-operative elective PCI cases, which at minimum includes all transferred cases.

(4) Provision for the hospital's cardiac catheterization laboratory and elective PCI program reporting requested information to the department of health or to the designated entity that the department requires information to be reported. The department of health does not intend to require duplicative reporting of information.

NEW SECTION

WAC 246-310-745 Need forecasting methodology. For the purposes of the need forecasting method in this section, the following terms have the following specific meanings:

(1) "Base year" the most recent calendar year for which December 31 data is available as of the first day of the application submission period from the DOH CHARS reports or successor reports.

(2) "Current capacity" a planning area's current capacity for PCIs equals the sum of the base year PCIs performed on planning area residents (aged fifteen years of age and older) at each hospital with an approved adult elective PCI program or a department grandfathered program within the planning area. In those planning areas where a new program has operated less than three years, the volume of that hospital will be measured as the greater of:

(a) The actual volume; or

(b) The minimum volume standard for an elective PCI program established in WAC 246-310-720.

(3) "Forecast year" the third year after the base year.

(4) "Percutaneous coronary interventions" means cases as defined by diagnosis related groups (DRGs) as developed under the Centers for Medicare and Medicaid Services (CMS) contract that describe catheter-based interventions involving the coronary arteries and great arteries of the chest. All pediatric catheter-based therapeutic and diagnostic interventions performed on persons fourteen years of age and younger are excluded. The department will update the list of DRGs administratively to reflect future revisions made by CMS to the DRG to be considered in certificate of need definitions, analyses, and decisions. The DRGs for calendar year 2008 applications will be DRGs reported in 2007, which include DRGs 518, 555, 556, 557 and 558.

(5) "Use rate" PCI use rate equals the number of PCIs performed on the residents of a planning area (aged fifteen

years of age and older). The use rate is defined per one thousand persons.

(6) "Grandfathered programs" means those hospitals operating a certificate of need approved interventional cardiac catheterization program or heart surgery program prior to the effective date of these rules, which continues to operate a heart surgery program. For hospitals with jointly operated programs, only the hospital where the program's procedures were approved to be performed will be grandfathered.

(7) The data sources for adult elective PCI case volumes include:

(a) The CHARS data from the DOH, office of hospital and patient data;

(b) DOH office of certificate of need survey data as compiled, by planning area, from hospital providers of PCIs to state residents (including patient origin information, i.e., patients' zip codes and a delineation of whether the PCI was performed on an inpatient or outpatient basis); and

(c) COAP data from the foundation for health care quality, as provided by the department.

(8) The data source for population estimates and forecasts is the office of financial management medium growth series population trend reports or if not available for the planning area, other received population data published by well-recognized demographic firms.

(9) The data used for evaluating applications submitted during the concurrent review cycle will be the most recent year end data as reported by CHARS or the most recent survey data available through DOH or COAP data for the appropriate application year. The forecasts for demand and supply will be for three years following the base year. The base year is the latest year that full calendar year data is available from CHARS. In recognition that CHARS does not currently provide outpatient volume statistics but is patient origin-specific and COAP does provide outpatient PCI case volumes by hospitals but is not currently patient origin-specific, the department will make available PCI statistics from its hospital survey data, as necessary, to bridge the current outpatient patient origin-specific data shortfall with CHARS and COAP.

(10) Numeric methodology:

Step 1. Compute each planning area's PCI use rate calculated for persons fifteen years of age and older, including inpatient and outpatient PCI case counts.

(a) Take the total planning area's base year population residents fifteen years of age and older and divide by one thousand.

(b) Divide the total number of PCIs performed on the planning area residents over fifteen years of age by the result of Step 1 (a). This number represents the base year PCI use rate per thousand.

Step 2. Forecasting the demand for PCIs to be performed on the residents of the planning area.

(a) Take the planning area's use rate calculated in Step 1 (b) and multiply by the planning area's corresponding forecast year population of residents over fifteen years of age.

Step 3. Compute the planning area's current capacity.

(a) Identify all inpatient procedures at CON approved hospitals within the planning area using CHARS data.

(b) Identify all outpatient procedures at CON approved hospitals within the planning area using department survey data.

(c) An alternative to (b) is to calculate the difference between total PCI procedures by CON approved hospitals within the planning area reported to COAP and CHARS. The difference represents outpatient procedures.

(d) Sum the results of (a) and (b) or sum the results of (a) and (c). This total is the planning area's current capacity which is assumed to remain constant over the forecast period.

Step 4. Calculate the net need for additional adult elective PCI procedures by subtracting the calculated capacity in Step 3 from the forecasted demand in step 2. If net need for procedures is less than three hundred, no new program shall be approved.

Step 5. If Step 4 is greater than three hundred, calculate the need for additional programs.

(a) Divide the number of projected procedures from Step 4 by three hundred.

(b) Round the results down to identify the number of needed programs. (For example: $575/300 = 1.916$ or 1 program)

NEW SECTION

WAC 246-310-750 Tiebreaker. If two or more hospitals are competing to meet the same forecasted net need, the department shall consider the most improvement in geographic access. Geographic access will mean the facility that is the farthest from an existing facility that is authorized to provide PCI procedures within the planning area.

NEW SECTION

WAC 246-310-755 Ongoing compliance with standards. If a certificate of need (CON) is issued, it will be conditioned to require ongoing compliance with the CON standards. Failure to meet the standards may be grounds for revocation or suspension of a hospital's CON, or other appropriate licensing or certification actions.

(1) Hospitals granted a certificate of need have three years from the date of initiating the program to meet the program procedure volume standards.

(2) These standards should be reevaluated every three years.

(3) Hospitals granted a certificate of need must meet QA standards in WAC 246-310-740.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-310-262

Nonemergent interventional cardiology standard.

WSR 08-12-106
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed June 4, 2008, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-114.

Title of Rule and Other Identifying Information: WAC 232-28-285 2008-2009 Pilot cougar hunting seasons with the aid of dogs, 232-28-272 2006-2007, 2007-2008, and 2008-2009 Black bear and cougar hunting seasons and regulations, and 232-12-243 Public safety cougar removals.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2515; and at the WDFW Spokane Regional Office, 2315 North Discovery Place, Spokane Valley, WA 99216, (509) 892-1001; on July 18, 2008, at 6:00 p.m.

Date of Intended Adoption: August 8-9, 2008.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by Monday, June 30, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 16, 2008, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **WAC 232-28-285 2008-2009 Pilot cougar hunting seasons with the aid of dogs:** Establishes pilot cougar with the aid of dogs in Chelan, Okanogan, Ferry, Stevens, and Pend Oreille counties for the 2008-09 winter, plus other Washington counties that meet opt-in requirements from ESHB 2438. The proposed changes to the existing rule include:

(1) Replace the requirement that hunters must own dogs capable of treeing a cougar to be eligible for a permit, with a requirement that prohibits payment for using dog-handler services.

(2) Replace the logbook requirement with mandatory reporting using the toll-free cougar hotline.

(3) Reduce the kill quotas by 40% to stabilize the cougar population at the current lower level and add kill quotas for new counties that participate in the pilot program.

(4) Change the bag limit from 2 to 1 cougar.

(5) Routine calendar date changes for the five counties continuing the pilot program.

At the date of this filing, only Klickitat County has met the basic requirements for inclusion in the pilot cougar hunt. This filing serves as a public notice that other counties may request inclusion in the pilot cougar program up until rule action by the fish and wildlife commission in August 2008. On June 19, 2008, the department of fish and wildlife will be presenting the draft cougar program to all county authorities and anticipates other counties may consider requesting inclusion into the pilot cougar hunt program. Kill quotas for new counties opting into the pilot cougar hunt program will be developed prior to the August fish and wildlife commission meeting and are anticipated to be consistent with harvest levels that result in stable cougar populations.

The anticipated effects are to stabilize cougar populations in effected [affected] areas at current levels.

WAC 232-28-272 2006-2007, 2007-2008, and 2008-2009 Black bear and cougar hunting seasons and regulations:

Establishes general cougar seasons statewide. The proposed change to the existing rule are to close the general cougar season on November 30, 2008, rather than March 15, 2009, for new counties that participate in the pilot cougar hunt with the aid of dogs. No anticipated effects to the cougar populations.

WAC 232-12-243 Public safety cougar removals:

Establishes rules for public safety cougar removals in portions of GMUs statewide. The proposed change to the existing rule is to discontinue the use of public safety cougar removals in GMUs within new counties that participate in a pilot cougar hunt with the aid of dogs. No anticipated effects to the cougar populations.

Reasons Supporting Proposal: Enhance public safety and provide a more effective cougar management program.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020.

Statute Being Implemented: RCW 77.12.047, 77.12-020.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: WAC 232-28-285 provides recommendation for implementation of ESHB 2438.

Name of Proponent: Washington fish and wildlife commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

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

June 4, 2008

Loreva M. Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 04-284, filed 10/14/04, effective 11/14/04)

WAC 232-12-243 Public safety cougar removals. (1) Definitions:

As used in this section and in the context of public safety cougar removals, the following definitions apply:

(a) "Confirmed" means qualified department staff is led to believe a cougar(s) was at the scene of the incident by interview of the complainant or observation of evidence at the scene.

(b) "Human-cougar safety incident" means aggressive or unusual behavior by a cougar which presents an actual or perceived threat to an individual.

(c) "Livestock or pet depredation" means incidents where livestock and/or pets are killed and/or injured by cougar.

(d) "Marginal cougar habitat" means those areas usually dominated by urban/suburban, developed lands with relatively high human densities.

(e) "Nuisance activity" means incidents associated with property disturbance, property damage, or livestock/pet harassment.

(f) "Preferred cougar habitat" means those areas usually dominated by rural, undeveloped lands with relatively low human densities.

(g) "Public safety need" means there exists a reasonable threat to human safety or property by one or more cougar, as indicated by the level of confirmed human-cougar safety incidents or livestock/pet depredations, and confirmed cougar sightings or nuisance activities.

(h) "Removal" means the act of killing one or more cougar with the aid of dogs.

(i) "Sighting" means a direct observation of one or more cougar, in urban or rural settings, near individuals or residences; typically more than chance observations.

(j) "Human-cougar interaction" means a human-cougar safety incident, livestock or pet depredation, cougar nuisance activity, or cougar sighting event.

(k) "Dog hunter" means a person that owns and hunts with dogs that are capable of detecting, tracking and treeing a cougar.

(2) Public safety cougar removal authorization: The commission authorizes the director to issue public safety cougar removal permits consistent with this rule. Prior to issuing public safety cougar removal permits, the department shall use other practical alternatives to address a public safety need, including livestock or pet depredations. Other practical alternatives may include, but are not limited to, general cougar hunting seasons, general public information, educational programs, information to recreational hunters, cougar depredation/kill permits, and department capture and relocation/euthanasia of specific cougars.

(3) Public safety cougar removal criteria:

(a) The commission determines that when the above practical alternatives have been utilized within a game management unit, eleven confirmed human-cougar interactions per year, of which at least four must be confirmed human-cougar safety incidents or livestock/pet depredations, therein demonstrating that the practical alternatives have been inadequate to address the public safety need. The director then is authorized by the commission to remove one or more cougar, with the aid of dogs, in a selected area of that game management unit or nearby geographic area suitable for the use of dogs. The commission authorizes the director to remove one cougar per one hundred twenty square kilometers of complaint area in preferred cougar habitat, and one cougar per four hundred thirty square kilometers of complaint area in marginal cougar habitat.

(b) If warranted by conditions of this rule, public safety cougar removal(s) will be conducted annually between

December 1st and March 15th in selected areas of game management units designated by the director to address a public safety need presented by one or more cougar, except in game management units in (~~Chelan, Okanogan, Ferry, Stevens, and Pend Oreille~~) counties where cougars will be removed to address public safety and protection of property with pilot cougar hunting seasons with the aid of dogs authorized under WAC 232-28-285.

(c) The department shall not target more than one hundred nine cougar during a public safety cougar removal period unless otherwise authorized by the commission.

(4) Public safety cougar removal permit issuance procedure.

(a) To participate in a public safety cougar removal, individuals must request that his/her name be placed on a list of available participants (participant list) by mailing their request to Washington Department of Fish and Wildlife, Enforcement Program - Public Safety Cougar Removal, 600 Capitol Way North, Olympia, WA 98501-1091. The request must include the individual's name, address, phone number, and game management units being applied for. Individuals may apply for no more than four game management units. An individual's request to be placed on a participant list for a removal period must be postmarked no later than October 1, or be received at the department's Olympia office no later than 5:00 p.m. on October 1, during the year the removal period begins.

(b) To be eligible for a public safety cougar removal permit (permit), the participant must be a Washington resident dog hunter who, at the time of application for a permit, possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a public safety cougar removal.

(c) Individuals eligible for participation in a public safety cougar removal will be randomly selected from the participant list. The department will issue a permit to the person whose name is selected from the participant list. Individuals selected will be notified by telephone or mail. Individuals selected must contact the department's enforcement program in Olympia and accept the public safety cougar removal permit within fifteen days of being notified. Failure to contact the department will result in forfeit of the permit and the individual will be placed on the participant list for later selections. Permits may not be sold or reassigned.

(d) Permit holders and all individuals who will accompany the permit holder must complete the department's public safety cougar removal education course prior to participating in a public safety cougar removal.

(5) Public safety cougar removals: Quota system and participation in cougar removal.

(a) Public safety cougar removals will be based on a quota system, where permit holders may hunt cougar until the allotted numbers of cougar have been killed from each game management unit or March 15, whichever is first.

(b) Permit holders who harvest a cougar before January 15 may continue hunting for a second cougar with dogs. The permit holder must purchase an additional cougar transport tag to hunt and harvest one additional cougar and the permit holder will be issued a second permit. Permit holders who

harvest a cougar after January 15 are not eligible to harvest a second cougar with dogs.

(c) To verify if the cougar removal season is open or closed in each game management unit, the permit holders shall notify the department's enforcement program in Olympia within twenty-four hours prior to exercising a public safety cougar removal permit.

(d) No more than four total individuals may participate per public safety cougar removal, including the permit holder(s). Only the permit holder, whose name appears on the permit, may take a cougar.

(e) Hunters killing a cougar during a public safety cougar removal must notify the department's enforcement program in Olympia within twenty-four hours after harvesting the cougar.

(f) The department reserves the right to accompany permit holders while participating in a public safety cougar removal.

(6) Public safety cougar removal general requirements.

(a) A valid big game hunting license which includes cougar as a species option is required to hunt cougar. One cougar transport tag is included with a big game license that has cougar as a species option. A second cougar transport tag must be purchased to take a second cougar. Individuals may participate in multiple public safety cougar removals, but must purchase a cougar transport tag for each cougar removed. Purchases in excess of two cougar transport tags must be made at department offices.

(b) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens. Individuals selected for a public safety cougar removal permit may take one cougar per permit.

(c) Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting cougar. The use of dogs to hunt cougar is prohibited except during a public safety cougar removal.

(d) Any person who takes a cougar must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar must be sealed by an authorized department employee within seventy-two hours of the notification of kill. Any person who takes a cougar must present the cougar skull, in such a manner that teeth and biological samples can be extracted, to an authorized department employee at the time of sealing.

(e) The public safety cougar removal permit (permit) belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

AMENDATORY SECTION (Amending Order 06-92, filed 5/8/06, effective 6/8/06)

WAC 232-28-272 2006-2007, 2007-2008, and 2008-2009 Black bear and cougar hunting seasons and regulations.

2006-2008 Fall Black Bear Seasons:

Black Bear Management Unit	Season	Hunt Area
Coastal	Aug. 1 - Nov. 15	GMUs 501, 504, 506, 530, 601, 602, 603, 607-621, 636-651, 658-663, 672-684
Puget Sound	Aug. 1 - Nov. 15	GMUs 407, 410, 454, 624, 627, 633, 652, 666, 667
North Cascades	Aug. 1 - Nov. 15	GMUs 418-450, 460
South Cascades	Aug. 1 - Nov. 15	GMUs 466, 485, 503, 505, 510-520, 524, 550-574, 653, 654
Okanogan	Aug. 1 - Nov. 15	GMUs 203, 209-243
East Cascades	Aug. 1 - Nov. 15	GMUs 244-247, 249-251, 328, 329-368, 382, 388, 578
Northeastern A	Sept. 5 - Nov. 15, 2006 Sept. 4 - Nov. 15, 2007 Sept. 2 - Nov. 15, 2008	GMUs 101-117
Northeastern B	Aug. 1 - Nov. 15	GMUs 121-130, 204
Blue Mountains	Sept. 5 - Nov. 15, 2006 Sept. 4 - Nov. 15, 2007 Sept. 2 - Nov. 15, 2008	GMUs 145-154, 162-186
Columbia Basin	Aug. 1 - Nov. 15	GMUs 133, 136, 139, 142, 248, 254, 260-290, 371-381
Long Island	Sept. 5 - Nov. 15, 2006 Sept. 4 - Nov. 15, 2007 Sept. 2 - Nov. 15, 2008	GMU 699

Bag Limit: Two (2) black bear per annual hunting season only one of which may be taken in Eastern Washington.

Area Restriction: Special deer permit required to hunt black bear in GMU 485.

Requirements for Fall Black Bear Seasons:

License Required: A valid big game hunting license, which includes black bear as a species option, is required to hunt black bear. One black bear transport tag is included with a big game hunting license that has black bear as a species option. A second black bear transport tag must be purchased to take a second bear.

Hunting Method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting black bear. The use of hounds and bait to hunt black bear is prohibited statewide.

Submitting Bear Teeth: Successful bear hunters must submit the black bear premolar tooth located behind the canine tooth of the upper jaw.

2006-2007, 2007-2008, and 2008-2009 Cougar Seasons:

Unit	Season	Hunt Area	Special Restrictions
Coastal	Aug. 1 - Mar. 15	GMUs 501, 504, 506, 530, 601-621, 636-651, 658-663, 672-684, 699	Any legal weapon
Puget Sound	Aug. 1 - Mar. 15	GMUs 407, 410, 454, 624-633, 652, 666	Any legal weapon
North Cascades	Aug. 1 - Mar. 15	GMUs 418, 426, 437, 448, 450, 460, 466, 485	Any legal weapon
South Cascades	Aug. 1 - Mar. 15	GMUs 503, 505, 510-520, 524, 550-574, 653, 654, 667	Any legal weapon
East Cascades North A	Aug. 1 - Mar. 15	GMUs 328, 329, 334-340	Any legal weapon
East Cascades North B	Oct. 14 - Nov. 19, 2006 Oct. 13 - Nov. 19, 2007 Oct. 11 - Nov. 19, 2008	GMUs 203, 209-247, 249-251 within Chelan or Okanogan counties	Any legal weapon
East Cascades North C	Sept. 1 - Nov. 30	GMUs 203, 209-247, 249-251 within Chelan or Okanogan counties	Archery deer or elk hunters and muzzleloader deer or elk hunters who possess a valid big game license that includes cougar as a species option may hunt for cougar without the aid of dogs during their respective deer or elk seasons and must use equipment consistent with their deer or elk tag.
East Cascades South <u>A</u>	Aug. 1 - Mar. 15	GMUs 342-368((, 382, 388, 578))	Any legal weapon
<u>East Cascades South B</u>	<u>Aug. 1 - Nov. 30</u>	<u>GMUs 382, 388, 578 within Klickitat County</u>	<u>Any legal weapon</u>
Northeastern A	Aug. 1 - Mar. 15	GMUs 124-133	Any legal weapon
Northeastern B	Oct. 14 - Nov. 19, 2006 Oct. 13 - Nov. 19, 2007 Oct. 11 - Nov. 19, 2008	GMUs 101-121 within Ferry, Stevens, or Pend Oreille counties, 204	Any legal weapon
Northeastern C	Sept. 1 - Nov. 30	GMUs 101-121 within Ferry, Stevens, or Pend Oreille counties, 204	Archery deer or elk hunters and muzzleloader deer or elk hunters who possess a valid big game license that includes cougar as a species option may hunt for cougar without the aid of dogs during their respective deer or elk seasons and must use equipment consistent with their deer or elk tag.
Blue Mountains	Aug. 1 - Mar. 15	GMUs 145-154, 162-186	Any legal weapon
Columbia Basin	Aug. 1 - Mar. 15	GMUs 136-142, 248, 254-290, 330, 371-381	Any legal weapon

Requirements for Cougar Seasons:

License Required: A valid big game hunting license which includes cougar as a species option is required to hunt cougar.

Bag Limit: Two (2) cougar per license year excluding public safety cougar removals. It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

Area Restriction: Special deer permit required to hunt cougar in GMU 485.

Tag Information: One cougar transport tag is included with a big game license that has cougar as a species option. A second cougar transport tag must be purchased to take a second cougar.

Hunting Method: Hunters may use any lawful big game modern firearm, archery, or muzzleloader equipment for hunting cougar. The use of hounds to hunt cougar is prohibited except by a public safety cougar removal permit (WAC 232-12-243) or commission authorized hound permit (WAC 232-28-285).

Cougar Pelt Sealing: Any person who takes a cougar must comply with the sealing requirements in WAC 232-12-024.

AMENDATORY SECTION (Amending Order 07-273, filed 11/6/07, effective 12/7/07)

WAC 232-28-285 ((2007-2008)) 2008-2009 Pilot cougar hunting seasons with the aid of dogs. As used in this section and in the context of pilot cougar hunting seasons, the following definitions apply:

"Accompany" means the dog handler and permit hunter must be in the physical presence of each other at the time dogs are released from a leash or unrestrained or starting a cougar track.

"Pursue" or "pursuit" means dogs are:

- Not on a leash or restrained; or
- Starting a cougar track; or
- In the act of tracking a cougar; or
- At a treed cougar.

Transporting dogs in a motorized vehicle or walking a dog on a leash is not pursuit.

"Dog ((owner)) handler" means a person that owns ((and)) or hunts with dogs that are capable of detecting, tracking and treeing a cougar.

"Quota" means the targeted harvest goal. The actual harvest level may exceed the quota.

"Kill permit" allows a hunter to pursue or kill cougar.

"Pursuit permit" allows a hunter to pursue cougar.

(1) The pilot cougar-hunting season will allow use of dogs to hunt cougar. The hunts will consist of pursuit-or-kill seasons and pursuit-only seasons, and are allowed only in Chelan, Okanogan, Ferry, Stevens, and Pend Oreille counties.

(2) Pursuit-or-kill seasons:

Cougar may be pursued or killed with the aid of dogs from December 1, ((2007)) 2008, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ((2008)) 2009, whichever occurs first; EXCEPT GMUs 101 and 204 where cougar may be pursued or killed from January 1, ((2008)) 2009, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ((2008)) 2009, whichever occurs first.

(3) Pursuit-only seasons:

(a) If a zone quota is killed prior to March 31, ((2008)) 2009, cougar may be pursued with dogs in all or portions of that zone until March 31, ((2008)) 2009. Hunters may only pursue cougars in designated pursuit only areas identified on their kill or pursuit-only permit. Hunters may not kill cougar during pursuit-only seasons.

(b) Hunters selected for the pursuit-or-kill season (accompanied by up to three of their identified handlers) may participate in a pursuit-only season. Permit hunters that harvest a cougar under a kill permit may continue to pursue cougars until March 31. If a zone quota is killed, the department ((will)) may also issue pursuit-only permit to hunters drawn at random from the unselected pool of applicants. The director will identify the number of pursuit-only hunters selected.

(4) Hunt areas and kill quotas:

Cougar seasons will be based on a quota system, where permit hunters using dogs may hunt and kill cougar until the allotted numbers of cougar have been killed from each hunt zone or March 31, ((2008)) 2009, whichever occurs first.

(a) Kill quotas start September 1 and will include all cougar killed during seasons with and without the aid of dogs, including cougar seasons under this section, cougar seasons without the aid of dogs authorized under WAC 232-28-272, depredation permits, landowner kill permits, and WDFW depredation authority.

(b) Individual problem cougar will continue to be killed on an as-needed basis utilizing depredation permits, landowner kill permits, and WDFW depredation authority even if these kills result in exceeding a zone quota.

CMU	Hunt Choice	Hunt Zone	Area Description	QUOTA	
				Total	Female
East Cascades North	9001	Okanogan	Those portions of GMUs 203, 209, 215, 218, 233, 224, 231, 239, and 242 within Okanogan County	((28)) <u>17</u>	((4+)) <u>7</u>
	9002	Chelan	Those portions of GMUs 243, 244, 245, 246, 247, 249, 250, and 251 within Chelan County	((40)) <u>6</u>	((4)) <u>2</u>
Northeastern	9003	Ferry-Okanogan	GMUs 101, 204	((26)) <u>16</u>	((40)) <u>6</u>

CMU	Hunt Choice	Hunt Zone	Area Description	QUOTA	
				Total	Female
	9004	Stevens-Pend Oreille	Those portions of GMUs 105, 108, 111, 113, 117, 121 within Stevens and Pend Oreille counties	((38)) <u>23</u>	((45)) <u>9</u>
<u>East Cascades South</u>	<u>9005</u>	<u>Klickitat</u>	<u>Those portions of GMUs 382, 388, 578 within Klickitat County</u>	<u>TBD</u>	<u>TBD</u>

(5) Quota hotline:

Permit hunters participating in a pursuit-or-kill season must call the toll free cougar quota hotline within twenty-four hours prior to each day hunting cougar to determine if the zone quota has been killed and the zone is closed. Hunters who hunt more than one consecutive day must call the quota hotline once daily to determine if the zone quota is killed. Hunters who harvest a cougar with the aid of dogs must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar, with proof of sex naturally attached, must be sealed by an authorized department employee within five days of the notification of kill. Any person who takes a cougar must present the cougar skull in such a manner that teeth and biological samples can be extracted to an authorized department employee at the time of sealing.

(6) Kill or pursuit-only permit eligibility:

~~((To apply for a kill or pursuit-only permit under this section, individuals must sign an affidavit provided by the department, certifying under penalty of false swearing under RCW 9A.72.040 that they are a dog owner. The affidavit must be mailed to WDFW by the date and time identified by the director. Individuals not registered as a dog owner will not be issued a permit.~~

~~((b)))~~ To apply for a kill or pursuit-only permit under this section, individuals must purchase a cougar permit application and submit the application in compliance with WAC 232-28-291 by a date and time identified by the director.

~~((e)))~~ (b) To be eligible for a permit, the participant must be a Washington resident who at the time of application for a permit possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a cougar hunt under this section.

~~((d)))~~ (c) A permit will not be issued to any person who has been convicted of unlawful use of dogs under RCW 77.15.245 within the five-year period prior to December 1, 2004. Any person issued a permit and who is subsequently convicted of any wildlife offense while participating in a pursuit-or-kill or pursuit-only season, or who violates any condition of the permit, will have the permit revoked and will be ineligible to participate in the remainder of the pilot program.

(7) Permit issuance procedure:

(a) The number of kill permits for a pursuit-or-kill season with the aid of dogs may be established by the director, but will not exceed two times the total cougar quota for each hunt zone.

(b) The department will issue kill or pursuit-only permits to the persons whose applications are drawn at random. Individuals selected will be notified by telephone or mail. ~~((Individuals selected must return the signed affidavit to the depart-~~

~~ment's wildlife program in Olympia within fifteen days of being notified. Failure to return the completed affidavit to the department will result in forfeit of the permit.))~~ Kill and pursuit-only permits may not be sold or reassigned.

(c) If a female zone quota or total zone quota is not killed in a hunt zone by January 15 (or sooner as identified by the director), then the department ~~((will))~~ may issue kill permits to additional hunters. Hunters will be drawn at random from the unselected pool of applicants and must be a resident of one of the ~~((five))~~ participating counties.

(8) Qualifications for participation and requirements:

In addition to the provisions applicable to all cougar hunters:

(a) Successful applicants must complete a training program prior to participating in a pursuit-or-kill season or pursuit-only season with the aid of dogs.

(b) Participants must have their permit issued by the department in their possession while hunting cougar.

(c) Individuals selected for a kill permit may kill and possess ~~((two))~~ one cougar per permit and only the permittee may kill the cougar(s). ~~((However, a kill permit holder may not kill a second cougar in a hunt zone until January 15 (or sooner as identified by the director).))~~

(d) Individuals selected for a cougar kill or pursuit-only permit may use dog handlers. However, no more than three handlers may accompany the permittee while hunting or pursuing cougar. Dog handlers may not pursue cougar when the permit hunter is not present at the time the dogs are released from a leash or unrestrained. Dog handlers must have a dog handler identification card, issued by the department, in their possession while participating in a pursuit-or-kill season or pursuit-only season. Dog handlers may not receive payment for their services.

(e) Dog handlers must be a Washington resident and possess a valid hunting license.

(f) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

(g) Participants must have a vehicle placard issued by the department. The vehicle placard must be placed in the permittee's and dog handler's vehicles and be visible from outside the vehicles at all times while hunting or pursuing cougar.

(h) Kill and pursuit-only permit hunters are required to ~~((maintain and return to the department a pilot cougar hunting season logbook. At the end of each day hunting cougar, the permit hunters must record their hunting activities, including that of their dog handlers, in their logbook. If requested by department staff, permit hunters must provide the logbook for inspection. Logbooks must be mailed to the department at WDFW Pilot Cougar Hunt, 600 Capitol Way North, Olympia, WA 98501-1091))~~ report their hunting

activity, whether they harvest a cougar or not, using the toll free cougar quota hotline. Unsuccessful hunters must report their hunting activity by April 10, ((2008)) 2009. A violation of this requirement under this subsection is punishable as an infraction under RCW 77.15.160.

(9) The permit belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

WSR 08-12-107
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed June 4, 2008, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-040.

Title of Rule and Other Identifying Information: WAC 415-113-059 Can I combine service from different systems to qualify for increased benefits?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on July 9, 2008, at 1:00 p.m.

Date of Intended Adoption: July 10, 2008.

Submit Written Comments to: Sarah Monaly, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail sarahm@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on July 9, 2008.

Assistance for Persons with Disabilities: Contact Sarah Monaly, rules coordinator, by July 2, 2008, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement SHB 1264 (2007), which amends the retirement plans eligible to qualify for an indexed retirement allowance. Previously, members of the law enforcement officers' and fire fighters' retirement system (LEOFF) Plan 2 could not qualify for an indexed retirement allowance. Now, with the passing of SHB 1264, members of LEOFF Plan 2 may qualify for an indexed retirement allowance.

Reasons Supporting Proposal: SHB 1264 took effect on July 22, 2007. The department needs to update its rules to assist plan members, retirees, employers, and department staff.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.54.030.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah Monaly, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Michelle Hardesty, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7193.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

June 4, 2008

Sarah Monaly

Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-22-043, filed 10/29/99, effective 11/29/99)

WAC 415-113-059 Can I combine service from different systems to qualify for increased benefits? (1) **You may combine service to determine retirement eligibility.** You may combine your service in all systems (~~for the sole purpose of determining~~) to determine your eligibility for a disability or service retirement allowance from your current system (~~and~~), a service retirement allowance from your prior system, or an indexed retirement allowance from LEOFF Plan 2, PERS Plan 3, SERS Plan 3, or TRS Plan 3.

(2) **You may not combine service for any other purpose.** You may not combine your service (~~in all systems~~) to qualify for (~~additional~~) any other benefit(~~s~~) offered by a particular system. (~~Those additional benefits include but are not limited to:~~) For example:

(a) PERS Plan 1 military service. You may not combine service from other systems to qualify for military service credit in PERS Plan 1 under RCW 41.40.170.

(b) LEOFF Plan 2 post-separation benefits. You may not combine your accrued service (~~under both~~) from other systems for purposes of qualifying for(~~:~~

~~(i) A LEOFF Plan 2 indexed retirement allowance under RCW 41.26.530(2); or~~

~~(ii)) a refund of one hundred fifty percent of the LEOFF Plan 2 member's accumulated contributions under RCW 41.26.540.~~

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed: "System" - RCW 41.54.010(6).

WSR 08-12-112
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed June 4, 2008, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-106.

Title of Rule and Other Identifying Information: WAC 314-29-006 What is the process once the board summarily suspends a liquor license?, 314-29-007 How may a licensee challenge the summary suspension of his or her liquor license?, and 314-29-008 Review of orders on stay.

Hearing Location(s): Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA, on July 9, 2008, at 10:00 a.m.

Date of Intended Adoption: July 23, 2008.

Submit Written Comments to: Pam Madson, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 704-4921, by July 16, 2008.

Assistance for Persons with Disabilities: Contact Pam Madson by July 16, 2008, TTY (800) 885-2880 or (360) 664-1648.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to clarify and set out the process for a licensee's administrative appeal from an order of emergency or summary suspension. The board has authority to summarily suspend a liquor license under RCW 66.08.150 upon a finding that "public health, safety, or welfare[]" requires emergency action. It is unclear whether a licensee may proceed to an administrative hearing or must go directly to superior court. There are no rules that currently provide guidance.

Statutory Authority for Adoption: RCW 66.08.030 and 66.08.150.

Statute Being Implemented: RCW 66.08.150.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Pam Madson, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1648; Implementation and Enforcement: Pat Parmer, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal imposes only minor impact on businesses in the industry.

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

June 4, 2008

Lorraine Lee

Chairman

NEW SECTION

WAC 314-29-006 What is the process once the board summarily suspends a liquor license? (1) The board may summarily suspend any license or permit after the board's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate cessation of the licensed or permitted activities is necessary for the protection or preservation of the public health, safety or welfare.

(2) Suspension of any license or permit under this provision shall take effect immediately upon personal service on

the licensee or employee thereof of the summary suspension order unless otherwise provided in the order.

(3) When a license or permit has been summarily suspended by the board, an adjudicative proceeding for revocation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee or permit holder, then a hearing shall be held within ninety days of the effective date of the summary suspension ordered by the board.

NEW SECTION

WAC 314-29-007 How may a licensee challenge the summary suspension of his or her liquor license? (1) Upon summary suspension of a license or permit by the board pursuant to WAC 314-29-006, an affected licensee or permit holder may petition the board for a stay of suspension pursuant to RCW 34.05.467 and 34.05.550(1). A petition for a stay of suspension must be received by the board within fifteen days of service of the summary suspension order. The petition for stay shall state the basis on which the stay is sought.

(2) A hearing shall be held before an administrative law judge within fourteen days of receipt of a timely petition for stay. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses or permits.

(3) Any hearing conducted pursuant to subsection (2) of this section shall be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing shall consist of the documentary information upon which the summary suspension was based. The licensee or permit holder shall have the burden of demonstrating by clear and convincing evidence that:

(a) The licensee or permit holder is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee or permit holder will suffer irreparable injury. For purposes of this section, elimination of income from licensed or permitted activities shall not be deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay shall be effective immediately upon service unless another date is specified in the order.

NEW SECTION

WAC 314-29-008 Review of orders on stay. (1) The licensee, permit holder, or agency may petition the board for review of an initial order on stay. Any petition for review must be in writing and received by the board within ten days of service of the initial order. If neither party has requested review within ten days of service, the initial order shall be deemed the final order of the board for purposes of RCW 34.05.467.

(2) If the board receives a timely petition for review, the board shall consider the petition within fifteen days of service of the petition for review. Consideration on review shall be limited to the record of the hearing on stay.

(3) The order of the board on the petition for review shall be effective upon personal service unless another date is specified in the order and is final pursuant to RCW 34.05.-467. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license or permit.

WSR 08-12-113
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed June 4, 2008, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-103.

Title of Rule and Other Identifying Information: Repeal of WAC 314-48-010 Transportation through the state—Permit required.

Hearing Location(s): Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA, on July 9, 2008, at 10:00 a.m.

Date of Intended Adoption: July 23, 2008.

Submit Written Comments to: Pam Madson, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 704-4921, by July 16, 2008.

Assistance for Persons with Disabilities: Contact Pam Madson by July 16, 2008, TTY (800) 885-2880 or (360) 664-1648.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal repeals a rule requiring a permit to transport liquor through the state. The permit application must include information on the route, the time and date of transfer, a description of the vehicle and a description of the liquor being transported. The permit limits the holder to certain described transport vehicles and to a specified type and amount of liquor. The permit and appropriate documentation must be carried in the vehicle and must be presented on request of appropriate authorities. The vehicle may be inspected. The permit must be mailed back to the board when the product reaches its destination. This rule no longer presents [represents] the agency practice. No permit is required and the agency has issued letters to concerned transporters stating that they may transport without a permit.

Reasons Supporting Proposal: No permits are currently issued to those who transport liquor through the state to destinations outside the state. The alcohol being transported is not used or sold within the state. No rule is necessary.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Pam Madson, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1648; Implementation and Enforcement: Debi Besser, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1668.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal imposes only minor impact on businesses in the industry.

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

June 4, 2008
Lorraine Lee
Chairman

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 314-48-010	Transportation through state—Permit required.
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WSR 08-12-114
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed June 4, 2008, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-02-090.

Title of Rule and Other Identifying Information: WAC 314-02-005 What is the purpose of this chapter?, 314-02-010 Definitions, 314-02-041 What is a hotel license?, 314-02-0411 What are the food service requirements for a hotel license?, 314-02-0412 Are minors restricted from any areas of the hotel premises?, 314-02-0413 What are the requirements if the hotel licensee does not operate the business serving alcohol or food within the hotel premises?, 314-02-0414 Can a hotel licensee use its alcohol inventory for sales and service at events outside of the hotel premises?, 314-02-0415 What are the requirements for instructing employees on spirits, beer, or wine? and 314-02-080 What are the requirements for a motel licensee or a hotel with a spirits, beer, and wine restaurant license to sell liquor in honor bars?; and repealing WAC 314-02-040 Can a hotel with a spirits, beer, and wine restaurant license sell liquor by the bottle to guests?

Hearing Location(s): Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA, on July 9, 2008, at 10:00 a.m.

Date of Intended Adoption: July 23, 2008.

Submit Written Comments to: Pam Madson, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 704-4921, by July 16, 2008.

Assistance for Persons with Disabilities: Contact Pam Madson by July 16, 2008, TTY (800) 885-2880 or (360) 664-1648.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule proposal implements a new liquor license for qualifying hotel pre-

mises. It clarifies food service requirements under this license and clarifies designation of areas of the hotel premises restricted to access by minors.

Reasons Supporting Proposal: The legislature established a new liquor license for qualifying hotel premises that takes effect July 1, 2008. Members of the hotel industry have identified issues that need clarification as licensees begin operation under this new license.

Statutory Authority for Adoption: RCW 66.08.030 and 66.24.590.

Statute Being Implemented: RCW 66.24.590.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Thomas, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1651; Implementation: Alan Rathbun, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1615; and Enforcement: Pat Parmer, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared. This proposal imposes only minor impact on businesses in the industry.

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

June 4, 2008
Lorraine Lee
Chairman

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

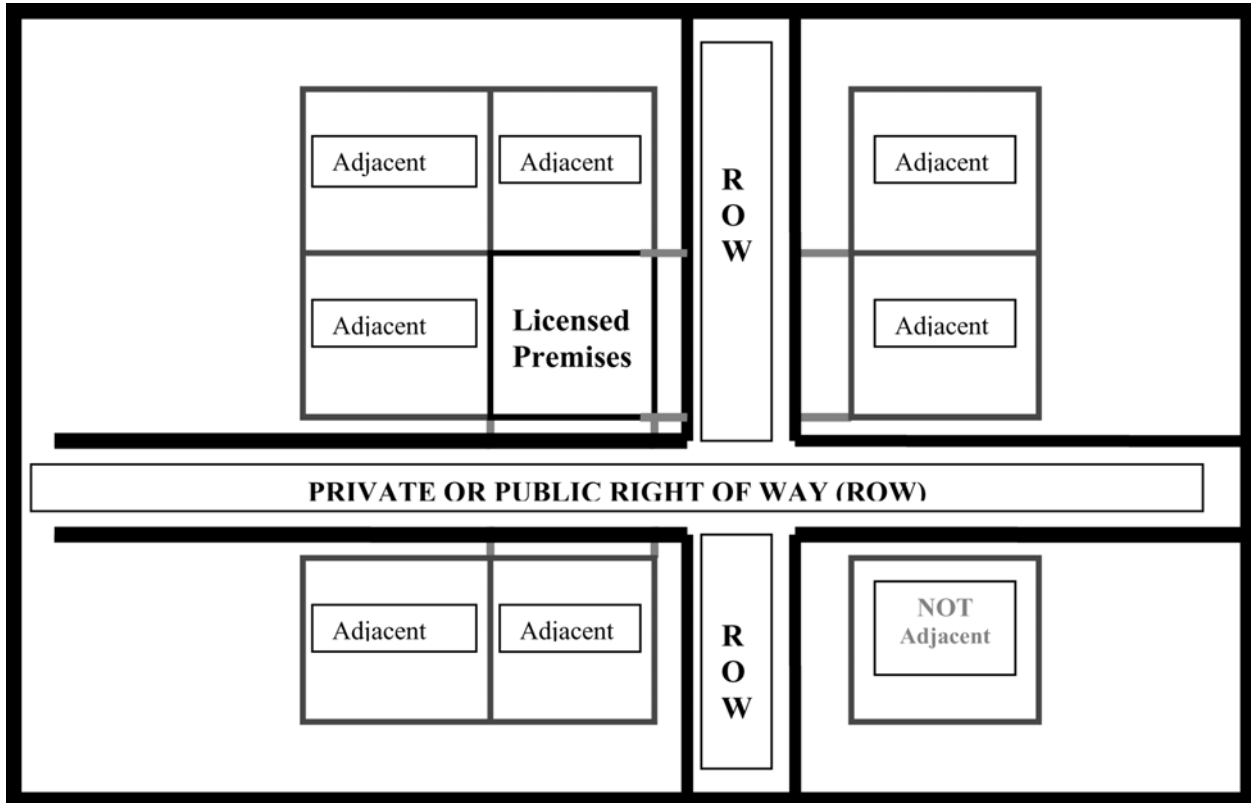
WAC 314-02-005 What is the purpose of chapter 314-02 WAC? Chapter 314-02 WAC outlines the qualifications for the following liquor licenses and permits:

- (1) Spirits, beer, and wine restaurants;
- (2) Hotels;
- (3) Beer and/or wine restaurants;
- ~~((3))~~ (4) Snack bars;
- ~~((4))~~ (5) Taverns;
- ~~((5))~~ (6) Motels;
- ~~((6))~~ (7) Bed and breakfasts;
- ~~((7))~~ (8) Nonprofit arts organizations;
- ~~((8))~~ (9) Public houses;
- ~~((9))~~ (10) Grocery stores;
- ~~((10))~~ (11) Beer/wine specialty shops; and
- ~~((11))~~ (12) Beer/wine gift delivery business.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-010 Definitions. The following definitions are to clarify the purpose and intent of the rules and laws governing liquor licenses and permits. Additional definitions can be found in RCW 66.04.010.

(1) "Adjacent" means having a common endpoint or border where the extension of the property lines of the licensed premises contacts that common border.



~~(2)~~ (2) "Banquet room" means any room used primarily for the sale and service of food and liquor to private groups.

~~((2))~~ (3) "Customer service area" means areas where food and/or liquor are normally sold and served to the public, i.e., lounges and dining areas. A banquet room is not considered a customer service area.

~~((3))~~ (4) "Dedicated dining area." In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. See WAC 314-02-025 for more information.

~~((4))~~ (5) "Designated area" means a space where alcohol may be sold, served, or consumed.

(6) "Food counter" means a table or counter set up for the primary purpose of food service to customers who sit or stand at the counter. Any alcohol served is incidental to food service.

~~((5))~~ (7) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

~~((6))~~ "Liquor" means beer, wine, or spirits (per RCW 66.04.010(19) Definitions).

~~(7))~~ (8) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

~~((8))~~ (9) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under twenty-one years of age).

~~((9))~~ (10) "Minor" means a person under twenty-one years of age.

~~((10))~~ (11) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

NEW SECTION

WAC 314-02-041 What is a hotel license? (1) Per RCW 66.24.590, this license allows a hotel to:

(a) Serve spirits by the individual serving at retail for consumption on the licensed premises;

(b) Serve beer, including strong beer, and wine for consumption on the licensed premises;

(c) Sell at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms;

(d) Provide, without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for consumption on the licensed premises at a specified regular date, time, and place. Self-service by guests is prohibited;

(e) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occu-

pants of private residential units which are part of the buildings or complex of buildings, that include the hotel;

(f) Sell beer, including strong beer, and wine, in the manufacturer's sealed container at retail sales locations within the hotel premises; and

(g) Place in guest rooms at check-in, complimentary beer, including strong beer, or wine in a manufacturer's sealed container.

(2) The annual fee for a hotel license is two thousand dollars.

NEW SECTION

WAC 314-02-0411 What are the food service requirements for a hotel license? (1) A hotel licensee must have the ability to serve at least four complete meals to hotel guests or any other patron of the hotel who is offered alcohol service for on-premise consumption at a food outlet on the hotel premises. Food outlets include room service, banquets, bars/lounges, restaurants, or coffee shops. "Complete meal" is defined in WAC 314-02-035.

(2) Complete meals must be prepared on the hotel premises.

(3) A menu must be available to hotel guests and patrons offered alcohol service that lists, at a minimum, the required complete meals.

(4) The food items required to maintain the menu must be located on the licensed premises. These items must be edible.

(5)(a) Licensees must maintain complete meal service for a minimum of five hours a day between the hours of 11:00 a.m. and 2:00 a.m. on any day that liquor is served. The board may consider written requests for exceptions to this requirement due to a demonstrated hardship and may allow exceptions under terms and conditions the board determines are in the best interests of the public.

(b) Minimum food service must be available during hours of alcohol service when complete meal service is not offered. Minimum food service includes items such as hamburgers or fry orders. Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(6) Hours of complete meal service must be listed on the menu. If applicable, a statement must be posted or listed on the menu that minimum food service is available when alcohol is served and complete meal service is unavailable.

NEW SECTION

WAC 314-02-0412 Are minors restricted from any areas of the hotel premises? (1) If an area of the hotel premises is used primarily for alcohol service on a continuing basis, the area must be designated by the licensee as restricted to access by minors.

(2) The board may restrict alcohol service in areas of the hotel premises where:

(a) The designated area is designed as an attraction for minors; or

(b) Consumption of alcohol in a designated area presents an increased risk to public safety.

NEW SECTION

WAC 314-02-0413 What are the requirements if the hotel licensee does not operate the business serving alcohol or food within the hotel premises? (1)(a) If any facilities within the hotel premises used for alcoholic beverage service and the preparation, cooking, and serving of food are operated under contract or joint venture agreement with a business separate from the hotel business, the operator may hold a license separate from the license held by the operator of the hotel.

(b) Food and beverage inventory used in separately licensed operations on the hotel premises may not be shared and shall be separately owned and stored by the separate licensees.

(c) The board may require a hotel licensee to submit a copy of the contract or joint venture agreement when a party other than the hotel operator provides food and alcoholic beverage service. Such contract or agreement must require the provider of food and alcoholic beverage services to meet the food service requirements of WAC 314-02-0411.

(d) The hotel licensee is responsible for the conduct of alcohol sales and service by a separately licensed business and violation incurred by the separately licensed business may result in an administrative violation for the hotel licensee.

(2)(a) If alcohol is consumed in an area of the hotel premises operated by a business separate from the hotel business but under a contract or joint venture agreement with the hotel licensee to conduct activities other than food service, the hotel licensee is responsible for violations of alcohol laws and regulations resulting from conduct of the separate business.

(b) The board may require a hotel licensee to submit a copy of the contract or joint venture agreement between the licensee and the separate business.

NEW SECTION

WAC 314-02-0414 Can a hotel licensee use its alcohol inventory for sales and service at events outside of the hotel premises? Per RCW 66.24.590, a licensee may:

(1) Remove from the hotel licensee's liquor stocks at the licensed premises, liquor to be sold and served at an event on a specified date at a specified location not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization defined under RCW 66.24.375.

(2) If requested by the board, the licensee must notify the board or its designee of the date, time, and location of these events.

(3) Licensees may sell and serve liquor under this section on the premises of a domestic winery.

NEW SECTION

WAC 314-02-0415 What are the requirements for instructing employees on spirits, beer, or wine? (1) Per RCW 66.24.590, a licensee or its manager may furnish spirits, beer, or wine to the licensee's employees who are twenty-

one years of age or older, free of charge, as a necessary part of instruction and training on spirits, beer, and wine.

(2) The licensee must use spirits, beer, and wine he or she obtains under the license for purposes of instruction.

(3) The instruction must be given at the hotel premises.

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-080 What are the requirements for a motel licensee or a hotel (~~with a spirits, beer, and wine restaurant license~~) licensee to sell liquor in honor bars? For the purposes of this chapter, an "honor bar" is a cabinet, box, cooler, or refrigerator in a guest room that can be opened only with a key, combination, magnetic card, or similar device. The following requirements apply to the use of an honor bar:

(1) The licensee must require proof of age before providing a guest access to an honor bar. The guest must sign a declaration, under penalty of perjury, verifying that:

(a) The guest is twenty-one years of age or older; and

(b) No one under twenty-one years of age will have access to the liquor in the honor bar.

(2) The honor bars must remain locked whenever the room is rented to a guest under twenty-one years of age.

(3) All liquor stored on the licensed premises must be either locked in an honor bar or locked in a secured liquor storage room.

(4) No person under twenty-one years of age may have access to the honor bars, liquor storage rooms, or keys, combinations, etc., to the locked honor bars or storage rooms.

(5) A honor bar or storage room may only be replenished during those hours when liquor may legally be sold (not between 2:00 a.m. and 6:00 a.m.), and only by employees who are twenty-one years of age or older. Beer and wine wholesalers may deliver, price, and stock product only in storage rooms.

(6) Liquor in honor bars may only be sold in individual containers in the following sizes:

(a) Spirits - not to exceed fifty milliliters;

(b) Beer - not to exceed twelve ounces; and

(c) Wine - not to exceed one hundred eighty-seven milliliters.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-02-040

Can a hotel with a spirits, beer, and wine restaurant license sell liquor by the bottle to guests?