

WSR 09-07-094
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Disability Services Administration)
 [Filed March 18, 2009, 7:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-23-042.

Title of Rule and Other Identifying Information: The department is amending chapter 388-832 WAC, Individual and family services 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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on May 5, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 6, 2009.

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 DSHSRPAURulesCoordinator[@dshs.wa.gov], fax (360) 664-6185, by 5 p.m. on May 5, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 21, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules clarify existing language and remove certain limitations for the receipt of services under the individual and family services program.

Washington Administrative Code	Effect of Rule
388-832-0001 (amended)	Adds or amends definitions used in this chapter.
388-832-0005 (amended)	Reformats this section.
388-832-0007 (amended)	Removes unnecessary language.
388-832-0015 (amended)	Clarifies language.
388-832-0020 (amended)	Adds a cross-reference.
388-832-0022 (amended)	Clarifies the name of the assessment.
388-832-0023 (amended)	Adds a cross-reference.
388-832-0024 (amended)	Clarifies language.
388-832-0025 (amended)	Clarifies that a client cannot receive IFS and SSP for the same reason.

Washington Administrative Code	Effect of Rule
388-832-0060 (amended)	Clarifies language.
388-832-0065 (amended)	Removes the twelve-month limitation for out of home placement and clarifies language.
388-832-0067 (amended)	Limits the receipt of IFS program services to children under age eighteen if the parent is also a client of DDD.
388-832-0070 (amended)	Changes "wait" list to "request" list.
388-832-0072 (amended)	Changes "wait" list to "request" list and allows a client to remain on the request list if in a temporary placement with plans to return home.
388-832-0075 (amended)	Changes "wait" list to "request" list.
388-832-0080 (amended)	Changes "wait" list to "request" list and clarifies when a client must respond to a notification to schedule an assessment.
388-832-0082 (amended)	Changes "wait" list to "request" list and clarifies the request date.
388-832-0085 (amended)	Changes "wait" list to "request" list and changes "new" participants to "additional" participants.
388-832-0087 (amended)	Changes "wait" list to "request" list and clarifies language.
388-832-0090 (amended)	Clarifies language.
388-832-0091 (amended)	Clarifies language.
388-832-0113 (amended)	Clarifies language.
388-832-0120 (amended)	Corrects typographical errors.
388-832-0123 (amended)	Corrects the name of the "medically intensive children's program."
388-832-0125 (amended)	Spells out the acronym "COPES."
388-832-0127 (amended)	Removes the requirement to request an ETR and obtain approval from the director of DDD.
388-832-0128 (amended)	Adds "review" as a time when the ISP plan may become effective.
388-832-0135 (amended)	Removes the limitation that the need must "result" from a developmental disability.
388-832-0136 (amended)	Clarifies language.

Washington Administrative Code	Effect of Rule
388-832-0137 (amended)	Clarifies language when the annual allocation may be used.
388-832-0160 (amended)	Removes "guardian" at work as a condition when respite care can be given.
388-832-0165 (amended)	Clarifies language and replaces "related to the person's disability" with "deemed necessary by their health care professional."
388-832-0166 (amended)	Adds that excess medical costs may be paid to a DDD contracted provider, changes "family support contract" to IFS contract and extends the length of time to remit receipts from thirty days to ninety days.
388-832-0168 (amended)	Replaces "related to the person's disability" with "deemed necessary by their health care professional," specifies that therapies included under WAC 388-332-0170 may not be paid as an excess medical cost and adds a cross-reference.
388-832-0170 (amended)	Clarifies language.
388-832-0175 (amended)	Specifies that DDD will pay the contracted therapist directly for therapy services.
388-832-0180 (amended)	Clarifies language, specifies that DDD will determine the need and amount of services based on the information from the treating professional and adds a cross-reference.
388-832-0185 (amended)	Adds repairs for damages to a client's residence resulting from the client's disability to allowable architectural modifications and adds repairs and maintenance to vehicular modifications to allowable vehicular modifications.
388-832-0195 (amended)	Clarifies language.
388-832-0200 (amended)	Removes the limitation that equipment and supplies must be "specialized medical" and clarifies language.
388-832-0205 (amended)	Clarifies who are qualified providers of equipment and supplies.
388-832-0210 (amended)	Removes the limitation that equipment and supplies must be "specialized medical" and excludes supplies for incontinence as requiring prior

Washington Administrative Code	Effect of Rule
	approval by the DDD regional administrator.
388-832-0215 (amended)	Specifies that specialized clothing must be "nonrestrictive."
388-832-0220 (amended)	Changes "family support" contract to "IFS" contract.
388-832-0225 (amended)	Clarifies language.
388-832-0235 (amended)	Clarifies the definition of copays.
388-832-0240 (amended)	Changes "family support" contract to "IFS" contract.
388-832-0245 (amended)	Clarifies language.
388-832-0255 (amended)	Changes "family support" contract to "IFS" contract.
388-832-0260 (amended)	Clarifies language, removes the prohibition against purchasing bus passes, removes the need for prior approval and clarifies what may be reimbursed as per diem costs.
388-832-0275 (amended)	Clarifies language and removes the need for prior approval.
388-832-0285 (amended)	Adds a cross reference to a DDD policy.
388-832-0290 (amended)	Specifies that DDD will determine the need and amount of behavior management based on the information from the treating professional.
388-832-0308 (amended)	Changes "family support" contract to "IFS" contract and clarifies language.
388-832-0310 (amended)	Removes the need for prior approval.
388-832-0315 (amended)	Clarifies language.
388-832-0320 (amended)	Changes "family support" contract to "IFS" contract and adds the recreational opportunity contract as an additional method for reimbursement.
388-832-0325 (amended)	Clarifies language and removes the requirement of prior approval.
388-832-0330 (amended)	Clarifies language.
388-832-0332 (amended)	Clarifies language.
388-832-0333 (amended)	Adds DVR as a source of funding that must be accessed and clarifies language.

Washington Administrative Code	Effect of Rule
388-832-0335 (amended)	Reformats the section for clarity.
388-832-0340 (amended)	Reformats the section for clarity.
388-832-0345 (amended)	Changes the requirement of prior approval from the DDD director to the DDD regional administrator.
388-832-0350 (amended)	Clarifies language.
388-832-0353 (amended)	Clarifies language.
388-832-0366 (amended)	Lengthens the period of time from sixty to ninety days.
388-832-0367 (amended)	Lengthens the period of time from sixty to ninety days and clarifies language.
388-832-0369 (amended)	Clarifies language.
388-832-0460 (amended)	Clarifies language.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Statute Being Implemented: Title 71A RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail roberdx@dshs.wa.gov, (360) 725-3400, fax (360) 404-0955; Implementation: Debbie Couch, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail couchdg@dshs.wa.gov, (360) 725-3515, fax (360) 404-0955; and Enforcement: Doug Washburn, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail washbdc@dshs.wa.gov, (360) 725-3452, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has analyzed these rules and concluded that they do not impact small businesses or small nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt from the preparation of a cost-benefit analysis pursuant to RCW 34.05.328 (5)(b)(ii) and (vii) as they incorporate Washington state legislation, clarify rules without changing their effect and relate only to client medical or financial eligibility.

March 9, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0001 What definitions apply to this chapter? The following definitions apply to this chapter:

"Agency provider" means a licensed and/or ADSA certified business that is contracted with ADSA or a county to provide DDD services (e.g., personal care, respite care, residential services, therapy, nursing, employment, etc.).

"Allocation" means an amount of funding available to the client and family for a maximum of twelve months, based upon assessed need.

"Authorization" means DDD approval of funding for a service as identified in the individual support plan or evidence of payment of a service.

"Back-up caregiver" is a person who has been identified as an informal caregiver and is available to provide assistance as an informal caregiver when other caregivers are unavailable.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration (ADSA), department of social and health services (DSHS).

"Department" means the department of social and health services (DSHS).

"Emergency" means the client's health or safety is in jeopardy.

"Family" means ~~((individuals, of any age, living together in the same household and related by blood, marriage, adoption or as a result of sharing legal custody of a minor child))~~ relatives who live in the same home with the eligible client. Relatives include spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your relatives live.

"Formal caregiver" is a person/agency who receives payment from DDD to provide a service.

"Individual and family services contract" means a contract between DDD and the family to reimburse the family for the purchase of goods and services.

"Individual provider" means an individual who is contracted with DDD to provide medicaid or waiver personal care, respite care, or attendant care services.

"Individual support plan" or **"ISP"** is a document that authorizes the DDD paid services to meet a client's needs identified in the DDD assessment.

"Informal caregiver" is a person who provides supports without payment from DDD for a service.

"Legal guardian" means a person/agency, appointed by a court, which is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardian for their child until the child reaches the age of eighteen.

~~("Parent family support contract" means a contract between DDD and the parent to reimburse the parent for the purchase of goods and services paid for by the parent.)~~

"Pass through contract" means a contract between DDD and a third party to reimburse the third party for the purchase of goods and services ~~((paid for by the third party)).~~

"Primary caregiver" is the formal or informal caregiver who provides the most support.

"Residential habilitation center" or "RHC" is a state operated facility certified to provide ICF/MR and/or nursing facility level of care for persons with developmental disabilities per chapter 71A.20 RCW.

"Significant change" means changes in your medical condition, caregiver status, behavior, living situation or employment status.

"State funded services" means services that are funded entirely with state dollars.

"State supplementary payment" or "SSP" means a state paid cash assistance program for certain DDD clients eligible for supplemental security income per chapter 388-827 WAC.

"You" means the client.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0005 What is the individual and family services program? The "individual and family services program" (IFS program) is a state-only funded program that:

(1) Provides an array of services to families to help maintain and stabilize the family unit; and

(2) Replaces ~~((WAC 388-825-200 through 388-825-242 (the family support opportunity program), WAC 388-825-252 through 388-825-256 (the traditional family support program), WAC 388-825-500 through 388-825-595, (the flexible family support pilot program), and WAC 388-825-244 through 388-825-250 (other family support rules))):~~

(a) The family support opportunity program (WAC 388-825-200 through 388-825-242);

(b) The traditional family support program (WAC 388-825-252 through 388-825-256);

(c) The family support pilot program (WAC 388-825-500 through 388-825-595); and

(d) Other family support rules (WAC 388-825-244 through 388-825-250).

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0007 What is the purpose of the individual and family services (IFS) program? The purpose of the IFS program is to ~~((have one DDD family support program that will)):~~

(1) Form a partnership between the state and families to help support families who have a ~~((client of))~~ DDD eligible family member living in the family home; and

(2) Provide families with a choice of services and allow families more control over the resources allocated to them.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0015 Am I eligible ~~((to participate in))~~ for the IFS program? (1) You are eligible to be considered for the IFS program if you meet the following criteria:

(a) You are currently an eligible client of DDD;

(b) You live in your family home;

(c) You are not enrolled in a DDD home and community based services waiver defined in chapter 388-845 WAC;

(d) You are currently enrolled in traditional family support, family support opportunity or the family support pilot or funding has been approved for you to receive IFS program services;

(e) You are age three or older ~~((as of July 1, 2007));~~

(f) You have been assessed as having a need for IFS program services as listed in WAC 388-832-0140; and

(g) You are not receiving a DDD adult or child residential service or licensed foster care.

(2) If you are a parent who is a client of DDD, you are eligible to receive IFS program services in order to promote the integrity of the family unit, provided:

(a) You meet the criteria in subsections (1)(a) through (f) above; and

(b) Your minor child who lives in your home is at risk of being placed up for adoption or into foster care.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0020 Will I be authorized to receive IFS services if I meet the eligibility criteria in WAC 388-832-0015? Meeting eligibility criteria per WAC 388-832-0015 for the IFS program does not ensure access to or receipt of the IFS program services.

(1) Receipt of IFS services is limited by availability of funding and your assessed need.

(2) WAC 388-832-0085 through 388-832-0090 describes how DDD will determine who will be approved to receive funding.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0022 What determines the allocation of funds available to me to purchase IFS services? The allocation of funds is based upon the ~~((IFS))~~ DDD assessment described in chapter 388-828 WAC. The DDD assessment will determine your service level based on your assessed need.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0023 If I qualify for another DDD service, will my IFS program be reduced or terminated? Since your IFS amount is based on the assessed need, if your needs change, the dollar amount ~~((with))~~ may be impacted. However, if you are qualified for another DDD service, you can still receive IFS as long as you continue to have an assessed need and have met the eligibility criteria per WAC

388-832-0015 for the IFS program with the exception of WAC 388-832-0024.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0024 **If I participate in the IFS program, will I be eligible for services through the DDD home and community based services (HCBS) waiver?** (1) If you participate in the IFS program you may not participate in the DDD HCBS waiver (~~(at the same time)~~).

(2) You may request enrollment in a DDD HCBS waiver at any time per WAC 388-845-0050.

(3) Participation in the IFS program will not affect your potential waiver eligibility.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0025 **Am I eligible for the IFS program if I currently receive other DDD paid services?** (1) If you receive other nonwaiver DDD funded services, you may be eligible for the IFS program.

(2) If you receive SSP in lieu of traditional family support or family support opportunity, you are not eligible to receive IFS program funding.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0060 (~~(Can)~~) **May DDD terminate my eligibility for the IFS program?** You may be terminated from the IFS program for any of the following reasons:

(1) You no longer meet DDD eligibility per WAC 388-823-0010 through 388-823-0170;

(2) You no longer meet the eligibility criteria for the IFS program per WAC 388-832-0015;

(3) You have not used an IFS program service during the last twelve calendar months;

(4) You cannot be located or do not make yourself available for the annual DDD assessment;

(5) You refuse to participate with DDD in service planning; and/or

(6) You begin to receive a DDD residential service.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0065 **If I go into a temporary out of home placement, will I be eligible for IFS upon my return home?** (~~(You can apply for)~~) (1) If you are disenrolled in the IFS program due to out of home placement, you may request reinstatement in the IFS program once you return to your family home (~~(from placement)~~).

(2) You may make this request by contacting your DDD case manager (~~(, if your out of home placement does not exceed twelve months)~~).

(3) Your case manager will schedule an assessment with you and, if you meet all the eligibility criteria described in WAC 388-832-0015, have an assessed need, and funding is

available, you (~~(will)~~) may receive an IFS program allocation.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0067 (~~(If I am a parent with a developmental disability and a client of DDD,)~~) **Are my children eligible for IFS program services, if I am a client of DDD?** If you are a parent with a developmental disability and a client of DDD, your children may be eligible for IFS program services if funding is available and your children:

(1) Are ages birth through (~~(twenty-one)~~) seventeen years of age;

(2) Are at risk of out of home placement; and

(3) Live with you.

INDIVIDUAL AND FAMILY SERVICES PROGRAM (~~(WAIT)~~) REQUEST LIST

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0070 **What is the IFS program (~~(wait)~~) request list?** The IFS (~~(wait)~~) request list is a list of clients who live with their family and the family has requested family support services. At the time of the family's request for IFS program services, funding was not available; therefore these clients were placed on the IFS program (~~(wait)~~) request list effective on the date of their request.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0072 **Who is eligible to be on the IFS program (~~(wait)~~) request list?** (1) To be on the IFS (~~(wait)~~) request list you must live in your family home and remain eligible for DDD services.

(2) If you are in temporary placement and the plan is to return home you may remain on the IFS request list.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0075 **Do I have to have a DDD assessment before I can be added to the IFS (~~(wait)~~) request list?** You do not have to have a DDD assessment prior to your name being added to the IFS (~~(wait)~~) request list.

(1) Your name and request date will be added to the (~~(wait)~~) request list.

(2) A notice will be sent to you to let you know your name has been added to the IFS (~~(wait)~~) request list.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0080 **How or when am I taken off the IFS (~~(wait)~~) request list?** You are taken off the (~~(wait)~~) IFS request list if:

(1) You no longer live in your family home;

(2) You are no longer eligible for DDD services;

(3) You request your name to be removed from the IFS ~~((wait))~~ request list;

(4) You do not respond ~~((to))~~ by the date outlined on the IFS notification to schedule the DDD assessment;

(5) You are offered IFS services and ~~((accept or))~~ refuse services; or

(6) You are on the HCBS waiver ~~((or))~~

~~((7) Your DDD assessment determines you are not eligible for the IFS program)).~~

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0082 If the DDD assessment determines I am not eligible for the IFS program, may I remain on the IFS ~~((wait))~~ request list? If the DDD assessment determines you are not eligible for the IFS program, you may request to remain on the ~~((wait list; however, your))~~ request list. The date ~~((will change))~~ you ask to remain on the list becomes your new request date ~~((of your current assessment))~~.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0085 When there is state funding available to enroll ~~((new))~~ additional clients in the IFS program, how will DDD select from the clients on the IFS program ~~((wait))~~ request list? When there is state funding available for ~~((new))~~ additional IFS participants, DDD may enroll participants based on the following considerations:

(1) Clients who have requested residential habilitation center (RHC) respite, emergency services, or residential placement, prior to June 30, 2007.

(2) Clients with the highest scores in caregiver and behavior status on the mini assessment.

(3) Clients who have been on the IFS program ~~((wait))~~ request list the longest.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0087 What happens next if I am selected from the IFS program ~~((wait))~~ request list? If you are selected from the IFS program ~~((wait))~~ request list:

(1) Your DDD case/resource manager will contact you, and determine if you meet the eligibility criteria for IFS program per WAC 388-832-0015 ~~((1) through (6);)~~.

(2) If you meet the criteria per (1) above, your case/resource manager will schedule an appointment to complete your DDD assessment or reassessment.

(3) If you have not been receiving any DDD paid services, your DDD eligibility ~~((will))~~ may need to be reviewed per WAC 388-823-1010(3).

(4) Your DDD eligibility review must be ~~((completed))~~ finalized prior to ~~((completing))~~ the completion of the DDD assessment for the IFS program.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0090 If I currently receive funding from the traditional family support program, the family support opportunity program or the family support pilot program, will I qualify for the IFS program? If you currently receive funding from the traditional family support program, the family support opportunity program or the family support pilot program, you may qualify for the IFS program if you meet the eligibility criteria in WAC 388-832-0015.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0091 If I currently receive funding from the traditional family support program, the family support opportunity program or the family support pilot program, will that funding continue until my next assessment? If you currently receive funding from the traditional family support (TFS) program, the family support opportunity (FSO) program or the family support pilot (FSP) program, you ~~((will))~~ may continue to receive funding under the TFS, FSO, or the FSP program until your next DDD assessment.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0113 Will my IFS allocation be impacted by my income? The amount of ~~((services you receive))~~ your allocation will be solely based on your assessed needs. Your income will not affect your ~~((level of service))~~ IFS allocation.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0120 Will my IFS allocation be impacted if I am eligible for medicaid personal care services? If you meet financial and functional eligibility for medicaid personal care services, your IFS allocation will be adjusted according to WAC 388-828-9100 through 388-828-9140.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0123 Will my IFS allocation be impacted if I am eligible for private duty nursing or the medically intensive children's program? If you meet eligibility for private duty nursing described in WAC 388-106-1000, or the medically intensive children's program described in WAC 388-551-3000, your IFS allocation will be adjusted according to WAC 388-828-9100 through 388-828-9140.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0125 Will my IFS allocation be impacted if I am eligible for the community options pro-

grams entry system (COPES)? If you are eligible for the community options programs entry system (COPES), your IFS allocation will not be adjusted.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0127 What if I have assessed needs that cannot be met by the IFS program? If you complete the DDD assessment and are assessed to have an unmet need and there is no approved funding to support that need, DDD will offer you referral information for ICF/MR services. In addition, DDD may:

- (1) Provide information and referral for non-DDD community-based supports; and
- (2) Add your name to the waiver data base, if you have requested enrollment in a DDD HCBS waiver per chapter 388-845 WAC(~~and~~
- (3) ~~Request short term emergency services as an exception to rule (ETR) per WAC 388-440-0001. Approval is required by the director of DDD or designee).~~

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0128 When is the individual support plan effective? (1) For an initial individual support plan, the plan is effective the date DDD signs and approves (~~(it after)~~) the plan based on a signature or verbal consent (~~(is obtained)~~).

(2) For a reassessment, amendment or review of the individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0135 How (~~can~~) may my family use its IFS program allocation? Your IFS program allocation is available to pay for any of the services listed in WAC 388-832-0140 if:

- (1) The service need relates to (~~and results from~~) your (~~developmental~~) disability, and
- (2) The need is identified in your DDD assessment and identified on your ISP.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0136 If I have a family support reimbursement contract, (~~can~~) may DDD ask me to verify my purchases through reviewing receipts? (1) If you have a family support reimbursement contract, you (~~will~~) must first need prior approval from your DDD case manager and then DDD will ask you to verify your purchases through reviewing receipts.

(2) You (~~need to~~) must submit receipts to your case manager whenever you are asking for reimbursement.

(3) Your request for reimbursement must be received within ninety days of the date that the service was received

and no later than thirty days after the end of your allocation year.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0137 May I use my allocation over a two year period for large costly expenditures? (1) You may not use your allocation over a two year period for a large costly expenditure.

(2) Your annual allocation (~~(must)~~) can only be used during the twelve month period your assessed needs were determined.

(3) If you do not use all of your allocation, your remaining dollars do not carry over to next (~~(year's allocation)~~) year.

(4) (~~(If at least some)~~) You must use a portion of your IFS program (~~(services are not used in the)~~) allocation within your twelve month assessment period(=) or you (~~(will)~~) may be terminated from the IFS program.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0160 Are there limits to the respite care I receive? The following limitations apply to the respite care you can receive:

- (1) Respite cannot replace:
 - (a) Daycare, childcare or preschool while a parent (~~(or guardian)~~) is at work; and/or
 - (b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

(2) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(d) The respite care provider cannot be your natural, step or adoptive parent living with you.

(3) Your caregiver will not be paid to provide DDD services for you or other persons at the same time you receive respite services.

(4) The need for respite must be identified in your ISP and, in combination with other IFS services, (~~(cannot)~~) may not exceed your IFS allocation.

(5) If your personal care provider is your parent, your parent provider may not be paid to provide respite services to any client in the same month that you receive respite services.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0165 What are considered excess medical costs not covered by another source? Excess medical costs are medical expenses incurred by (~~(a client)~~) you

after medicaid or private insurance have been accessed or when ~~((the client does))~~ you do not have medical insurance. This may include the following:

- (1) Skilled nursing services (e.g., ventilation, catheterization, and insulin shots);
- (2) Psychiatric services;
- (3) Medical and dental services ~~((related to the person's disability))~~ deemed medically necessary by your health care professional and an allowable medicaid covered expense;
- (4) Prescriptions for medications; and/or
- (5) ~~((Copays))~~ Medical and ~~((deductible limited to your IFS allocation))~~ dental premiums.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0166 How are excess medical costs paid? (1) Excess medical costs ~~((are))~~ may be paid directly to a DDD contracted provider or reimbursed to a family member who has an individual and family ~~((support))~~ services contract with the division of developmental disabilities ~~((and))~~ if receipts are received within ~~((thirty))~~ ninety days from the date of service.

(2) Skilled nursing services are paid to the DSHS contracted nurse directly.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0168 Are there limits to excess medical costs? There are limits to excess medical costs.

(1) The ~~((payment))~~ service must be of direct medical or remedial benefit to ~~((the individual))~~ you and deemed medically necessary ~~((as a result of the individual's disability;))~~ by your health care professional.

(2) Therapies included under WAC 388-832-0170 may not be paid under excess medical costs.

(3) Medical and dental premiums are excluded for family members other than the DDD eligible clients ~~((;and))~~.

~~((3))~~ (4) The need for excess medical costs must be identified in your ISP and, in combination with other IFS services, ~~((cannot))~~ may not exceed your IFS allocation.

~~((4))~~ (5) Other restriction per WAC 388-832-0333 also apply.

(6) Prior approval by regional administrator or designee is required.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0170 What therapies ~~((can))~~ may I receive? The therapies you ~~((can))~~ may receive are:

- (1) Physical therapy;
- (2) Occupational therapy; and/or
- (3) Speech, hearing and language therapy.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0175 Who is a qualified therapist? Providers must be certified, registered or licensed therapists

as required by law and contracted with DDD for the therapy they are providing. DDD will pay the contracted therapist directly for the therapy services they provide.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0180 Are there limits to the therapy I ~~((can))~~ may receive? The following limitations apply to therapy you may receive:

(1) Additional therapy may be authorized as a service only after you have accessed what is available to you under medicaid and any other private health insurance plan or school;

(2) DDD does not pay for treatment determined by DSHS to be experimental;

(3) DDD ~~((and the treating professional))~~ determines the need ~~((for))~~ and amount of services you ~~((can))~~ will receive based upon information received from the therapist;

(a) DDD may require a second opinion from a DDD selected provider.

(b) DDD ~~((will))~~ requires you to provide evidence that you have accessed your full benefits through medicaid, private insurance and the school before authorizing this service.

(4) The need for therapies must be identified in your ISP and, in combination with other IFS services, ~~((cannot))~~ may not exceed your IFS allocations.

(5) ~~((Prior approval by the regional administrator or designee is required))~~ Other restrictions per WAC 388-832-0333 also apply.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0185 What are architectural and vehicular modifications? (1) Architectural and vehicular modifications are physical adaptations to the home and vehicle of the individual to:

(a) Ensure the health, welfare and safety of the client and or caregiver; or

(b) Enable a client who would otherwise require a more restrictive environment to function with greater independence in the home or in the community.

(2) Architectural modifications include the following:

(a) Installation of ramps and grab bars;

(b) Widening of doorways;

(c) Modification of bathroom facilities; ~~((or))~~

(d) Installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual;

(e) Repairs for damages to the client's residence as a result of the client's disability up to the balance of the client's allocation; or

(f) Repairs to architectural modifications if necessary for client safety.

(3) Vehicular modifications include the following:

(a) Wheel chair lifts;

(b) Strap downs; ~~((or))~~

(c) Other access modifications; or

(d) Repairs and maintenance to vehicular modifications if necessary for client safety.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0195 What limits apply to architectural and vehicular modifications? The following service limitations apply to architectural and vehicular modifications are in addition to any limitations in other rules governing this service:

(1) Prior approval by the regional administrator or designee is required.

(2) Architectural and vehicular modifications to the home and vehicle are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as floor covering (e.g., carpeting, linoleum, tile, hard wood flooring, decking), roof repair, central air conditioning, fencing for the yard, etc.

(3) Architectural modifications ~~((cannot))~~ may not add to the square footage of the home.

(4) DDD ~~((will))~~ requires evidence that you accessed your full benefits through medicaid, private insurance and the division of vocational rehabilitation (DVR) before authorizing this service.

(5) Architectural and vehicular modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by DDD.

(6) Architectural and vehicular modifications ~~((will be))~~ are prorated by the number of other members in the household who use these modifications.

(7) The need for architectural and vehicular modifications must be identified in your ISP and, in combination with other IFS services, ~~((cannot))~~ may not exceed your ~~((annual))~~ IFS allocation.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0200 What are ~~((specialized medical))~~ equipment and supplies? (1) ~~((Specialized medical))~~ Equipment and supplies are ~~((durable and nondurable medical equipment not available through Medicaid or the state plan which enables individuals))~~ designed to assist clients to:

(a) Increase or maintain their abilities to perform their activities of daily living; or

(b) Perceive, control or communicate with the environment in which they live.

(2) Equipment and supplies may include durable and nondurable ~~((medical))~~ equipment that are ~~((defined in WAC 388-543-1000 and 388-543-2800 respectively))~~ specialized or adapted, and generally not useful to a person in the absence of illness, injury or disability.

(3) Also included are items ~~((necessary for life support and ancillary supplies))~~ and ~~((equipment))~~ services necessary to the proper functioning of the equipment and supplies ~~((described in subsection (1) above)).~~

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0205 Who are qualified providers of ~~((specialized medical))~~ equipment and supplies? The provider of ~~((specialized medical))~~ equipment and supplies must

be ~~((a medical))~~ an equipment supplier contracted with DDD ~~((or))~~, a parent who has an individual and family services contract ~~((with DDD))~~, or a provider who purchases goods and services through the pass through contract~~((s))~~.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0210 Are there limitations to my receipt of ~~((specialized medical))~~ equipment and supplies? The following limitations apply to your receipt of ~~((specialized medical))~~ equipment and supplies:

(1) ~~((Specialized medical))~~ Equipment and supplies with the exception of supplies for incontinence (e.g., diapers, disposable underpads, and wipes) require prior approval by the DDD regional administrator or designee for each authorization.

(2) DDD reserves the right to require a second opinion by a department-selected provider.

(3) Items reimbursed with state funds ~~((shall))~~ must be in addition to any medical equipment and supplies furnished under medicaid or private insurance.

(4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.

(5) Medications, prescribed or nonprescribed, and vitamins are excluded.

(6) The need for ~~((specialized medical))~~ equipment and supplies must be identified in your ISP and, in combination with other IFS services, ~~((cannot))~~ may not exceed your IFS allocation.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0215 What are specialized nutrition and specialized clothing? (1) Specialized nutrition is specialized formulas or specially prepared foods for which a written recommendation has been provided by a qualified and appropriate professional and when it constitutes fifty percent or more of the person's caloric intake (e.g., licensed physician or registered dietician).

(2) Specialized clothing is nonrestrictive clothing adapted for a physical disability, excessive wear clothing, or specialized footwear for which a written recommendation has been provided by a qualified and appropriate professional (e.g., a podiatrist, physical therapist, or behavior specialist).

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0220 How do I pay for specialized nutrition and specialized clothing? Specialized nutrition and specialized clothing can be a reimbursable expense through the ~~((parent))~~ individual and family ~~((support))~~ services contract and the pass through contract.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0225 Are there limits for specialized nutrition and specialized clothing? (1) The need for specialized nutrition and specialized clothing must be identified in your ISP and, in combination with other IFS services, ~~((cannot))~~ may not exceed your IFS allocation.

(2) Prior approval by regional administrator or designee is required.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0235 What are copays for medical and therapeutic services? Copays ~~((for medical and therapeutic services))~~ are fixed fees that subscribers to a medical plan must pay ~~((for disability related))~~ to use specific medical or therapeutic services ~~((you may have received that were not))~~ covered by the plan. These services must have been deemed medically necessary by your ~~((private insurance or Medicaid))~~ health care professional.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0240 How do I pay for medical and therapeutic copays? Medical and therapeutic copays can be a reimbursable expense through the ~~((parent))~~ individual and family ~~((support))~~ services contract and the pass through contract.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0245 Are there limits to medical and therapeutic copays? (1) Medical and therapeutic copays must be identified ~~((as a need))~~ in your ISP and, in combination with other IFS services, ~~((cannot))~~ may not exceed your IFS ~~((program))~~ allocation.

(2) The copays must be for your ~~((disability related))~~ medical or therapeutic needs.

(3) Prescribed or nonprescribed vitamins and supplements are excluded.

~~((4) Prior approval by regional administrator or designee is required.))~~

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0255 Who is a qualified provider for transportation services? (1) The provider of transportation services can be an individual or agency contracted with DDD.

(2) Transportation services can be a reimbursable expense through the ~~((parent))~~ individual and family ~~((support))~~ services contract.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0260 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace medicaid transportation services.

(3) Transportation is limited to travel to and from an IFS program service.

~~((4) ((Transportation does not include the purchase of a bus pass.~~

~~((5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.~~

~~((6))~~ (6) This service does not cover the purchase or lease of vehicles.

~~((7) Reimbursement for provider travel time is not included in this service.~~

~~((8))~~ (5) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

~~((9))~~ (6) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

~~((10) Transportation services require prior approval by the DDD regional administrator or designee.~~

~~((11))~~ (7) Per diem costs may be reimbursed ~~((with prior approval from DDD regional administrator or designee))~~ utilizing the state rate to access medical services if the DDD client and one family member must travel over one hundred fifty miles one way ~~((for client receiving medical services and one family member)).~~

~~((12))~~ (8) Air ambulance costs due to an emergency may be reimbursed after insurance, deductibles, medicaid and other resources have been exhausted not to exceed your annual IFS allocation.

~~((13))~~ (9) The need for transportation services must be identified in your ISP and, in combination with other IFS services, ~~((cannot))~~ may not exceed your IFS allocation.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0275 Are there limitations to the training and counseling ~~((I can receive))~~? There are limitations to training and counseling that your family may receive.

(1) Expenses to the family for room and board or attendance, including registration fees for conferences are excluded as a service under family counseling and training.

(2) The need for training and counseling must be identified in your ISP and, in combination with other IFS services, ~~((cannot))~~ may not exceed your IFS allocation.

~~((3) Prior approval by regional administrator or designee is required.))~~

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0285 Who is a qualified provider of behavior management? The provider of behavior management and consultation must be one of the following professionals contracted with DDD and must adhere to and follow DDD's positive behavior support policy and be duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Registered counselor; or
- (11) Polygrapher.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0290 Are there limits to behavior management? The following limits apply to your receipt of behavior management:

- (1) DDD (~~(and the treating professional)~~) will determine the need and amount of service you (~~(will)~~) may receive based upon information from the treating professional.
- (2) DDD may require a second opinion from a DDD-selected provider.
- (3) Only scientifically proven, nonexperimental methods may be utilized.
- (4) Providers may not use methods that cause pain, threats, isolation or locked settings.
- (5) The need for behavior management must be identified in your ISP and, in combination with other IFS services, (~~(cannot)~~) may not exceed your IFS allocation.
- (6) Psychological testing is not allowed.
- (7) Behavior management services require prior approval by the regional administrator or designee.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0308 How is parent/sibling education paid? Parent/sibling education may be a reimbursable expense through the (~~(parent)~~) individual and family (~~(support)~~) services contract, the pass through contract or paid directly to the contracted provider.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0310 Are there limitations to parent/sibling education? There are limitations to parent/sibling education that your family may receive.

(1) Parent/sibling education does not include conference fees or lodging.

(2) Viewing of VHS or DVD at home by (~~(yourself)~~) your parent or sibling does not meet the definition of parent or sibling education.

(3) The need for parent/sibling education must be identified in your ISP and, in combination with other IFS services, (~~(cannot)~~) may not exceed your IFS allocation.

(~~(4) Prior approval by regional administrator or designee is required.~~)

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0315 What are recreational opportunities? (1) Recreational opportunities are leisure activities that may be available to children and adults with a developmental disability such as summer camps, YMCA activities, day trips or typical activities available in your community.

(2) Recreational opportunities may include memberships in civic groups, clubs, crafting classes, or classes outside of K-12 school curriculum or sport activities.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0320 How are recreational opportunities paid for? Recreational opportunities may be a reimbursable expense through the (~~(parent)~~) individual and family (~~(support)~~) services contract (~~(and)~~), the pass through contract or the recreational opportunity contract.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0325 Are there limitations to recreation opportunities? The following limitations apply to recreation opportunities:

(1) (~~(The)~~) Recreational opportunities must occur in your community or the bordering states addressed in WAC 388-832-0331.

(2) The need for recreation opportunities must be identified in your ISP and, in combination with other IFS services, (~~(cannot)~~) may not exceed your IFS allocation.

(3) DDD does not pay for recreational opportunities that may pose a risk to individuals with disabilities or the community at large.

(~~(4) Prior approval by regional administrator or designee is required.~~)

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0330 (~~(Does my family)~~) Do I have a choice of IFS program services? In collaboration with your case manager and based upon your assessed need, you may choose the services available with this program.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0332 ~~((Will))~~ **May I ((have a choice of)) choose my provider?** You may choose a qualified individual, agency or licensed provider within the guidelines described in WAC 388-825-300 through 388-825-400. These WACs describe:

(1) Qualifications for individuals and agencies providing DDD services in the client's residence or the provider's residence or other settings; and

(2) Conditions under which DDD will pay for the services of an individual provider or a home care agency provider or other provider.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0333 **What restrictions apply to the IFS program services?** The following restrictions apply to the IFS program services:

(1) IFS program services are authorized only after you have accessed what is available to you under medicaid, including medicaid personal care, and any other private health insurance plan, school, division of vocational rehabilitation or child development services.

(2) All IFS program service payments must be agreed to by DDD and you in your ISP.

(3) DDD ~~((will))~~ may contract directly with a service provider or parent for the reimbursement of goods or services purchased by the family member.

(4) DDD ~~((will))~~ may not pay for treatment determined by DSHS/MAA or private insurance to be experimental.

(5) Your choice of qualified providers and services may be limited to the most cost effective option that meets your assessed need.

(6) The IFS program ~~((will))~~ must not pay for services provided after the death of the eligible client. Payment may occur after the date of death, but not the service.

(7) DDD's authorization period ~~((will start))~~ begins when you agree to be in the IFS program and have given written or verbal approval for your ISP. The period will last up to one year and may be renewed if you continue to need and utilize services. If you have not utilized the services within one year period you will be terminated from this program.

(8) IFS program ~~((will))~~ must not pay for psychological evaluations or testing, or DNA testing.

(9) Supplies/materials related to ~~((community integration or recreational activities))~~ recreation opportunities are the responsibility of the family.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0335 **What is a one-time award?** (1) One-time awards are payments to individuals and families who meet the IFS program eligibility requirements and have a one time unmet need not covered by any other sources for which they are eligible.

(2) One-time awards can only be used for architectural/vehicular modifications, or specialized equipment.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0340 **Who is eligible for a one-time award?** You are eligible to be considered for a one-time award if:

(1) You are not currently authorized for IFS program services in your ISP((-);

(2) You meet the eligibility for the IFS program((-);

(3) The need is critical to the health or safety of you or your caregiver; and

(4) You and your family have no other resource to meet the need or your resources do not cover all of the expense.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0345 **Are there limitations to one-time awards?** (1) One-time awards are limited to architectural/vehicular modifications or specialized equipment.

(2) One-time awards cannot exceed six thousand dollars in a twenty-four month period.

(3) One-time awards must be approved by the ~~((director of))~~ DDD regional administrator or designee.

(4) Eligibility for a one-time award does not guarantee approval and authorization of the service by DDD. Services are based on availability of funding.

(5) One-time awards will be prorated by the number of other members in the household who use these modifications or specialized equipment.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0350 **How do I ~~((apply for the)) request a one-time award?~~** If you have a need for a one-time award, you ~~((can))~~ may make the request to your case manager.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0353 **Do I need to have a DDD assessment before I receive a one-time award?** You need to have a DDD assessment ~~((prior to))~~ before receiving a one-time award.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0366 **What limitations apply to emergency services?** (1) Emergency services may be granted to individuals and families who are on the IFS wait list and have an emergent need.

(2) Funds are provided for a limited period not to exceed ~~((sixty))~~ ninety days.

(3) All requests are reviewed and approved or denied by the regional administrator or designee.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0367 What if the client or family situation requires more than ~~((sixty))~~ ninety days of emergency service? ~~((+))~~ If the client or family situation requires more than ninety days of emergency services ~~((are limited to sixty days.~~

~~((2))~~, DDD will conduct an administrative review of ~~((other))~~ DDD services to determine if the need can be met through other services.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0369 Do I need to have a DDD assessment before I receive an emergency service? You do not need to have a DDD assessment ~~((prior to))~~ before receiving an emergency service; however the regional manager/designee may request a DDD assessment for a client at any time.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-832-0460 How will DDD notify me ~~((on))~~ of their decisions? Your DDD case resource manager will call you and send a written planned action notice per WAC 388-825-100 to notify you of their decision.

WSR 09-08-013

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 20, 2009, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-080.

Title of Rule and Other Identifying Information: Create chapter 392-124 WAC, Finance—National Guard youth challenge apportionment.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on May 13, 2009, at 9:00.

Date of Intended Adoption: May 14, 2009.

Submit Written Comments to: Mitch Thompson, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Mitch.Thompson@k12.wa.us, fax (360) 725-6306, by May 12, 2009.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu by May 12, 2009, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules outline the apportionment process for National Guard youth challenge program, provide rules for determining eligibility, the methodology for applying for funding, and a set of definitions for terms used in the National Guard youth challenge program.

Reasons Supporting Proposal: HB 1646 from the 2002 legislative session established the creation of the National Guard youth challenge program. RCW 28A.150.310 directs the office of superintendent of public instruction to adopt rules for funding this program.

Statutory Authority for Adoption: RCW 28A.150.310.

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: Mitch Thompson, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: Calvin W. Brodie, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: Jennifer Priddy, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

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.

March 4, 2009

Randy I. Dorn

State Superintendent

Chapter 392-124 WAC

FINANCE—NATIONAL GUARD YOUTH CHALLENGE APPORTIONMENT

NEW SECTION

WAC 392-124-005 Authority. The authority for this chapter is RCW 28A.300.165 which authorizes the superintendent of public instruction to adopt rules and regulations for the implementation of chapter 28A.150 RCW.

NEW SECTION

WAC 392-124-010 Purpose. The purpose of this chapter is to establish policies and procedures for the distribution of state moneys to school districts for the National Guard youth challenge program authorized by RCW 28A.150.310.

NEW SECTION

WAC 392-124-020 Definition—National Guard youth challenge. National Guard youth challenge means an alternative program that is operated in conjunction with the military department as defined in 2SHB 1646 in the 2002 legislative session. For the purposes of funding, the National Guard youth challenge program shall be defined as a separate and unique entity.

NEW SECTION

WAC 392-124-030 Definition—State average rate. For the purpose of this chapter, the state average rate for basic and vocational programs shall be those rates established annually for the running start program.

NEW SECTION

WAC 392-124-035 Definition—State average rate free and reduced price lunch program. For the purpose of this chapter, the state average rate for the free and reduced price lunch program shall be the statewide average of all students of all districts participating in the free and reduced price lunch program as reported to the superintendent of public instruction.

NEW SECTION

WAC 392-124-040 Definition—Form P-223YC. "Form P-223YC" means the report of school district enrollment for students enrolled in a National Guard youth challenge program submitted monthly by the hosting school district(s) to the superintendent of public instruction for the school year for the purpose of calculating the program allocations.

(1) The count dates for the National Guard youth challenge program shall be:

- (a) The fourth day of school in the months of January and July, or the start of the term of the educational program; and
- (b) The first day of school in the months of February through June and the months of August through December.

(2) This report shall indicate the enrollment by resident school district and serving school district.

NEW SECTION

WAC 392-124-050 Definition—Full-time equivalency. For the purposes of this chapter, full-time equivalency is calculated as a 1.0 FTE for every one hundred hours of instruction each month in a course of study as defined in WAC 392-121-107, a course of study shall encompass that instruction which will generate credit towards a high school diploma when successfully completed. Students who participate in more than one hundred hours may be counted for more than a 1.0 FTE. FTE shall be rounded to two decimal places (e.g., 1.725 would be reported as 1.73).

NEW SECTION

WAC 392-124-060 Definition—Annual average full-time equivalency. For the purposes of this chapter, annual average full-time equivalency shall be calculated by taking the annual total of full-time equivalent students enrolled on the twelve count dates of the school year and reported to the superintendent of public instruction Form P-223YC for the months of September through August divided by nine. This calculation applies to the reporting of basic education and vocational students.

NEW SECTION

WAC 392-124-070 Definition—Headcount. For the purposes of this chapter students may be counted for a maximum of one headcount for basic education, special education, or bilingual education. A student who participates in more than one of these educational opportunities shall be counted

for a maximum of one headcount under each separate category.

NEW SECTION

WAC 392-124-080 Definition—Annual average headcount. For the purposes of this chapter, annual average headcount shall be calculated by taking the sum of the monthly headcounts as reported on Form P-223YC for the months of September through August divided by twelve. This calculation applies to the reporting of basic education, special education, and bilingual education students.

NEW SECTION

WAC 392-124-090 Definition—Eligible student. An eligible student shall be one who:

- (1) Is likely to be expelled or is enrolled in a school district but has been suspended;
- (2) Is academically at risk; or
- (3) Has been subject to repeated disciplinary actions due to behavioral problems.

NEW SECTION

WAC 392-124-100 Definition—Apportionment. Apportionment shall be paid to the school district the National Guard youth challenge program is operating within pursuant to chapter 28A.510 RCW.

NEW SECTION

WAC 392-124-110 Definition—Apportionment allocation. The apportionment allocation shall be based and made consistent with state funding formulas with the following items set as:

- (1) The basic education funding rate shall be the basic state average rate as defined in WAC 392-124-030.
- (2) The vocational education funding rate shall be the vocational state average rate as defined in WAC 392-124-030.
- (3) The special education rate shall be 93.09% of the basic state average rate as defined in WAC 392-124-030 with the number of funded special education headcount limited to 12.7% of the reported basic education headcount.
- (4) Funding under the following categorical programs shall use the legislative provided formulas and rates. Categorical programs are subject to legislative allotment and program standards and include:
 - (a) Highly capable;
 - (b) Bilingual;
 - (c) Learning assistance - shall use the statewide average for the free and reduced price lunch rate;
 - (d) Student achievement.
- (5) Funding for categorical programs and vocational education is subject to program approval by the superintendent of public instruction.

WSR 09-08-019
PROPOSED RULES
GAMBLING COMMISSION

[Filed March 23, 2009, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-03-017.

Title of Rule and Other Identifying Information: WAC 230-13-150 Amusement game locations, 230-13-080 Operating coin or token activated amusement games, and 230-13-135 Maximum wagers and prize limitations at certain amusement game locations.

Hearing Location(s): Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 99301, (509) 547-0701, on May 15, 2009, at 9:00 a.m.

Date of Intended Adoption: May 15, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by May 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by May 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change would add family sporting complexes, whether operated by commercial or a charitable/nonprofit organization, as an authorized location to operate amusement games.

Reasons Supporting Proposal: In May 2008, this rule was amended after a petition submitted by Starfire Sports to add a new location for placement of authorized amusement games. The change became effective July 1, 2008. The location added was a "commercially operated family sports complex." Unfortunately, it was not known by staff that the petitioner was a nonprofit organization, not a "commercially operated" sports complex. After the amendment was adopted, staff began working with the petitioner to issue an amusement game license and realized the rule change did not allow Starfire to operate amusement games.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

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

March 23, 2009
 Susan Arland
 Rules Coordinator

AMENDATORY SECTION (Amending Order 625, filed 5/14/08, effective 7/1/08)

WAC 230-13-080 Operating coin or token activated amusement games. (1) Coin or token activated amusement games must have nonresetting coin-in meters, certified as accurate to within plus or minus one coin or token in one thousand plays, which stop play of the machine if the meter is removed or disconnected when operating at:

- (a) Amusement parks; or
- (b) Regional shopping malls; or
- (c) Movie theaters; or
- (d) Bowling alleys; or
- (e) Miniature golf course facilities; or
- (f) Skating facilities; or
- (g) (~~Commercially operated~~) Family sports complex, offering sports such as indoor and outdoor soccer, lacrosse, baseball, Frisbee, and lawn bowling; or
- (h) Amusement centers; or
- (i) Restaurants; or
- (j) Grocery or department stores. A "department or grocery store" means a business that offers the retail sale of a full line of clothing, accessories, and household goods, or a full line of dry grocery, canned goods, or nonfood items plus some perishable items, or a combination of these. A department or grocery store must have more than ten thousand square feet of retail and support space, not including the parking areas(~~;~~ or

~~(k) Any premises that a charitable or nonprofit organization currently licensed to operate punch boards, pull tabs, or bingo controls or operates).~~

(2) All coin or token activated amusement games must have a coin acceptor capable of taking money for one play and may have an additional acceptor to include paper money.

(3) Operators using amusement games that do not return change must have a change-making bill acceptor or the ability to get change in the immediate vicinity of such games. All amusement games using paper money acceptors must either:

- (a) Return change; or
- (b) Clearly disclose to players before play that change is not returned and disclose to them where at the location they may get change.

AMENDATORY SECTION (Amending Order 625, filed 5/14/08, effective 7/1/08)

WAC 230-13-135 Maximum wagers and prize limitations at certain amusement game locations. The maximum wager is fifty cents and the maximum cost for a prize is two hundred fifty dollars if school-aged minors are allowed to play amusement games at the following locations:

- (1) Regional shopping centers; and
- (2) Movie theaters; and
- (3) Bowling alleys; and
- (4) Miniature golf course facilities; and
- (5) Skating facilities; and
- (6) (~~Commercially operated~~) Family sports complex, offering sports such as indoor and outdoor soccer, lacrosse, baseball, Frisbee, and lawn bowling; and
- (7) Amusement centers; and

(8) Grocery or department stores. A "department or grocery store" means a business that offers the retail sale of a full line of clothing, accessories, and household goods, or a full line of dry grocery, canned goods, or nonfood items plus some perishable items, or a combination of these. A department or grocery store must have more than ten thousand square feet of retail and support space, not including the parking areas; and

(9) Any business whose primary activity is to provide food service for on premises consumption.

AMENDATORY SECTION (Amending Order 625, filed 5/14/08, effective 7/1/08)

WAC 230-13-150 Amusement game locations. (1) Amusement game operators must obtain written permission to operate at any location from the person or organization owning the premises or sponsoring the event where the operator will hold the activity.

(2) Operators may only conduct commercial amusement games at:

(a) Locations set out in RCW 9.46.0331; and

(b) (~~Commercially operated~~) Family sports complex, offering sports such as indoor and outdoor soccer, lacrosse, baseball, Frisbee, and lawn bowling; and

(c) Skating facilities; and

(d) Grocery or department stores. A "department or grocery store" means a business that offers the retail sale of a full line of clothing, accessories, and household goods, or a full line of dry grocery, canned goods, or nonfood items plus some perishable items, or a combination of these. A department or grocery store must have more than ten thousand square feet of retail and support space, not including the parking areas.

(3) Operators must conduct amusement games in conformance with local zoning, fire, health, and similar regulations.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner is requesting a rule amendment to increase the winning payout verification limit from \$1,000 to \$3,000.

In January 2009, wagering limits at house-banked card rooms increased from \$200 to \$300. The petitioner states that if house-banked card rooms choose to offer \$300 wagering limits, it is possible that surveillance observers will have to verify more jackpot payouts than normal if the payout verification limit remains at \$1,000. According to the petitioner, many card games offered at house-banked card rooms have bonus payouts with 4:1 odds and are frequently paid. At \$300 betting limits and a payout verification limit of \$1,000, surveillance observers may spend more time verifying jackpot payouts and less time performing other necessary duties in the surveillance room.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Recreational Gaming Association, private.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

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

March 24, 2009

Susan Arland

Rules Coordinator

WSR 09-08-030
PROPOSED RULES
GAMBLING COMMISSION

[Filed March 24, 2009, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-001.

Title of Rule and Other Identifying Information: Amending WAC 230-15-320 Surveillance room requirements for house-banked card game licensees.

Hearing Location(s): Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 99301, (509) 547-0701, on May 15, 2009, at 9:00 a.m.

Date of Intended Adoption: May 15, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by May 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by May 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

AMENDATORY SECTION (Amending Order 638, filed 11/18/08, effective 1/1/09)

WAC 230-15-320 Surveillance room requirements for house-banked card game licensees. House-banked card game licensees must maintain one or more surveillance rooms. They must:

(1) Control access to the surveillance room so that only surveillance department employees use the room. Owners or their approved supervisory or management personnel may also enter the surveillance room to monitor activities. Licensees may allow authorized personnel to escort any other person into the surveillance room for educational, investigative, or maintenance purposes; and

(2) Ensure that surveillance room entrances are not easily observed from the gambling floor; and

(3) Ensure that a surveillance employee is present in the room and monitoring activities using the equipment any time the card room is conducting gambling and during the count process. However, subject to subsection (4) of this section, licensees may operate the surveillance room without staff.

(a) For routine breaks that are less than thirty minutes per shift; or

(b) When only nonhouse-banked card games are operated with wager limits of forty dollars or less and such limits are documented in their internal controls.

(4) Ensure that any time a winning wager, a jackpot, or bonus pay out greater than ~~((one))~~ three thousand dollars is won, they use pan-tilt-zoom (PTZ) cameras to verify:

- (a) Winning hands; and
- (b) Amounts of the wager; and
- (c) Amounts of the pay out; and
- (d) Players who won the prize.

WSR 09-08-035

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed March 25, 2009, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-149.

Title of Rule and Other Identifying Information: Definitions, licensing, and education for home inspectors.

Hearing Location(s): 2000 4th Avenue West, 2nd Floor Conference Room, Olympia, WA 98507, on May 7, 2009, at 10:30 a.m.

Date of Intended Adoption: May 7, 2009, or after.

Submit Written Comments to: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98507, e-mail jmcdonald@dol.wa.gov, fax (360) 570-7051, by April 30, 2009.

Assistance for Persons with Disabilities: Contact Gale Mitchell by April 30, 2009, TTY (360) 664-8885 or (360) 664-6426.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will create definitions, licensing, and education rules for licensed home inspectors for [to] follow.

Reasons Supporting Proposal: This creates uniform practices for licensed home inspectors and references for purchasers when requesting a home inspection.

Statutory Authority for Adoption: RCW 18.280.050.

Statute Being Implemented: RCW 18.280.060 (1), (2), (3).

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6524.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules are for individual licensees and not small business enterprises.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies under this RCW.

March 24, 2009

Jerry McDonald

Assistant Administrator

Chapter 308-408 WAC

DEFINITIONS

NEW SECTION

WAC 308-408-010 Words and terms. Words and terms used in these rules shall have the same meaning as each has under chapter 18.280 RCW unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

(1) "Classroom" means training that takes place in a setting where individuals receiving training are assembled together and learn through lectures, study papers, class discussion, textbook study, or other means of organized formal education techniques, such as video, closed circuit, or other forms of electronic means.

(2) "Comment" means the act of stating one's observations clearly in the report.

(3) "Describe" means the act of stating one's observations clearly in the report.

(4) "Distance education" means a delivery method in which instruction takes place in other than a live classroom setting, the instructor and the student are in physically separate locations, and interactive instructional methods such as video-based instruction, computer conferencing, video conferencing, interactive audio, interactive computer software, correspondence or internet-based instruction are used.

(5) "Enter" means to physically go into an attic, crawl-space, or other area. Simply sticking one's head and shoulders into these areas is not entering.

(6) "Field training" is in addition to the one hundred twenty hours of classroom instruction and shall be done on actual inspection sites. Field training must include forty hours of instruction with a minimum of five actual complete home inspections done to the standards of practice under the supervision of an experienced inspector. The applicant will be required to complete written reports for each inspection and the supervisor will review the reports and certify that they are in full compliance with the standards of practice. The forty hours of supervised instruction will not include travel time to and from inspection, meals, and report writing time.

(7) "Interactive" means the course structure and technologies promote active student involvement with the course content, including the ability to:

- (a) Access or bypass optional content, if applicable;
- (b) Submit questions or answer test items, and receive direct feedback; and
- (c) Communicate with the instructor and/or other students on an immediate or reasonably delayed basis.

Interactive instruction specifically excludes courses that only provide passive delivery of instructional content.

(8) "Passive" means there is no required or actual interaction or feedback between the student and instructor.

(9) "Preinspection agreement" is a written contract signed by the client that outlines the standards and work to be performed by the home inspector.

(10) "Preoffer consultation" is a verbal report that is limited in scope performed by a licensed home inspector. A preinspection agreement must be signed by the client and describe the limited scope of the consultation. This preoffer consultation is conducted only prior to mutual acceptance.

(11) "Readily accessible" means available for visual inspection without requiring moving personal property, dismantling, destructive measures, or any action that likely will involve risk to persons or property.

(12) "Record" means the act of stating one's observations clearly in the report.

(13) "Report" means the act of stating one's observations clearly in the report.

(14) "Standard home inspection" is a prelisting or presale written report that contains all or most of the components listed in the standards of practice. The components must be listed in the preinspection agreement. This standard home inspection report cannot be delivered verbally and must be in writing.

(15) "Technically exhaustive" is an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations or other means.

(16) "Traverse" means the act of physically moving through a crawlspace or attic or over the surface of a roof during an inspection when it is safe to do so.

Chapter 308-408A WAC

LICENSING

NEW SECTION

WAC 308-408A-010 Application for a license—Fingerprinting. Persons who have been convicted of a crime within ten years of application may be required to submit fingerprint identification on a form provided by the department prior to issuance of a license.

NEW SECTION

WAC 308-408A-020 Application process to take examination. This section does not apply to applicants for a home inspector's license who are actively licensed in another jurisdiction or were so licensed in the preceding six months in accordance with WAC 308-408A-040.

(1) Any person desiring to take an examination for a home inspector's license, except applicants who have received clock hours in another jurisdiction that have not been approved by the department, or applicants who are requesting substitution of clock hours per WAC 308-408A-050, shall telephone the testing service up to one day prior to the desired test date to schedule and pay for an examination by cashier's check, certified check, money order, credit card,

debit card, e-checks, or money voucher to the testing service. On the day of the examination, the candidate shall submit a completed examination application that has been approved by the department to the testing service. This approval is valid for six months from the date of the approval letter. If the approval expires, the candidate must apply to be reapplied. Approval is granted upon successful completion of a one hundred twenty hour course in fundamentals of home inspection and proof of forty hours of field training approved by the department. The candidate must pass a course examination approved by the director. This course and the required field training must be completed within two years prior to applying for the home inspector's license examination.

(2) The candidate will be able to schedule an examination date up to one day prior to their desired test date. Candidates requesting a morning or afternoon test session will be scheduled immediately for an examination and will be provided with a registration number confirming their reservation. On the day of the examination, the candidate shall submit the verified examination application document to the testing service approved by the department.

(3) A candidate shall be assessed the full examination fee for any examination in which the candidate fails to provide two days' notice to the testing service for changing their examination date or for failing to arrive and take a scheduled examination at the time the examination is scheduled or rescheduled.

NEW SECTION

WAC 308-408A-030 Successful applicants must apply for license. Examination results are valid for one year only. Any person who has passed the examination for home inspector licensure must become licensed within one year from the date of such examination. Failure to comply with this provision will necessitate the taking and passing of another examination.

NEW SECTION

WAC 308-408A-040 Application for home inspector examination, licensed in another jurisdiction. (1) Any person applying for a home inspector examination who has been licensed and actively practices as a home inspector for two years in the last four years in another jurisdiction that meets or exceeds the requirements under chapter 18.280 RCW and has maintained his or her license in good standing is eligible to take the Washington state portion of the examination.

(2) Any person applying to take the examination under this section shall submit an examination application approved by the department and shall submit evidence of licensure in good standing in another jurisdiction by a license verification form completed by an administrative officer of the licensure authority in such jurisdiction.

(3) After the qualifications for the examination have been verified by the department the candidate shall contact the testing service up to one day prior to the desired test date to schedule and pay for an examination. Candidates requesting a morning or afternoon test session shall be scheduled immediately for an examination and will be provided with a registration number confirming their reservation. On the day

of the examination, the candidate shall submit at the test site the verified examination application.

NEW SECTION

WAC 308-408A-050 Substitution of clock hours. (1)

The director may allow for substitution of the clock hour requirements in RCW 18.280.070 if the individual is otherwise and similarly qualified by reason of completion of equivalent educational coursework in any institution of higher education or degree granting institution. Proof of a minimum of sixty hours of fundamentals of home inspection will qualify for a supplemental course to meet the one hundred twenty hour requirement.

(2) Individuals requesting approval of equivalent educational coursework shall submit a transcript of coursework completed from an institution of higher education or a degree granting institution together with an application for the license examination. The department may also require certification from an authorized representative of the institution of higher education or degree granting institution that the coursework satisfies the department's prescribed course content or curriculum and offered through classroom instruction for a given course(s).

NEW SECTION

WAC 308-408A-060 Grading of examinations. (1) To

pass the home inspector examination a minimum scaled score of seventy is required on each portion. The home inspector examination shall consist of two portions:

(a) The national portion consisting of questions that test general home inspector practices; and

(b) The state portion consisting of questions that test on Washington laws and rules for home inspector licensing.

(2) A passing score for either portion of an examination shall be valid for a period not to exceed one year from the date of testing.

NEW SECTION

WAC 308-408A-070 Reexamination. An applicant

who has failed the full or any portion of the examination or failed to appear for a scheduled examination may apply for reexamination, provided the required reexamination fee is submitted. An applicant who has failed the full or any portion of the examination or failed to appear for a scheduled examination may apply for reexamination by contacting the testing service to schedule and pay for an examination by cashier's check, certified check, money order, credit card, debit card, e-checks, or money voucher to the testing service approved by the department.

NEW SECTION

WAC 308-408A-080 Examination procedures. (1)

Each applicant will be required to present one piece of positive identification which bears a photograph of the applicant. Failure to produce the required identification will result in the applicant being refused admission to the examination.

(2) Applicants will be required to refrain from:

(a) Talking to other examinees during the examination unless specifically directed or permitted to do so by a test monitor;

(b) Attempting to communicate or record any information;

(c) Using unauthorized materials during any portion of the examination;

(d) Removing test materials and/or notes from the testing room; and

(e) Disruptive behavior.

(3) Applicants who participate in any activity listed in subsection (2) of this section will be required to turn in their test materials to the test monitor and leave the examination site. Their opportunity to sit for the examination will be forfeited. Their answer sheet will be voided. A voided answer sheet will not be scored and the examination fee will not be refunded. A candidate must then reapply to take the examination.

(4) Any applicant who was removed from the testing site for any of the reasons listed in subsection (2) of this section will be required to submit a letter to the department requesting permission to retest and stating the circumstances of the event. After receipt of the applicant's letter, the department will review the proctor's report and the applicant's letter and may deny testing for up to one year.

NEW SECTION

WAC 308-408A-090 Home inspector fees. These fees are applicable to all original licenses, examination services, and fee generating services. The following fees shall be charged by professional licensing services of the department of licensing:

TITLE OF FEE	FEE
Home Inspector:	
Application/examination	\$ 300
Reexamination	
Full	\$ 300
National portion	\$ 250
State portion	\$ 125
Original license	\$ 680
License renewal	\$ 375
Late renewal with penalty	\$ 435
Reinstatement penalty fine	\$ 150
Course review	\$ 75

NEW SECTION

WAC 308-408A-100 Home inspectors renewal—Expiration. The minimum requirements for a home inspector to be issued the renewal of a license are that the home inspector:

(1) Has furnished proof of successful completion of twenty-four hours in instruction in courses approved by the board.

(2) Submit a renewal fee.

(3) If the application for a renewal is not received by the director on or before the renewal date, a penalty fee as prescribed by the director by rule shall be paid.

(4) The license of any person whose license renewal fee is not received within one year from the date of expiration shall be canceled. This person may obtain a new license by satisfying the procedure and requirements as prescribed by the director by rule.

NEW SECTION

WAC 308-408A-105 Reinstatement of a canceled license for nonpayment of renewal fee. Any person desiring to be reinstated as a licensed home inspector within two years of cancellation may have their license reinstated by satisfying either of the following options:

(1) Submission of an application to the director providing proof of the following:

(a) Successful completion of twenty-four hours of approved home inspection coursework completed within one year preceding the application for reinstatement. A minimum of three clock hours must include a course(s) in Washington home inspector laws and regulations;

(b) Payment of all back renewal fees with penalty at the current rate; and

(c) Payment of reinstatement penalty fine of one hundred fifty dollars; or

(2) Satisfy the procedures and qualifications for initial licensing, including the following:

(a) Successful completion of the home inspection licensing examination; and

(b) Successful completion of the fundamentals of home inspection course pursuant to RCW 18.280.070(2); and

(c) Proof of up to forty hours of field training supervised by a licensed home inspector as required by RCW 18.280.070(3).

(3) Former licensees canceled for nonpayment of fees for periods in excess of two years will be required to satisfy the requirements of subsection (2) of this section.

NEW SECTION

WAC 308-408A-110 Continuing education clock hour requirements. A licensee shall submit to the department evidence of satisfactory completion of clock hours, pursuant to RCW 18.280.110, in the manner and on forms prescribed by the department.

(1) A licensee applying for renewal of a license shall submit evidence of completion of twenty-four hours of instruction in a course(s) approved by the board and commenced within twenty-four months of a licensee's renewal date.

(2) The twenty-four clock hours shall be satisfied by evidence of completion of approved real estate courses as defined in WAC 308-408B-040.

(3) Courses for continuing education clock hour credit shall be commenced after issuance of a first license.

(4) Approved courses may be repeated for continuing education credit in subsequent renewal periods.

(5) Clock hour credit for continuing education shall not be accepted if: The course is not approved pursuant to chapters 308-408B WAC and 18.280 RCW.

(6) Instructors shall not receive clock hour credit for teaching or course development.

Chapter 308-408B WAC

EDUCATION

HOME INSPECTOR COURSE APPROVAL

NEW SECTION

WAC 308-408B-010 Course approval required. (1) Any education provider or course developer must submit a course to the department for approval.

(2) Course approval by the department is required prior to the date on which the course is offered for clock hour credit.

(3) Each application for approval of a course shall be submitted to the department on the appropriate application form provided by the department.

(4) The director or designee shall approve, disapprove, or conditionally approve applications based upon criteria established by the board.

(5) Upon approval, disapproval or conditional approval, the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons therefor.

(6) Approval shall expire two years after the effective date of approval.

NEW SECTION

WAC 308-408B-020 Course titles reserved for prescribed curriculum courses. Any education provider desiring to offer any prescribed curriculum courses shall utilize the most recent course curriculum prescribed by the department, and shall include in its title the phrase "fundamentals of home inspection" if submitted for approval for clock hours. No other courses shall use this phrase in their titles.

NEW SECTION

WAC 308-408B-030 Application process for previously approved courses. (1) If there are no changes for a previously approved course in the course content or in the original course approval application or WAC 308-408B-040 affecting the topic areas or criteria for approval, the course will be approved upon receipt of a course renewal application and payment of the required fee for one renewal cycle only.

(2) If there are changes in course content or in the original course approval application for a previously approved course, other than updating for changes required by WAC 308-408B-050, the application will not be processed as a renewal, and will require completion of a course approval application and payment of the required fee.

(3) If a course renewal application or a course approval application is submitted at least thirty days prior to the current course expiration date, the previous course approval shall remain in effect until action is taken by the director.

NEW SECTION

WAC 308-408B-040 General requirements for course approval. Courses shall meet one of the following requirements:

- (1) Be offered by a private entity; or
- (2) Be offered by a tax-supported, public technical or community college or other institution of higher learning that offers college credits; or
- (3) Be offered by the Washington home inspector board; and
- (4) Have a minimum of one hundred twenty hours of coursework or instruction for the student for prelicense; or
- (5) Have a minimum of two hours of coursework or instruction for the student for continuing education. A clock-hour is a period of fifty minutes of actual instruction; and
- (6) Provide practical information related to the practice of home inspection in any of the following home inspection topic areas:
 - (a) Department prescribed curricula for prelicense: Fundamentals of home inspection.
 - (b) Continuing education:
 - (i) Communications;
 - (ii) Structures;
 - (iii) Plumbing;
 - (iv) Electrical;
 - (v) Heating;
 - (vi) Ventilation;
 - (vii) Air conditioning;
 - (viii) Law and business administration;
 - (ix) Current trends and issues;
 - (x) Exteriors;
 - (xi) Interiors;
 - (xii) Consumer protection;
 - (xiii) Report writing; and
 - (xiv) Environmental conditions or hazardous materials.
- (7) Be under the supervision of an instructor, who shall, at a minimum, be available to respond to specific questions from students;
- (8) The following types of courses will not be approved for clock hours:
 - (a) Mechanical office and business skills, such as, key-boarding, speed-reading, memory improvement, and grammar;
 - (b) Standardized software programs such as word processing, e-mail, spreadsheets or data bases; an example: A course specific to the reporting system necessary to deliver a home inspection would be acceptable, but a course teaching how to use a computer would not be acceptable;
 - (c) Orientation courses for licensees, such as those offered by trade associations;
 - (d) Personal and sales motivation courses or sales meetings held in conjunction with a licensee's general business;
 - (e) Courses that are designed or developed to serve other professions, unless each component of the curriculum and content specifically shows how a home inspector licensee can utilize the information in the practice of home inspection;
 - (f) Personal finance, etiquette, or motivational type courses;
 - (g) Courses that are designed to promote or offer to sell specific products or services to home inspector licensees such

as warranty programs, client/customer data base systems, software programs or other devices. Services or products can be offered during nonclock hour time, such as breaks or lunch time. Letterhead, logos, company names or other similar markings by itself, on course material are not considered promotional;

(h) Clock hours will not be awarded for any course time devoted to meals or transportation.

(9) Prelicense courses which are submitted for approval shall include a comprehensive examination(s) and answer key(s) of no fewer than two hundred questions, and a requirement of passing course grade of at least seventy percent; essay question examination keys shall identify the material to be tested and the points assigned for each question; an examination is not required for continuing education courses;

(10) Include textbook or instructional materials approved by the director, which shall be kept accurate and current;

(11) Not have a title which misleads the public as to the subject matter of the course;

(12) The provider's course application shall identify learning objectives and demonstrate how these are related to the practice of home inspection.

NEW SECTION

WAC 308-408B-050 Changes and updates in approved courses. Course materials shall be updated no later than thirty days after the effective date of a change in federal, state, or local statutes or rules. Course materials shall also be updated no later than thirty days after changes in procedures or other revisions to the practice of home inspection which affect the validity or accuracy of the course material or instruction.

NEW SECTION

WAC 308-408B-060 Certificate of course completion. Each education provider must issue a certificate of course completion within thirty days to students who have satisfactorily completed the course requirements. The certificate shall include the following information:

- (1) Student's name;
- (2) School's name;
- (3) The course commencement date and completion date;
- (4) Course title;
- (5) Clock hours for the course;
- (6) School administrator's signature;
- (7) Course identification number issued by the department;
- (8) Instructor name; and
- (9) Completion of a required examination, if applicable.

NEW SECTION

WAC 308-408B-070 Courses offered in a symposium or conference format. (1) Approved schools offering courses in a symposium or conference format with two or more modules of independent instruction may issue certificates of course completion for fewer clock hours than

approved by the department on their original course approval application; and

(2) Students must complete a minimum of two clock hours of instruction to receive clock hour credit.

NEW SECTION

WAC 308-408B-080 Disciplinary action—Procedures—Investigation. (1) The department shall have the authority on its own motion or upon complaint made to it to investigate or audit any course to determine compliance with chapter 18.280 RCW and with the rules and regulations of this chapter.

(2) Complaints concerning approved courses should be made in writing to the department and contain the following information when appropriate:

(a) The complainant's name, address, and telephone number;

(b) School name, address, and telephone number;

(c) Instructor(s) name;

(d) Nature of complaint and facts detailing dates of attendance, termination date, date of occurrence, names, addresses and positions of school officials contacted, and any other pertinent information;

(e) An explanation of what efforts if any, have been taken to resolve the problem with the school;

(f) Copies of pertinent documents, publications, and advertisements.

NEW SECTION

WAC 308-408B-090 Grounds for denial or withdrawal of course approval. Course approval may be denied or withdrawn if the instructor or any owner, administrator or affiliated representative of a school, or a course provider or developer:

(1) Submits a false or incomplete course application or any other information required to be submitted to the department;

(2) Includes in its title the phrase "fundamentals of home inspection" if the course was not submitted for approval of clock hours pursuant to WAC 308-408B-020;

(3) If the title of the course misleads the public and/or licensees as to the subject matter of the course;

(4) If course materials are not updated within thirty days of the effective date of a change in the statute or rules;

(5) If course content or material changes are not submitted to the department for approval prior to the date of using the changed course content;

(6) Failed to meet the requirements under WAC 308-408B-040 and 308-408B-120;

(7) If a course or prescribed curriculum was approved through the mistake or inadvertence of the director.

NEW SECTION

WAC 308-408B-100 Hearing procedure. Upon notice of course denial or disapproval or withdrawal of course approval, a person is entitled to a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and the provisions of WAC 308-408B-040. To exer-

cise the right to a hearing under this section, a person must request a hearing within twenty days after receipt of the notice of denial, disapproval or withdrawal of course approval. Any person aggrieved by a final decision of the director or authorized representative of the director is entitled to judicial review under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 308-408B-110 Record retention. (1) Each school shall maintain for a minimum of five years each student's record;

(2) A "student record" shall include:

(a) The name, address, and telephone number of the school;

(b) Full name, address, and telephone number of the student;

(c) Beginning and ending dates of attendance;

(d) Clock hour courses completed and examination results. (3) Each school shall provide a copy of a student's record to the student or the department upon request.

NEW SECTION

WAC 308-408B-120 Distance education delivery method approval required. Applicants are required to submit an application for each separate distance education delivery method for which they propose to offer approved courses for clock hours. When submitting a distance education delivery method application, the following minimum criteria must be provided by the applicant:

(1) Specify the course learning objectives for each learning unit and clearly demonstrate that the learning objectives cover the subject matter and how these relate to the practice of home inspection. Objectives must be specific to ensure that all content is covered adequately to ensure mastery;

(2) Demonstrate how mastery of the material is provided by:

(a) Dividing the material into major learning units, each of which divides the material into modules of instruction;

(b) Specifying learning objectives for each learning unit or module of instruction. Learning objectives must be comprehensive enough to ensure that if all the objectives are met, the entire content of the course will be mastered;

(c) Specifying an objective, quantitative criterion for mastering, used for each learning objective and provide a structured learning method designed to enable students to attain each objective.

(3) Demonstrate that the course includes the same or reasonably similar informational content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction and how the provider will know that the student completed the required number of clock hours;

(4) Describe consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process, and must directly support the student's achievement of the course learning objectives. The application must identify the interactive events included in the

course and specify how the interactive events contribute to achievement of the stated learning objectives;

(5) Demonstrate how the course provides a mechanism of individual remediation to correct any deficiencies identified during the instruction and assessment process;

(6) Measure, at regular intervals, the student's progress toward completion of the master requirement for each learning unit or module. In the case of computer-based instruction, the course software must include automatic shutdown after a period of inactivity;

(7) Demonstrate that instructors are available to answer questions regarding course content at reasonable times and by reasonable means, including in-person contact, individual and conference telephone calls, e-mail and fax;

(8) Demonstrate how reasonable security will be provided to ensure that the student who receives credit for the course is the student who enrolled in and completed the course. Both the approved school and the student must certify in writing that the student has completed the course, and the required number of clock hours;

(9) Provide a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the course material and an assessment of the availability and adequacy of the equipment, software or other technologies to the achievement of the course's instructional claims;

(10) Provide an orientation session with the instructor or an affiliated representative of an approved school. Mechanisms must be clearly in place which allow students an early orientation to discuss course specifics;

(11) Demonstrate how the provider determined the number of clock hours requested in the distance education delivery method approval application; and

(12) Provide with each distance education delivery method approval application a copy of a course evaluation form. The provider must provide each student with the mandatory evaluation form and retain the completed form in the school records as required under WAC 308-408B-110.

WSR 09-08-058

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed March 26, 2009, 9:33 a.m.]

Continuance of WSR 09-03-070.

Preproposal statement of inquiry was filed as WSR 07-20-115.

Title of Rule and Other Identifying Information: WAC 181-82A-207 and 181-82A-208, speciality endorsements adding environmental and sustainability education, teacher of the visually impaired, and orientation and mobility teacher (WAC 181-82A-207) and requiring assessment of teacher content knowledge in the specialty area (WAC 181-82A-208).

Hearing Location(s): Maple Hall Auditorium, 1st and Commerce Street, LaConner, Washington 98257, on May 20, 2009, at 8:30 a.m.

Date of Intended Adoption: May 20, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548 by March [May] 16, 2009.

Assistance for Persons with Disabilities: Contact David Brenna by May 18, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Expands specialty endorsements adding environmental and sustainability education, teacher of the visually impaired, and orientation and mobility teacher to endorsements currently for only teaching deaf students. Includes requirement for assessing content knowledge of applicants.

Reasons Supporting Proposal: Consistent with state policy and national teacher board certification.

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: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

March 25, 2009

David Brenna

Legislative and
Policy Coordinator

WSR 09-08-063

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed March 26, 2009, 4:32 p.m.]

Continuance of WSR 09-05-080.

Title of Rule and Other Identifying Information: Amending Regulation I, Section 8.08 (Fire Department Training Exercises).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on April 23, 2009, at 9:15 a.m.

Date of Intended Adoption: April 23, 2009.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by April 22, 2009.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by April 16, 2009, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Continue hearing from March 26, 2009, to April 23, 2009.

March 26, 2009
Dennis J. McLerran
Executive Director

WSR 09-08-066

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed March 27, 2009, 2:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-02-052.

Title of Rule and Other Identifying Information: New chapter 172-121 WAC, Student conduct code, repealing chapter 172-120 WAC and adopting chapter 172-121 WAC to revise the standards of conduct for students.

Hearing Location(s): Eastern Washington University, Main Campus, Tawanka Commons, Room 215, Cheney, Washington 99004, on May 15, 2009, at 3:00 p.m.

Date of Intended Adoption: May 15, 2009.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by May 14, 2009.

Assistance for Persons with Disabilities: Contact Trent Lutey by May 14, 2009, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules constitute a major revision in the content and organization of the student conduct code for Eastern Washington University (EWU) which are more easily implemented by repealing the existing conduct code and adopting the new chapter.

Reasons Supporting Proposal: Clarifies EWU's requirements for student conduct. Rules will also streamline the hearing, disciplinary, and appeals processes.

Statutory Authority for Adoption: RCW 28B.35.120.

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

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Laurie Connelly, 214 Showalter Hall, Cheney, WA 99004, (509) 359-2371; Implementation: Dorothy Zeisler-Vralsted, 129 Showalter Hall, Cheney, WA 99004, (509) 359-6319; and Enforcement: Alfred Thompson, 320 Pence Union Building, Cheney, WA 99004, (509) 359-2292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. New chapter 516-40

[172-121] WAC does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-132 [172-121] WAC is not considered a significant legislative rule by Eastern Washington University.

March 27, 2009

Trent S. Lutey

University Policy Administrator

Chapter 172-121 WAC

EASTERN WASHINGTON UNIVERSITY STUDENT CONDUCT CODE

NEW SECTION

WAC 172-121-010 Introduction. Eastern Washington University is an academic community dedicated to providing instruction in higher education, advancing knowledge through scholarship and research, and providing related services to the community.

As a public institution of higher education, the university has a special responsibility to create and maintain an academic environment that promotes freedom of inquiry and expression while protecting the rights, opportunities and welfare of students, faculty, staff and guests. To achieve this, the university establishes rules, regulations, procedures, policies, and standards of conduct.

Through the student conduct code as well as other university policies and directives, the university sets forth specific behavioral expectations for students and student organizations. It is the responsibility of each student to clearly understand and comply with those expectations. The responsibility for enforcement of the student conduct code rests with the university president.

The board of trustees of Eastern Washington University, acting under the authority granted by RCW 28B.35.120, has established the following regulations for student conduct and discipline.

NEW SECTION

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Accused" refers to any student or student organization that is accused of violating the standards of conduct for students under this chapter.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any accused or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means any person who files a complaint alleging that a student or student organization violated the standards of conduct for students.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or a designee of the dean of students.

"Director of OSRR" refers to the director of the office of student rights and responsibilities, or designated representative.

"Hearing authority" refers to the university official holding a conduct review hearing. The conduct review officer is the hearing authority for a summary hearing while the student disciplinary council is the hearing authority for a council hearing.

"Local or surrounding communities" refers to communities having an existing relationship with Eastern Washington University (EWU) including, but not limited to, satellite campus communities and surrounding Spokane County communities.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Officer" or "the officer" refers to the conduct review officer as described in WAC 172-121-070.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, university policies, and graduate/undergraduate catalogs.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Student" includes all persons taking courses through the university, both full and part time, pursuing undergraduate, graduate or professional studies. Nonmatriculated, international students attending language institutes or foreign study programs through the university, and persons, who have been notified of acceptance for admission at EWU, are also considered students. Any person who engaged in conduct in violation of the student conduct code during a period in which they had student status as previously described in this subsection, remain subject to action under this conduct code even if the person has graduated, withdrawn, or has not officially enrolled for a particular term at the university.

"Summary hearing" refers to a conduct review hearing before the conduct review officer.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased or used by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or a designee of the university president.

"Vice-president for student affairs" refers to the vice-president for student affairs or a designee of the vice-president for student affairs.

NEW SECTION

WAC 172-121-030 Rights of students. (1) Any student or student organization accused of or charged with any violation of the student conduct code has the following rights in conduct review proceedings:

(a) The right to a fair and impartial conduct review hearing before the conduct review officer or the student disciplinary council;

(b) The right to prior written notice to attend a preliminary conference as described in WAC 172-121-110;

(c) The right to remain silent during any conduct review proceeding;

(d) The right to prior written notice to attend a council hearing as described in WAC 172-121-120 if the matter is not resolved through a summary hearing process;

(e) The right to waive his/her right to prior notice about a council hearing and to request that the case be heard in a summary hearing immediately following the preliminary conference;

(f) The right to know who is bringing the accusation(s) against them as described in WAC 172-121-110 and 172-121-120 (2)(b);

(g) The right to speak on his/her own behalf in all proceedings;

(h) The right to consult an advisor as described in WAC 172-121-090;

(i) The right to appeal as provided in WAC 172-121-130; and

(j) The right to be subjected to university disciplinary action only one time for the same incident.

(2) Any student or student organization appearing before a council hearing has the following additional rights:

(a) The accused has the right to hear all information and view all material to be presented against them;

(b) The accused and complainant have the right to present witnesses as described in WAC 172-121-120;

(c) The accused and complainant have the right to submit questions to be asked of witnesses as described in WAC 172-121-120.

NEW SECTION

WAC 172-121-040 Jurisdiction. Eastern Washington University shall have jurisdiction over student behavior which occurs on university premises. The university may also exercise jurisdiction over student conduct which occurs at off-campus locations if the behavior adversely affects the university and/or the pursuit of its objectives and the university determines that a significant university interest is affected. The university has sole discretion in determining what conduct adversely impacts the university and/or the pursuit of its objectives.

Similarly, the student conduct code shall apply to conduct without regard to a student's academic status at the time

the conduct took place. This includes all periods from the time of application for admission through the actual awarding of a degree, including times between academic periods or outside of normal business hours.

The student conduct code shall also apply to former students if the accused was in a student status as defined in WAC 172-121-020 when the misconduct took place. This is true even if the alleged misconduct is discovered after the student was awarded a degree or if the student withdrew from school while a disciplinary matter was pending.

These provisions are not intended to protect any person or class of persons from injury or harm, or to deny students their legally and/or constitutionally protected rights.

NEW SECTION

WAC 172-121-050 External authorities. Many offenses under this code are also violations of federal, state or local laws. A student or student organization may face criminal and civil prosecution as well as university disciplinary action for violation of these laws.

The university reserves the right to initiate action for offenses that have an impact on the educational or administrative functions or the general well-being of the university and its surrounding communities. Proceedings under this code may be carried out prior to, simultaneously with, or following civil or criminal proceedings in the courts. University proceedings under the student conduct code are not subject to challenge or dismissal based solely on the disposition of any criminal charges related to the same incident.

NEW SECTION

WAC 172-121-060 Notification of criminal arrest. A student is responsible for notifying the university of any off-campus arrest.

When the office of student rights and responsibilities (OSRR) is informed of the arrest of a student, the university may send a letter to the student requiring that he or she make an appointment for an interview with the OSRR. During this interview, the director of OSRR shall discuss with the student:

- (1) The facts involved in the student's arrest;
- (2) The student's obligation to keep the university informed of the progress of the criminal charge(s); and
- (3) The student's obligation to advise the university of the final disposition of the criminal charge(s).

The university will cooperate fully with law enforcement and other agencies administering a corrective or rehabilitative program for the student. The university reserves the right to initiate concurrent disciplinary action.

NEW SECTION

WAC 172-121-070 Conduct review officials. (1) The director of OSRR shall:

- (a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;
- (b) Manage the proceedings as described in this chapter;
- (c) Maintain all records of conduct review proceedings as described in WAC 172-121-080.

(2) Conduct review officer: The university president shall designate one or more conduct review officers. The director of OSRR may be designated as a conduct review officer. The conduct review officer(s) shall:

- (a) Perform conduct review proceedings under this chapter; and
- (b) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives.

(3) Student disciplinary council: The student disciplinary council hears cases of conduct code violations as described in WAC 172-121-120. The council also serves as an appeal authority under WAC 172-121-130.

(a) Council pool: For each academic year, a pool of council members is established based on availability. Appointment of council pool members and their terms of service are as follows:

(i) Faculty: Three faculty members shall be selected by the faculty senate for three-year terms;

(ii) Staff: Three university staff members shall be appointed by the university president for three-year terms;

(iii) Students: Six students shall be appointed by the president of the ASEWU for one-year terms. Student appointments shall be made with the advice and consent of the associated students' legislature, as described in the constitution of the ASEWU. Students holding a position with any of the associated student courts, or who are in any way affiliated with any judicial, quasi-judicial, or advocacy position with the courts of the ASEWU, may not be appointed to the council pool;

(iv) Nonvoting chair: Two nonvoting chairs shall be elected for a one-year term by members of the council pool. Reelection of chairs is permissible;

(v) Vacancies: Council pool vacancies shall be filled as needed by the designated appointing authority.

(b) Session council: When a student disciplinary council is needed for a hearing or an appeal, council members shall be selected from the council pool as follows:

(i) Composition: A session council shall include, at a minimum, one nonvoting chair, two student members, and two faculty or staff members. The faculty/staff members may be both faculty, both staff, or one faculty and one staff member;

(ii) Selection: The director of OSRR shall select members from the council pool to serve as the session council. As much as possible, council members should be selected based on their availability;

(iii) If a nonvoting chair is unavailable, the director of OSRR shall select another member of the council pool to serve as chair;

(iv) Quorum: Four voting members constitute a quorum;

(v) Members of the student disciplinary council shall not participate in any case in which they are a defendant, complainant or witness; in which they have a direct or personal interest or bias; or in which they have acted previously in an advisory or adjudicatory capacity;

(vi) A council member's eligibility to participate in a case may be challenged by parties to the case or by other council members. When such a challenge is made, the ses-

sion council shall make a decision on the challenge and respond as needed and appropriate; and

(vii) In the event members of the session council are disqualified or disqualify themselves from a case, a temporary (for that case only) replacement will be appointed by the director of OSRR.

NEW SECTION

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any question regarding the interpretation or application of this student conduct code are referred to the vice-president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed every three years under the direction of the vice-president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of OSRR. As much as possible, records should include:

(i) A summary of the proceedings during a preliminary conference;

(ii) A written record of the statements made during a conduct review hearing;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings; and

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding.

(b) The director of OSRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the accused may review the records relative to their case. The accused shall request to review the case records by contacting the conduct review officer. The conduct review officer shall make every reasonable effort to support the accused's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university may not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

(iii) The university may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence as defined by FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99).

(iv) The university will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of Title 18, United States Code), or a nonforcible sex offense, the report on the results of any disciplinary proceeding conducted by the university against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this subsection (3)(b)(iv). Such disclosure will be subject to the provisions of 20 U.S.C. 1094.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of his or her own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 CFR Part 99) by providing a written consent to the office of student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting the office of student rights and responsibilities.

(viii) A student may obtain a copy of his or her disciplinary record by making a written request to the office of student rights and responsibilities. The office of student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by applicable law.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The conduct review officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the conduct review officer.

(c) Required holds: The conduct review officer shall place a hold on a student's academic record if the student is accused of violating the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student.

(i) In such cases, the student shall be notified that disciplinary action may be initiated when the student reenters or applies for readmission.

(ii) Holds of this type may not be implemented in cases where the university proceeds with a conduct review hearing or other disciplinary action under this chapter.

NEW SECTION

WAC 172-121-090 Conduct review proceedings. (1)

General provisions:

(a) All conduct review proceedings are conducted in an informal manner.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules such as are applied in criminal or civil court, are not used in student conduct code proceedings.

(2) Notification for student organizations: When a charge is directed towards a student organization, the conduct review officer will communicate all matters relative to conduct review proceedings with the president of the organization or that position's designee.

(3) Advisors: The complainant and the accused may each be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor will be incurred by the complainant or the accused that employed the advisor;

(b) The advisor may be an attorney;

(c) The complainant and the accused are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any conduct review proceeding. The complainant and/or the accused may, however, speak quietly with their advisor during such proceedings;

(d) If an attorney is used as an advisor, the person using the attorney shall inform the conduct review officer or the council of their intent to do so at least two business days prior to any conduct review proceeding; and

(e) If the complainant and/or the accused elect to be advised by an attorney, the conduct review officer or the council may elect to have the university advised by an assistant attorney general.

NEW SECTION

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any student, faculty member, staff member, or other member of the university community may file a complaint against a student or student organization for any violation of the student conduct code.

(b) A person wishing to file a complaint must submit the complaint, in writing, to one of the following:

(i) The office of student rights and responsibilities;

(ii) The office of the dean of students; or

(iii) Another designated university office or official.

(c) In instances of alleged violations of local, county, state or federal law, nothing in this student conduct code will prohibit or limit the rights of persons to go directly to the civil and/or criminal authorities and file charges.

(d) All complaints will be forwarded to the director of OSRR for further review and action.

(2) Complaint review. The director of OSRR will review the complaint to determine if there is sufficient information

to hear the matter. During this review, the director of OSRR will also evaluate the circumstances to determine if any interim restriction action is warranted.

(3) Inform complainant. As part of the complaint review process, the director of OSRR will contact the complainant and explain to him/her:

(a) The complainant rights under the student conduct code;

(b) The allegations which the complainant has against the accused; and

(c) The potential conduct code violations related to the allegations.

(4) Following the complaint review, the director of OSRR will either dismiss the matter or arrange a preliminary conference with the accused.

(a) Dismiss the matter. If the director of OSRR believes that there is insufficient justification or insufficient evidence to pursue conduct review proceedings against the accused, he/she may dismiss the matter. In such cases, the director of OSRR will prepare a written record of the dismissal. The director of OSRR will also notify the complainant of their decision, if such notification is appropriate and feasible.

(b) Preliminary conference. If the director of OSRR does not dismiss the matter he/she will arrange a preliminary conference as described in WAC 172-121-110.

(5) Records. The dismissal letter, along with the original complaint and any other related documents, shall be maintained as described in WAC 172-121-080.

NEW SECTION

WAC 172-121-110 Preliminary conference. (1)

Scheduling. If, after reviewing a complaint, the director of OSRR decides to initiate conduct review proceedings, the director of OSRR shall appoint a conduct review officer (CRO) to the case and notify the accused according to the following provisions:

(a) Notification shall be in writing;

(b) A written list of charges against the accused shall be included with the notification; and

(c) Notification shall include the name of the conduct review officer assigned to the case and the deadline for the accused to contact the CRO in order to schedule a preliminary conference.

(2) Failure to respond: If the accused fails to comply with the notification requirements, the director of OSRR shall schedule the preliminary conference and notify the accused. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.

(3) Appearance. Only the accused and the accused's advisor may attend the preliminary conference. The accused may be assisted by an advisor during the preliminary conference. The complainant, complainant's advisor, and witnesses may not appear at the preliminary conference.

(4) Failure to appear. In cases where proper notice has been given but the accused fails to attend the preliminary conference, the CRO may:

(a) Proceed with a hearing and decide the case based on the information available; or

(b) Place a hold on the accused's academic records as described in WAC 172-121-080.

(5) Proceedings. During the preliminary conference, the conduct review officer will:

(a) Review the written list of charges with the accused;

(b) Inform the accused who is bringing the accusation(s) against them;

(c) Provide the accused with a copy of the student conduct code and any other relevant university policies;

(d) Explain the accused's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the accused's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

(6) After the preliminary conference, the conduct review officer will take one of the following actions:

(a) Conduct a summary hearing with the accused as described in WAC 172-121-120;

(b) Schedule a summary hearing with the accused as described in WAC 172-121-120; or

(c) Refer the case to the student disciplinary council for a council hearing under WAC 172-121-120.

(7) Records. Records of the preliminary conference shall be maintained as described in WAC 172-121-130.

NEW SECTION

WAC 172-121-120 Hearings. (1) General provisions.

(a) Hearing authority: The hearing authority exercises control over hearing proceedings. All procedural questions are subject to the final decision of the hearing authority.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the hearing authority.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(2) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the accused fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the accused's input.

(b) Complainant's appearance: The complainant may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, so long as the complainant's identity can be reasonably established.

(c) Advisors: The complainant and the accused may be assisted by an advisor during conduct review hearings as described in WAC 172-121-090.

(d) Disruption of proceedings: Any person, including the accused, who disrupts a hearing may be excluded from the proceedings.

(e) Telephonic appearance. In the interest of fairness and expedience, the hearing authority may permit any person to

appear by telephone, audio tape, written statement, or other means, as determined appropriate.

(3) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the hearing authority. However, hearing authorities are not bound by the rules of evidence observed by courts and may exclude incompetent, irrelevant, immaterial or unduly repetitious material.

(b) The accused has the right to view all material admitted into evidence by the hearing authority.

(i) If the accused wishes to view such material prior to the scheduled hearing, he/she shall contact the CRO. The CRO shall make a reasonable effort to support the request of the accused. To facilitate this process, the accused should contact the CRO as early as possible prior to the scheduled hearing.

(ii) In every case, the accused may examine any material presented against him/her during the course of the hearing.

(4) Reasonable cause. The hearing authority shall consider information presented at the hearing in determining whether there is reasonable cause to believe that the accused violated the student conduct code as charged. In determining whether such reasonable cause exists, the hearing authority shall decide whether it is more likely that the accused violated the student code by engaging in the conduct for which he or she is charged than that he or she did not.

(5) Sanctions. In determining what sanctions shall be imposed, the hearing authority may consider the information presented at the hearing as well as any information available from past conduct and academic performance. If a student fails to appear for a hearing, then the hearing authority shall review the evidence provided and may consider information available from past conduct and academic performance in determining what sanction should be imposed. The hearing authority cannot impose a sanction based solely on the failure to answer the charges or appear at the hearing.

(6) Witnesses.

(a) The complainant, the accused and the hearing authority may present witnesses at council review hearings. Witnesses may not appear during summary hearings unless the CRO specifically allows it.

(b) The complainant and the accused shall provide the name and reasonable contact information for each proposed witness to the office of student rights and responsibilities at least two business days before the scheduled hearing. For each proposed witness requested, the complainant and the accused must also provide a brief statement regarding what relevant information the witness may have.

(c) The office of student rights and responsibilities shall attempt to contact each proposed witness and request their attendance at the scheduled hearing. The office of student rights and responsibilities is not obligated to contact proposed witnesses who appear to have no relevant first hand information.

(d) The accused has the right to hear or view all information provided by witnesses during the hearing.

(7) Questioning:

(a) The complainant and the accused may submit questions to be asked of each other or of any witnesses. Questions

shall be submitted, in writing, to the hearing authority. The hearing authority may ask such questions, but is not required to do so. The hearing authority may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitious. The hearing authority has complete discretion in determining what questions will be asked during the hearing.

(b) During a conduct review hearing, only the hearing authority may pose questions to persons appearing before them.

(c) The hearing authority may ask their own questions of any witness called before them.

(8) Risk management. The hearing authority may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate.

(9) Summary hearing procedures.

(a) The CRO may hold a summary hearing with the accused only if all of the following conditions are met:

(i) The accused waives his/her right to prior notice about a conduct review hearing;

(ii) The accused requests that the case be heard in a summary hearing with the CRO; and

(iii) The CRO agrees to conduct the summary hearing. The CRO is not obligated to conduct a summary hearing, but may instead refer the case to the student disciplinary council for a council hearing.

(b) Scheduling and notification. The summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time.

(i) If the summary hearing will be held at a later date or time, the CRO shall schedule the hearing in the presence of the accused so that the accused is informed of the date, time, and place of the hearing.

(ii) If the CRO is not able to schedule the hearing in the presence of the accused, the accused shall contact the CRO at a later time, as specified by the CRO, to be informed of the date, time, and location of the summary hearing. If the accused fails to contact the CRO, the CRO shall conduct the summary hearing without the accused present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The CRO may also place a hold on the accused's academic records under WAC 172-121-080.

(c) Deliberation: After the hearing, the conduct review officer shall decide whether there is reasonable cause to establish the accused violated the student conduct code.

(i) If the CRO determines that there is not sufficient information to establish reasonable cause, the CRO shall terminate the complaint.

(ii) If the CRO determines that there is reasonable cause to establish the accused violated the student conduct code, the CRO shall impose any number of sanctions as described in WAC 172-121-210.

(10) Council hearing procedures.

(a) Scheduling and notification. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, director of OSRR shall schedule the hearing and notify the accused and the council. The

council must receive at least seventy-two hours notice as to the time and place of the hearing. The CRO may coordinate with the accused to facilitate scheduling, but is not required to do so. The CRO shall notify the accused of the preliminary conference. Notification will be in writing and will include the date, time and location of the hearing.

(b) Deliberations and sanctions. After the hearing, the council shall meet in closed session and determine by majority vote whether reasonable cause exists to indicate that the accused violated the conduct code. If the council decides that the accused did violate the conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session.

(c) Notification. The council's decision must be made within seven business days of the hearing conclusion. The council chair shall forward the council decision to the director of OSRR. The director of OSRR shall notify the accused of the council decision and sanctions (if any).

(11) Records. Records of the conduct review hearing shall be maintained as described in WAC 172-121-080.

NEW SECTION

WAC 172-121-130 Appeals. (1) Basis: Appeals may be filed by either the accused or the complainant for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures. A hearing may have deviated from established procedures if:

(i) The hearing was not conducted fairly in light of the charges and information presented;

(ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;

(iii) The accused was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code.

(b) To determine whether the decision reached by the hearing authority was based on the information presented and that that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur.

(c) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(d) To consider new information or other relevant facts not previously presented because such information and/or facts were not known to the appellant at the time of the original hearing. In such cases, if the information was reasonably available at the time of the original hearing but the appellant did not make a good faith effort to discover the information, there is no basis for appeal. It is important for the parties to make a good faith effort to gather all relevant facts before the hearing. The university is not obligated to hold an appeal when the parties did not take reasonable efforts to prepare their case for the initial hearing.

(2) Filing: Following a conduct review hearing, if the accused or the complainant believes there is basis to support an appeal, they may file such an appeal, subject to the following provisions:

(a) The appeal must be submitted to the director of the office of student rights and responsibilities within five business days of receipt of the decision;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(3) Appeal authorities:

(a) For summary hearings heard by the conduct review officer, the appeal authority is the student disciplinary council.

(b) For council hearings heard by the student disciplinary council, the appeal authority is the dean of students.

(4) Forwarding of appeals: The director of the office of student rights and responsibilities shall, within five business days of receipt of an appeal, forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of OSRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the accused. When determining sanctions, the appeal authority may consider the complete record of the accused's prior conduct and academic performance in addition to all other information associated with the case.

(9) Further proceedings. After an appeal authority has completed an appeal action, no further appeals may be made under this chapter.

(10) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether reasonable evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation resulted in a material change in the outcome of the case or the sanctions imposed.

(11) Records: Records of appeal proceedings shall be maintained as described in WAC 172-121-080.

NEW SECTION

WAC 172-121-140 Interim restriction. Ordinarily, the disciplinary authority of the university will be invoked only after all related review, hearing, and appeal procedures have been completed. However, in situations where there is cause to believe that a student or a student organization endangers the health, safety, or welfare of themselves, the university community, or property of the university community, the dean of students may take immediate action(s) against the student or student organization without prior notice or hearing.

Simultaneous with such action(s), the dean of students will refer the charges to the conduct review officer, who will process such charges in accordance with the provisions of this student conduct code.

Interim restriction is subject to the following:

(1) Interim restriction actions may only be imposed in the following situations:

(a) When a student or student organization poses an immediate threat to:

(i) The health, safety or welfare of any part of the university community or public at large;

(ii) The student's own physical safety and well-being; or

(iii) Any property of the university community;

(b) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community;

(c) In all cases where a student is undergoing criminal proceedings for any felony charge.

(2) During the interim restriction period, a student may be restricted by any or all of the following means:

(a) Denial of access, including but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(b) Interim suspension, including temporary total removal from the university or restriction of access to campus;

(c) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The dean of students will determine what restriction(s) will be ordered.

(4) All interim restrictions that involve any type of restriction from any university premises will be accom-

plished by giving a notice against trespass. The notice against trespass may be given by any manner specified in WAC 172-122-200.

(5) The dean of students will prepare a brief memorandum for record containing the reasons for the interim restriction. The dean of students will forward copies of the memorandum for record by personal delivery or by U.S. mail to the restricted student, the office of student rights and responsibilities, and all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) constitute a violation of the student conduct code; and

(c) How the circumstances of the case necessitated the interim restriction action(s).

(6) In all such cases, the student or student organization may appeal the interim restriction to the vice-president for student affairs. The challenge must be submitted, in writing, within ten business days after the interim restriction action is taken, unless the student requests an extension. Requests for extension will only be granted to review the following issues:

(a) The reliability of the information concerning the student's behavior; and

(b) Whether the student's continued presence or prior or present behavior warrants interim restriction for the causes listed in subsection (1) of this section.

(7) As a result of the challenge, the vice-president for student affairs will schedule a meeting with the accused. The vice-president for student affairs may have the dean of students or any other person deemed relevant attend the meeting. The accused may have an advisor present at the meeting so long as the name of that person is provided to the director of OSRR at least two business days prior to the scheduled meeting.

(8) During the appeal meeting, the vice-president for student affairs will review available materials and statements. After the meeting, the vice-president for student affairs may either uphold or terminate the interim restriction action.

(9) The interim restriction does not replace the regular hearing process, which will proceed consistent with this chapter.

(10) Records. Records of interim restriction proceedings shall be maintained as described in WAC 172-121-080.

NEW SECTION

WAC 172-121-200 Violations. The following are defined as offenses which are subject to disciplinary action by the university.

(1) Acts of academic dishonesty. University policy regarding academic dishonesty is governed by the university academic integrity policy. However, repeated violations, as described in the academic integrity policy, are subject to action under the student conduct code. Academic dishonesty includes, but is not limited to, any of the following activities:

(a) Plagiarism: Representing the work of another as one's own work;

(b) Preparing work for another that is to be used as that person's own work;

(c) Cheating by any method or means;

(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research;

(e) Knowingly furnishing false information to a university official relative to academic matters.

(2) Acts of social misconduct.

(a) Violence/threats/abuse/endangerment.

(i) Abuse or harm of others. Conduct which causes physical abuse, harm, threats, intimidation, coercion, detention, and/or other conduct which threatens or endangers the health or safety of any person.

(ii) Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to another person or property.

(b) Sexual misconduct. Sexual misconduct is any sexual activity with another person that is unwanted and nonconsensual. Sexual misconduct includes, but is not limited to:

(i) Unwanted verbal (including telephone), written (including electronic media), pictorial or physical conduct of a sexual nature which a reasonable person would consider to be harassing, intimidating, hostile, offensive and/or which adversely affects the learning or living environment of the campus;

(ii) Unwanted, forceful, sexual contact. The use of force may include, but is not limited to use of body weight, pushing or hitting, coercion, threats, or intimidation;

(iii) The use of force (body weight, hitting or pushing, use of a weapon, threats to kidnap or kill, for example) to overcome earnest resistance to engaging in sexual intercourse. Earnest resistance may be verbal, physical or both;

(iv) Sexual intercourse which occurs without consent whether force is used or not. Consent requires actual words or conduct demonstrating freely given agreement to the sexual activity. Sexual activity is nonconsensual when the victim is incapable of consent by reason of mental incapacity, drug/alcohol intoxication, illness, unconsciousness or physical helplessness. Silence and passivity do not constitute consent;

(v) Voyeurism. Voyeurism occurs when an individual, for the purpose of arousing or gratifying his/her sexual desire, knowingly views, photographs, or films another person, without that person's knowledge or consent, while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy;

(vi) Charges of sexual harassment may be adjudicated under the university sexual harassment policy in addition to any processing under this student conduct code.

(c) Harassment. Harassment of any sort is prohibited. Conduct (physical, verbal, graphic, written, or electronic) that is sufficiently severe, pervasive, or persistent to have the purpose or effect of unreasonably interfering with an individual's ability to work, study, or participate in his/her regular life or university activities. Examples of harassment include, but are not limited to the following:

(i) Cyberstalking;

(ii) Unwanted telephone calls;

(iii) Unwanted text messaging; and/or

(iv) Unwanted conversation.

(d) Stalking. Any repeated conduct directed specifically at another person that causes that person to fear for his/her health and safety. Such behaviors and activities may include, but are not limited to the following:

(i) Nonconsensual communication or contact, including face-to-face, telephone calls, voice messages, electronic mail, instant messaging, written letters, unwanted gifts, etc.;

(ii) Harassment, either by the individual or through a third party;

(iii) Use of threatening or obscene gestures;

(iv) Pursuing or following;

(v) Surveillance or other types of observation;

(vi) Use of electronic devices or software to track or obtain private information;

(vii) Trespassing;

(viii) Vandalism; and

(ix) Nonconsensual touching.

(e) Unauthorized use of electronic or other devices: Making an audio or video record of any person while on university premises without his or her prior knowledge, or without his or her effective consent when such a recording is of a private conversation or of images taken of a person(s) at a time and place where she or he would reasonably expect privacy and where such images are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

(3) Property violations. Theft from, or damage to, or misuse of university property or the property of any person on or off campus are subject to university disciplinary action.

(4) Weapons. No individual shall have on his/her person, in his/her vehicle or otherwise in his/her possession any gun, pistol, or firearm or explosives, dangerous chemicals or other dangerous weapons or instruments on the university campus or other university premises except as follows:

(a) Authorized law enforcement officers are permitted to carry arms while on duty and engaged in their regular duties;

(b) Activities requiring use of the prohibited items may be conducted on approval of the activity by the board of trustees;

(c) Persons are permitted to have firearms in their possession directly en route to or from campus firearm storage facilities where such possession is incidental to approved on or off campus possession or use of such firearms;

(d) Examples of weapons under this section include, but are not limited to: Shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, any item that can be used as an object of intimidation and/or threat, replica or look-a-like weapons, etc.

(5) Disobedience. Disobedience, interference, resistance, or failure to comply with direction of an identified university official or other authority acting in the line of duty, including:

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so, or the violation of sanctions imposed after such proceedings;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students, the self-harm prevention team, or other authorized university official.

(6) Trespassing/unauthorized use of keys.

(a) Trespass. The unauthorized entry into or onto, or the unauthorized remaining in any building or facility or on any property.

(b) Unauthorized use of keys and unauthorized entry. Unauthorized possession, duplication, or use of keys to university premises or unauthorized entry to or use of university premises.

(7) Deception, forgery, fraud, unauthorized representation.

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

(8) Safety.

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

(9) Alcohol, drugs, and controlled substances.

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is also prohibited.

(b) Illegal drugs and paraphernalia. Use, possession, distribution, manufacture, or sale of drug paraphernalia and/or illegal drugs, including marijuana, narcotics or other controlled substances, is prohibited except as authorized by federal or state law. Being under the influence of an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance is also prohibited while on property owned or operated by the university, except when legally prescribed by a licensed medical practitioner.

(10) Hazing. Any action required of or imposed on current or potential members of an organization or group which, regardless of location of the incident or consent of the participant(s):

(a) Produces or is reasonably likely to produce bodily harm or danger, mental or physical discomfort, embarrassment, harassment, fright, humiliation or ridicule; or

(b) Compels an individual to participate in any activity which is illegal, perverse or publicly indecent or contrary to university rules, regulations or policies, or which is known by the compelling person(s) to be contrary to the individual's moral or religious beliefs.

(11) Disruptive conduct/obstruction.

(a) Disruptive conduct. Conduct which disrupts or obstructs teaching, research, administration, disciplinary proceedings, freedom of movement or other lawful activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

(d) Demonstration. Participation in a campus demonstration which violates the university regulations governing campus assembly and peaceful demonstration.

(12) Violations of other laws, regulations and policies.

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies or regulations.

(13) Assisting. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code. Conduct involving being an accessory to any person who violates this code.

(14) Acts against the administration of this code.

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code, including but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

(15) Other provisions:

(a) Responsibility for guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying; and

(iii) Any other agreements related to the student's study program in the foreign country.

(c) Student organization and/or group offenses. Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized

group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

NEW SECTION

WAC 172-121-210 Sanctions. If any student or student organization is found to have committed any of the offenses described in WAC 172-121-200, one or more of the following sanctions may be imposed against the student or student organization. Failure to comply with any imposed sanction may result in additional sanctions.

(1) Individual student sanctions:

(a) Admonition: An oral statement to a student that he/she has violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The university conduct officer and the student disciplinary council may assess monetary fines up to a maximum of four hundred dollars against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary

assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.30.125, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Deferred suspension: Notice of suspension from the university with the provision that the student may remain enrolled contingent on meeting a specified condition or conditions. Not meeting the specified condition(s) will immediately invoke the suspension for the period of time and under the conditions originally imposed.

(k) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered.

(l) Dismissal: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Dismissal actions will be accomplished by issuing both an order of dismissal and a notice against trespass. The notice against trespass may be given by any manner specified in chapter 9A.52 RCW.

(m) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time.

(2) Student organizations and/or group sanctions: Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Charter restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. It may be recommended by the appropriate disciplinary body, but may only be imposed by the university president;

(d) Charter revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. It may be recommended by the appropriate judicial body, but can only be imposed by the university president;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

- (i) Exclusion from intramural competition as a group;
- (ii) Denial of use of university facilities for meetings, events, etc.;
- (iii) Restitution; and/or
- (iv) Fines.

WSR 09-08-072

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 30, 2009, 8:31 a.m.]

The aging and disability services administration requests the withdrawal of the proposed rule-making notice filed as WSR 09-04-064 on February 2, 2009 (chapter 388-823 WAC).

Stephanie E. Schiller

Rules Coordinator

WSR 09-08-078

PROPOSED RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed March 30, 2009, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-101.

Title of Rule and Other Identifying Information: Amending WAC 181-78A-500, rule governing the awarding of professional certification the [of] educators. The rule change adds school administrators to the professional certification preparation programs that education service districts may develop for approval. Educational service districts are encouraged to partner with institutions of higher education these programs would now include school administrators.

Hearing Location(s): Maple Hall Auditorium, 1st and Commerce Street, LaConner, Washington 98257, on May 20, 2009, at 8:30 a.m.

Date of Intended Adoption: May 20, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 16, 2009.

Assistance for Persons with Disabilities: Contact David Brenna by May 18, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Aligns administrator professional certification with teacher certification by authorizing education service districts to develop preparation programs.

Reasons Supporting Proposal: Consistent with state policy for approving preparation programs.

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: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

March 25, 2009
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

WAC 181-78A-500 Professional certificate program approval. All professional certificate programs for teachers, principals/program administrators, and school counselors, school psychologists, and school social workers shall be approved pursuant to the requirements in WAC 181-78A-520 through 181-78A-540. Only colleges/universities with professional educator standards board-approved residency certificate teacher, principals/program administrator, and school counselor, school psychologist, and school social worker preparation programs. Educational service districts are eligible to apply for approval to offer teacher professional certificate programs or administrator professional certificate programs. Educational service districts are encouraged to partner with institutions of higher education, local school districts or consortia of school districts to provide teacher professional certificate programs or administrator professional certificate programs.

WSR 09-08-080
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed March 30, 2009, 11:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-142.

Title of Rule and Other Identifying Information: Chapter 246-811 WAC, Chemical dependency professionals (CDP), amending the chapter to include requirements for a chemical dependency professional trainee (CDPT), clarify and define current standards, and establish fees for the CDPT.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on May 11, 2009, at 9:00 a.m.

Date of Intended Adoption: May 15, 2009.

Submit Written Comments to: Betty J. Moe, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by May 11, 2009.

Assistance for Persons with Disabilities: Contact Betty Moe by May 6, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2SHB 2674 (chapter 135, Laws of 2008) amended credentialing standards for registered counselors (RC). The legislation created eight new professions, abolished the RC credential, and added a CDPT as one of the new professions.

The change in statute makes it necessary for the department to develop rules for the new CDPT profession. Rules are needed to clearly define licensing requirements for CDPs and CDPTs.

Reasons Supporting Proposal: The proposed rules are required to implement legislation and will ensure only qualified individuals are credentialed in the chemical dependency profession.

Statutory Authority for Adoption: Chapter 18.205 RCW.

Statute Being Implemented: Chapter 18.225 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Betty J. Moe, 310 Israel Road S.E., Tumwater, WA, (360) 236-4912.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Betty J. Moe, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4912, fax (360) 236-2901, e-mail Betty.Moe@doh.wa.gov.

March 30, 2009
Mary C. Selecky
Secretary

Chapter 246-811 WAC

CHEMICAL DEPENDENCY PROFESSIONALS AND
CHEMICAL DEPENDENCY PROFESSIONALS
TRAINEES

AMENDATORY SECTION (Amending WSR 99-13-084, filed 6/14/99, effective 7/15/99)

WAC 246-811-010 ((What)) Definitions ((should-I know?)). The definitions in this section apply throughout this chapter unless the context clearly states otherwise.

(1) ~~((Approved supervisor is an individual who meets the education and experience requirements described in WAC 246-811-030 and 246-811-045 through 246-811-049 and who is available to the person being supervised.~~

(2)) **Approved school** means any college or university accredited by a national or regional accrediting body recognized by the commission on recognition of postsecondary accreditation, at the time the applicant completed the required education.

~~((3))~~ (2) **Certified chemical dependency professional (CDP)** means an individual certified in chemical dependency counseling under chapter 18.205 RCW.

(3) **Certified chemical dependency professional trainee (CDPT)** means an individual working toward the education and experience requirements for certification as a chemical dependency professional, and who has been credentialed as a CDPT under chapter 18.205 RCW.

(4) **Core competencies of chemical dependency counseling** means competency in the following nationally recognized areas:

- Knowledge;
 - Skills;
 - Attitudes of professional practice, including assessment and diagnosis of chemical dependency;
 - Chemical dependency treatment planning and referral;
 - Patient and family education in the disease of chemical dependency;
 - Individual and group counseling with alcoholic and drug addicted individuals; and
 - Relapse prevention counseling, and case management.
- All oriented to assist alcohol and drug addicted patient to achieve and maintain abstinence from mood-altering substances and develop independent support systems.

(5) **Direct supervision** means the supervisor is on the premises and available for immediate consultation.

(6) **Enrolled** means the ability to demonstrate current enrollment in an approved school and progress toward, or completion of the coursework to be certified as a chemical dependency professional as described in WAC 246-811-030 (2)(a) through (w).

(7) **Individual formal meetings** means a meeting with an approved supervisor, involving one approved supervisor and no more than four supervisees.

(8) **Official transcript** ~~((is defined as))~~ means the transcript from an approved college or ~~((university))~~ school, in an envelope readily identified as having been sealed by the school.

~~((4))~~ **Individual formal meetings** is defined as a meeting with an approved supervisor, involving one approved supervisor and no more than four supervisees.

~~(5) **Addiction counseling competencies** means the knowledge, skills, and attitudes of chemical dependency counselor professional practice as described in Technical Assistance publication No. 21, Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services 1998.~~

~~((6))~~ (9) **Related field** ~~((is defined as))~~ means health education, behavioral science, sociology, psychology, marriage and family therapy, mental health counseling, social

work, psychiatry, nursing, divinity, criminal justice, and counseling education.

AMENDATORY SECTION (Amending WSR 08-07-090, filed 3/19/08, effective 4/19/08)

WAC 246-811-020 Sexual misconduct. (1) The definitions and prohibitions on sexual misconduct described in chapter 246-16 WAC apply to chemical dependency professionals and a chemical dependency professional trainee except WAC 246-16-100 (3) and (4).

(2) A chemical dependency professional or a chemical dependency professional trainee shall never engage, or attempt to engage, in the activities listed in WAC 246-16-100(1) with a former patient, former client or former key party.

AMENDATORY SECTION (Amending WSR 99-13-084, filed 6/14/99, effective 7/15/99)

WAC 246-811-030 ~~((What are the minimum educational requirements ((for chemical dependency professional certification?))~~ (1) The minimum education requirements for a chemical dependency professional are:

(a) An associate's degree in human services or related field from an approved school; or

(b) Successful completion of ninety quarter or sixty semester college credits in courses from an approved school.

(2) At least forty-five quarter or thirty semester credits must be in courses relating to the chemical dependency profession and shall include the following topics specific to alcohol and drug addicted individuals:

- (a) Understanding addiction;
- (b) Pharmacological actions of alcohol and other drugs;
- (c) Substance abuse and addiction treatment methods;
- (d) Understanding addiction placement, continuing care, and discharge criteria, including American Society of Addiction Medicine (ASAM) criteria;
- (e) Cultural diversity including people with disabilities and its implication for treatment;
- (f) Chemical dependency clinical evaluation (screening and referral to include comorbidity);
- (g) HIV/AIDS brief risk intervention for the chemically dependent;
- (h) Chemical dependency treatment planning;
- (i) Referral and use of community resources;
- (j) Service coordination (implementing the treatment plan, consulting, continuing assessment and treatment planning);
- (k) Individual counseling;
- (l) Group counseling;
- (m) Chemical dependency counseling for families, couples and significant others;
- (n) Client, family and community education;
- (o) Developmental psychology;
- (p) Psychopathology/abnormal psychology;
- (q) Documentation, to include, screening, intake, assessment, treatment plan, clinical reports, clinical progress notes, discharge summaries, and other client related data;
- (r) Chemical dependency confidentiality;

- (s) Professional and ethical responsibilities;
- (t) Relapse prevention;
- (u) Adolescent chemical dependency assessment and treatment;
- (v) Chemical dependency case management; and
- (w) Chemical dependency rules and regulations.

(3) A person who receives a certification of completion from the Washington consortium of addictions substance abuse educators (WACASE), as long as they meet department standards, is considered to have met the requirements of WAC 246-811-030 pertaining to the forty-five quarter or thirty semester credits in courses covering the subject content described in WAC 246-811-030(2). Official verification of the additional forty-five quarter or thirty semester credits will be required upon application to the department.

(4) All applicants, including individuals who are licensed under chapter 18.83 RCW, Psychologists; and chapter 18.79 RCW, Advance nurse practitioner, must also meet the requirements in subsection (2) of this section.

NEW SECTION

WAC 246-811-035 Certification of a chemical dependency professional trainee (CDPT). (1) The department of health will issue a CDPT certificate to an individual who:

- (a) Submits an application on forms the department provides;
 - (b) Includes written documentation to meet the eligibility criteria;
 - (c) Declares that he or she is enrolled in an approved school and gaining the experience required to receive a CDP credential;
 - (d) Submit evidence of completion of four clock hours of AIDS education. The requirement of WAC 246-811-030 (2)(g) will satisfy this requirement.
- (2) A CDPT must submit a signed declaration with their annual renewal that states they are enrolled in an approved education program and are obtaining the experience requirements for a CDP credential.
- (3) A CDPT certificate can only be renewed four times.

AMENDATORY SECTION (Amending WSR 99-13-084, filed 6/14/99, effective 7/15/99)

WAC 246-811-045 ((How will my)) Accumulation of experience ((be counted?)). (1) The department of health will consider experience in the field of chemical dependency up to seven years prior to the date of application.

(2) Accumulation of the experience hours is not required to be consecutive. Experience that will count toward certification must meet the requirements outlined in WAC 246-811-046 through 246-811-049.

(3) Supervised experience is the practice as referred to in RCW 18.205.090 (1)(c) and is the experience received under an approved supervisor. A practicum or internship taken while acquiring the degree or semester/quarter hours is applicable.

AMENDATORY SECTION (Amending WSR 99-13-084, filed 6/14/99, effective 7/15/99)

WAC 246-811-046 ((How many hours of)) Number of experience ((will I need for certification?)) hours required for certification as a chemical dependency professional. You will be required to complete one thousand to two thousand five hundred((two thousand or one thousand five hundred)) hours of supervised experience depending upon your formal education ((level)).

(1) Two thousand five hundred hours of chemical dependency counseling as defined in RCW 18.205.020(3), for individuals who possess an associate degree; or

(2) Two thousand hours of chemical dependency counseling for individuals who possess a baccalaureate degree in human services or a related field from an approved school; or

(3) One thousand five hundred hours of chemical dependency counseling for individuals who possess a master or doctoral degree in human services or a related field from an approved school; or

(4) One thousand ((five hundred)) hours of chemical dependency counseling for individuals who are licensed as advanced registered nurse practitioners under chapter 18.79 RCW((;)), marriage and family therapists, mental health counselors, advanced social workers, and independent clinical social workers under chapter 18.225 RCW or

((5)) One thousand five hundred hours of chemical dependency counseling for individuals who are) licensed as a psychologist under chapter 18.83 RCW.

AMENDATORY SECTION (Amending WSR 99-13-084, filed 6/14/99, effective 7/15/99)

WAC 246-811-047 ((What competencies must I become proficient at during my experience?)) Competency—Experience requirements. (1) It is the intent that ((individuals)) an individual applying for a chemical dependency professional certificate has become competent in ((addiction)) the core competencies of chemical counseling ((competencies)), as defined in WAC 246-811-010((5))((4)), through the experience requirement.

(2) Individuals must have experiences to gain the addiction counseling competencies listed in (a) through (i) of this subsection.

(a) Two hundred hours of clinical evaluation. One hundred hours of the two hundred must be face-to-face patient contact hours.

(b) Six hundred hours of face-to-face counseling to include:

- Individual counseling;
- Group counseling;
- Counseling family, couples, and significant others.

(c) Fifty hours of discussion of professional and ethical responsibilities.

(d) Transdisciplinary foundations:

- Understanding addiction;
- Treatment knowledge;
- Application to practice;
- Professional readiness.

(e) Treatment planning.

(f) Referral.

- (g) Service coordination.
- (h) Client, family, and community education.

(i) Documentation, to include, screening, intake, assessment, treatment plan, clinical reports, clinical progress notes, discharge summaries, and other client related data.

(3) Eight hundred fifty hours of experience ~~((are designated to))~~ must be divided among subsection (2)(a) through (c) of this subsection, the remaining experience hours must be divided among subsection (2)(d) through (i) of this subsection as determined by the supervisor.

AMENDATORY SECTION (Amending WSR 99-13-084, filed 6/14/99, effective 7/15/99)

WAC 246-811-048 ~~((How much of the experience requirement needs to be under))~~ Supervision ~~((?))~~ requirements. (1) All of the experience must be under an approved supervisor as defined in WAC ~~((246-811-010(1)))~~ 246-811-049.

(2) A chemical dependency professional trainee (CDPT) can provide chemical dependency assessment, counseling, and case management to patients consistent with their education, training, and experience as documented by the approved supervisor.

(a) The first fifty hours of any face-to-face ~~((client))~~ patient contact must be under direct observation of an approved supervisor or a chemical dependency professional. ~~((Supervision shall be based on assisting the person being supervised in acquiring proficiency in the addiction counseling competencies as defined in WAC 246-811-010(5)).~~

~~((2))~~ (b) An approved supervisor or designated certified chemical dependency professional must provide direct supervision when a CDPT is providing clinical services to patients until the approved supervisor documents in the employee file that the CDPT has obtained the necessary education, training, and experience.

(3) Approved supervisors ~~((shall))~~ must attest to the department of the supervised person's satisfactory progress in becoming proficient in the addiction counseling competencies as listed in WAC 246-811-047 (2)(a) through (i) on forms provided by the department.

AMENDATORY SECTION (Amending WSR 99-13-084, filed 6/14/99, effective 7/15/99)

WAC 246-811-049 ~~((Who may act as an))~~ Approved supervisor ~~((?))~~ requirements. (1) An approved supervisor is a certified chemical dependency professional (CDP) or a person who meets or exceeds the requirements of a certified ~~((chemical dependency professional))~~ CDP in the state of Washington, and who would be eligible to take the examination required for certification ~~((and))~~.

(2) An approved supervisor has at least four thousand hours of experience in a state approved chemical dependency treatment agency in addition to the supervised experience hours required to become a CDP.

~~((a) The four thousand hours are in addition to the supervised experience hours required to be eligible to become a chemical dependency professional.~~

~~((b))~~ (3) Twenty-eight clock hours of recognized supervisory training may be substituted for one thousand hours of experience ~~((and~~

~~((3))~~.

(4) An approved supervisor is not a blood or legal relative, significant other, cohabitant of the supervisee, or someone who has acted as the ~~((person supervised's))~~ supervisee's primary counselor.

(5) A chemical dependency professional trainee (CDPT) must receive documentation of their approved supervisor's qualifications before training begins.

(6) An approved supervisor or other certified CDP must review and sign all CDPT clinical documentation.

(7) An approved supervisor is responsible for all patients assigned to the CDPT they supervise.

AMENDATORY SECTION (Amending WSR 00-01-122, filed 12/17/99, effective 1/17/00)

WAC 246-811-060 ~~((What))~~ Examination ~~((is required))~~ requirements for chemical dependency certification professional certification ~~((?))~~. (1) All applicants must take and pass the National Association of Alcoholism and Drug Abuse Counselor (NAADAC) National Certification Examination for Addiction Counselors or International Certification and Reciprocity Consortium (ICRC) Certified Addiction Counselor Level II or higher examination.

(2) The department will accept the passing score ~~((established))~~ set by the testing company.

(3) The application and application fee must be submitted to the department at least ninety days prior to the scheduled examination date. All other supporting documents, including verification of education and experience, must be submitted at least sixty days prior to the examination date.

AMENDATORY SECTION (Amending WSR 99-13-084, filed 6/14/99, effective 7/15/99)

WAC 246-811-070 ~~((To what extent will my))~~ National certification ~~((be recognized by the department?))~~. (1) A person who is certified through the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) or the International Certification and Reciprocity Consortium (ICRC), is considered to ~~((have met))~~ meet the experience requirements of WAC 246-811-046.

(2) A person who is certified through NAADAC or ICRC is considered to have met the requirements of WAC 246-811-030 pertaining to the forty-five quarter or thirty semester credits in courses covering the subject content described in WAC 246-811-030(2). Verification of the additional forty-five quarter or thirty semester credits will be required upon application to the department.

(3) Verification of certification must be sent directly to the department from NAADAC or ICRC.

AMENDATORY SECTION (Amending WSR 99-13-084, filed 6/14/99, effective 7/15/99)

WAC 246-811-075 ~~((How many hours of))~~ AIDS prevention and information education ~~((do I need?))~~ requirements. Chemical dependency professionals and chemical

dependency professional trainee applicants must complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

AMENDATORY SECTION (Amending WSR 99-13-084, filed 6/14/99, effective 7/15/99)

WAC 246-811-080 What happens if my certification expires? (1) If the chemical dependency professional (CDP) or chemical dependency certification trainee (CDPT) certification has expired for five years or less, the individual must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If a CDP certification has lapsed for more than five years, the applicant ~~((will be required to))~~ must demonstrate continued competency and ~~((shall be required to take))~~ must pass an examination, if an examination was not ~~((taken and))~~ successfully passed for the initial certification. In addition, the requirements of chapter 246-12 WAC, Part 2, must be met.

(3) If a CDPT certification has lapsed for more than five years, the applicant must meet the requirements of chapter 246-12 WAC, Part 2.

CHEMICAL DEPENDENCY PROFESSIONAL RETIRED ACTIVE CREDENTIAL

AMENDATORY SECTION (Amending WSR 02-07-083, filed 3/19/02, effective 4/19/02)

WAC 246-811-081 ~~((How may I obtain a))~~ Retired active chemical dependency professional (CDP) credential((?)). A certified ~~((chemical dependency professional))~~ CDP may obtain a retired active credential. Refer to the requirements of chapter 246-12 WAC, Part 5.

AMENDATORY SECTION (Amending WSR 00-12-102, filed 6/7/00, effective 7/8/00)

WAC 246-811-090 Who must provide client disclosure information? A chemical dependency professional(s) and a chemical dependency professional trainee must provide disclosure information to each client prior to the delivery of certified services (WAC 440-22-010). Disclosure information may be printed in a format of the chemical dependency professional's choosing or in a general format used by a state approved treatment facility.

AMENDATORY SECTION (Amending WSR 00-12-102, filed 6/7/00, effective 7/8/00)

WAC 246-811-100 ~~((What must I include on my))~~ Disclosure statement((?)) requirements. (1) The following information must be printed on all disclosure statements provided to counseling clients in language that can be easily understood by the client:

(a) Name of firm, agency, business, or chemical dependency professional's practice.

(b) ~~((Chemical dependency professional's business address and telephone number.~~

(c) ~~Washington state certified chemical dependency professional number.~~

~~(d) The chemical dependency professional's name with credentials.~~

~~(e)) Employment address and telephone number.~~

~~(c) Name, credential, and credential number.~~

~~(d) Billing information, including:~~

~~(i) Client's cost per each counseling session;~~

~~(ii) Billing practices, including any advance payments and refunds.~~

~~((#)) (e) A list of the acts of unprofessional conduct in RCW 18.130.180 including the name, address, and contact telephone number within the department of health.~~

(2) The ~~((chemical dependency professional))~~ CDP or CDPT and the client must sign and date a statement indicating that the client has been ~~((provided))~~ given a copy of the required disclosure information, and the client has read and understands the information provided.

AMENDATORY SECTION (Amending WSR 00-12-102, filed 6/7/00, effective 7/8/00)

WAC 246-811-110 ~~((What happens if I fail))~~ Failure to provide client disclosure information((?)). Failure to provide to the client any of the disclosure information required by WAC 246-811-090 and 246-811-100 constitutes an act of unprofessional conduct as defined in RCW 18.130.180(7) and may be grounds for disciplinary action.

CONTINUING COMPETENCY ~~((PROGRAM))~~ REQUIREMENTS FOR CHEMICAL DEPENDENCY PROFESSIONALS

AMENDATORY SECTION (Amending WSR 02-07-084, filed 3/19/02, effective 4/19/02)

WAC 246-811-200 ~~((What))~~ Continuing competency definitions ~~((should I know?))~~. (1) Continuing education means a program or course (including distance learning), seminars, or workshops, professional conferences approved by an industry recognized local, state, national, international organization or institution of higher learning.

(2) Professional development activities means addiction competencies as outlined in WAC 246-811-047, including: Clinical evaluation, individual counseling, group counseling, counseling family, couples, and significant others, professional and ethical responsibilities, understanding addiction, treatment knowledge, application to practice, professional readiness, treatment planning, referral, service coordination, client, family, and community education, screening, intake, assessment, clinical reports, clinical progress notes, discharge summaries, and other client related data.

(3) Industry recognized is any local, state, national, international organization, or institution of higher learning, including, but not limited to, the following organizations:

(a) National Association of Alcoholism and Drug Abuse Counselors (NAADAC);

(b) National Association of Addiction Treatment Providers (NAATP);

(c) International Certification and Reciprocity Consortium (ICRC);

(d) Northwest Indian alcohol/drug specialist certification board;

(e) Chemical dependency counselor certification board;

(f) Institutions of higher learning that are accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation; or

(g) Division of alcohol and substance abuse (DASA).

(4) **Distance learning** is industry recognized education obtained to enhance proficiency in one or more of the professional development activities as outlined in subsection (2) of this section, through sources such as, internet coursework, satellite downlink resources, telecourses, or correspondence courses.

(5) **Agency sponsored training** is training provided by an agency that is **not** limited to people working within that agency and is a professional development activity as outlined in subsection (2) of this section.

(6) **In-service training** is training provided by an agency that is limited to people working within that agency and is a professional development activity as outlined in subsection (2) of this section.

(7) **Continuing competency enhancement plan** is a plan showing the goals the CDP will develop to continue proficiency in their profession. The plan will be based on core competencies as listed in WAC 246-811-047. The plan will be developed on forms provided by the department.

AMENDATORY SECTION (Amending WSR 02-07-084, filed 3/19/02, effective 4/19/02)

WAC 246-811-210 ((What is the scope and)) Purpose of a continuing competency program((?)). To enhance the professional competency of the ((CDP)) chemical dependency professional. A successful continuing competency program focuses on all aspects of professional practice to ensure that the practitioner is competent to provide safe and quality care to patients. The purpose of the professional development activities is to broaden the experience that a CDP may undertake to maintain competency.

AMENDATORY SECTION (Amending WSR 02-07-084, filed 3/19/02, effective 4/19/02)

WAC 246-811-220 ((What are the)) Continuing competency program requirements((?)). (1) ((CDPs must complete)) A chemical dependency professional must complete an enhancement plan, as described in WAC 246-811-200(7);

(2) ((CDPs must complete)) Twenty-eight hours of continuing education, as described in WAC 246-811-240; and

(3) ((CDPs must complete)) Twelve hours of other professional development activities as ((outlined)) described in WAC 246-811-047 and 246-811-200(2).

AMENDATORY SECTION (Amending WSR 02-07-084, filed 3/19/02, effective 4/19/02)

WAC 246-811-230 ((What is the)) Continuing competency reporting period((?)). ((CDPs)) A chemical dependency professional must complete the continuing competency program requirements every two years. A CDP((& will)) must develop and implement the plan ((on their 2002

renewal date or)) upon initial certification((The effective date for reporting the continuing competency program requirements shall begin with the 2004 renewal cycle)), and every two years thereafter.

AMENDATORY SECTION (Amending WSR 02-07-084, filed 3/19/02, effective 4/19/02)

WAC 246-811-240 ((How many)) Number of continuing education hours ((are needed?)) required. ((CDPs)) A chemical dependency professional must complete twenty-eight hours of continuing education every two years. At least fourteen hours must be completed in one or more of the topic areas as described in WAC 246-811-030(2)(a) through (w). At least four hours must be in professional ethics and law. The additional ten hours shall be in areas relating to the various phases of their professional career.

AMENDATORY SECTION (Amending WSR 02-07-084, filed 3/19/02, effective 4/19/02)

WAC 246-811-250 ((What are)) Acceptable ((programs or courses for)) continuing education((?)). (1) Programs having a featured instructor, speaker(s) or panel that is industry recognized;

(2) Distance learning programs;

(3) Agency sponsored trainings;

(4) Course work at institutions of higher learning that are accredited by a national or regional accrediting body recognized by the commission on recognition of postsecondary accreditation; or

(5) In-service training programs limited to seven hours per reporting period.

AMENDATORY SECTION (Amending WSR 02-07-084, filed 3/19/02, effective 4/19/02)

WAC 246-811-260 ((How do I fulfill the)) Completion of the twelve hours of other professional development activities((?)). (1) ((CDPs)) A chemical dependency professional (CDP) may obtain hours through the following:

(a) Practicum;

(b) Peer-review including serving on a formal peer review panel or committee, or individual review of a sole provider, where the purpose of the review is to determine whether appropriate treatment was rendered;

(c) Public presentation including preparing and presenting lectures or education that contribute to the professional competence of a CDP. The CDP may accumulate the same number of hours obtained for continuing education purposes by attendees as required in WAC 246-12-220. The hours for presenting a specific topic lecture or education may only be used for continuing education credit once during each reporting period;

(d) Publication of writings;

(e) Other activities as determined by the CDP's supervisor;

(f) Continuing education; these continuing education hours are in addition to the twenty-eight hours of continuing education as listed in WAC 246-811-240.

(2) All documentation must include the dates the continuing competency activity (~~occurred~~) that took place, and if appropriate, the title of the course, the location of the course, and the name of the instructor.

AMENDATORY SECTION (Amending WSR 02-07-084, filed 3/19/02, effective 4/19/02)

WAC 246-811-270 (~~What is~~) Acceptable audit documentation for continuing education, professional development activities, and the enhancement plan(?) (1) Acceptable documentation must be specific to the program completed and include:

- (a) Transcripts, letters from course instructors, or certificate of completion;
- (b) Written report by the CDP explaining how they achieved the competencies in WAC 246-811-047; or
- (c) Signed agreement between parties involved.

(2) (~~CDPs~~) A chemical dependency professional must comply with the requirements of chapter 246-12 WAC, Part 7.

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-811-990 (~~How often do I need to renew and what are the costs for certification?~~) Chemical dependency professional and chemical dependency professional trainee—Fees and renewal cycle. (1) A chemical dependency professional (CDP) certificate(s) must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) A chemical dependency professional trainee (CDPT) certificate must be renewed every year to correspond with issuance date.

(3) The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs to administer the program and maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required fee shall remain in place for the duration of the renewal cycle.

(4) The following nonrefundable fees will be charged for a certified chemical dependency professional:

Title of Fee	Fee
Application	\$200.00
Initial certification	225.00
Renewal	230.00

Title of Fee	Fee
Renewal retired active	115.00
Late renewal retired active	57.50
Late renewal penalty	115.00
Expired certification reissuance	115.00
Duplicate certification	10.00
Certification of certificate	10.00

(5) The following nonrefundable fees will be charged for a certified chemical dependency professional trainee:

<u>Title of Fee</u>	<u>Fee</u>
<u>Application</u>	<u>\$110.00</u>
<u>Renewal</u>	<u>90.00</u>
<u>Late renewal penalty</u>	<u>50.00</u>
<u>Expired certification reissuance</u>	<u>50.00</u>
<u>Duplicate certification</u>	<u>15.00</u>
<u>Certification of certificate</u>	<u>15.00</u>

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-811-082 What is the retired active credential renewal fee?

**WSR 09-08-091
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**
[Filed March 31, 2009, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-101.

Title of Rule and Other Identifying Information: Amending WAC 181-78A-500, rule governing the awarding of professional certification the [of] educators. The rule change adds school administrators to the professional certification preparation programs that education service districts may develop for approval. Educational service districts are encouraged to partner with institutions of higher education these programs which would now include school administrators.

Hearing Location(s): Maple Hall Auditorium, 1st and Commerce Street, LaConner, Washington 98257, on May 20, 2009, at 8:30 a.m.

Date of Intended Adoption: May 20, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 16, 2009.

Assistance for Persons with Disabilities: Contact David Brenna by May 18, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Aligns administrator professional certification with teacher certification by authorizing education service districts to develop preparation programs.

Reasons Supporting Proposal: Consistent with state policy for approving preparation programs.

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: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

March 25, 2009

David Brenna

Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

WAC 181-78A-500 Professional certificate program approval. All professional certificate programs for teachers, principals/program administrators, and school counselors, school psychologists, and school social workers shall be approved pursuant to the requirements in WAC 181-78A-520 through 181-78A-540. Only colleges/universities with professional educator standards board-approved residency certificate teacher, principals/program administrator, and school counselor, school psychologist, and school social worker preparation programs. Educational service districts are eligible to apply for approval to offer teacher professional certificate programs or administrator professional certificate programs. Educational service districts are encouraged to partner with institutions of higher education, local school districts or consortia of school districts to provide teacher professional certificate programs or administrator professional certificate programs.

WSR 09-08-092

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed March 31, 2009, 9:37 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-19-073 What happens if an employee who is serving a probationary period accepts a nonpermanent appointment?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 14, 2009, at 8:30 a.m.

Date of Intended Adoption: May 14, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 7, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 7, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following proposed new rule addresses what happens when a probationary employee accepts a nonpermanent appointment.

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.

April 1 [March 31], 2009

Eva N. Santos

Director

NEW SECTION

WAC 357-19-073 What happens if an employee who is serving a probationary period accepts a nonpermanent appointment? If an employee who is serving a probationary period accepts a nonpermanent appointment, the probationary period will end and the employee will not be granted permanent status unless the employer agrees to return the employee to a position at the conclusion of the nonpermanent appointment. Any return rights granted by the employer must be to a vacant position in the class in which the employee was serving a probationary period. If the employer chooses to grant the employee a return right the employer must notify the employee in writing.

Upon return from a nonpermanent appointment the employee will resume their probationary period. If the employer determines the position the employee was serving a probationary period in and the position the employee was appointed to on a nonpermanent basis are allocated to classes which are closely related, the employer may count the time

worked in the nonpermanent appointment towards the probationary period.

WSR 09-08-093
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed March 31, 2009, 9:38 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-19-160 Can an employee be elevated following a demotion?, 357-19-240 What positions can be designated as in-training?, and 357-19-285 What happens to an employee who fails to progress satisfactorily through an in-training plan?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 14, 2009, at 8:30 a.m.

Date of Intended Adoption: May 14, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 7, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 7, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following proposed rule modification will eliminate any reference to the term "occupational category" in Title 357 WAC and replace it with "class series."

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.

April 1 [March 31], 2009

Eva N. Santos
Director

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

WAC 357-19-160 Can an employee be elevated following a demotion? Employers may elevate an employee with permanent status to the class held by the employee immediately prior to being demoted or to a class in the same

~~((occupational category))~~ class series which is between the current class and the class from which the employee was demoted. Elevation must be to a position for which they meet the competencies and other position requirements. The employer may require the elevated employee to serve a trial service period.

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

WAC 357-19-240 What positions can be designated as in-training? Employers may designate specific positions, groups of positions, or all positions in a class or class series ~~((or an occupational category))~~, as in-training positions. Unless other staffing methods have been exhausted, positions with primary responsibility for supervision should not be designated as in-training positions.

AMENDATORY SECTION (Amending WSR 06-15-065, filed 7/13/06, effective 8/14/06)

WAC 357-19-285 What happens to an employee who fails to progress satisfactorily through an in-training plan?

This table is used to determine what happens when an employee appointed to an in-training position fails to satisfactorily progress through the in-training plan.		
	Type of In-Training Position:	
	Class Series ((Occupational Category)) : All positions in the ((occupational category)) class series are designated as in-training positions by the employer	Individual position: The individual position is designated as an in-training position
Employee Status:		
Employee in Probationary Period	⇒ The employee must be separated in accordance with WAC 357-46-185.	⇒ The employee must be separated in accordance with WAC 357-46-185.
Employee in Trial Service Period	<i>If the employee WAS PERMANENT before the in-training appointment:</i> ⇒ The employee has reversion rights in accordance with WAC 357-19-115 through 357-19-117 to the class the employee held permanent status in before the in-training appointment. <i>If the employee was NOT PERMANENT before the in-training appointment:</i> ⇒ The employee must be dismissed under the provisions of WAC 357-40-010.	⇒ The employee has reversion rights in accordance with WAC 357-19-115 through 357-19-117 to the class in which the employee was most recently permanent.

<p>Employee achieved permanent status in job class of the current in-training step but is failing to progress to the next step</p>	<p><i>If the employee WAS PERMANENT before the in-training appointment:</i> ⇒ The employee has reversion rights in accordance with WAC 357-19-115 through 357-19-117 to the class the employee held permanent status in before the in-training appointment.</p> <p><i>If the employee was NOT PERMANENT before the in-training appointment:</i> ⇒ The employee must be dismissed under the provisions of WAC 357-40-010.</p>	<p>⇒The employee is removed from the in-training position and has reversion rights in accordance with WAC 357-19-115 through 357-19-117. The employee has reversion rights to a position, if available, in the class in which the employee currently holds permanent status.</p>
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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.

WSR 09-08-094
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed March 31, 2009, 9:40 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-215 When may vacation leave be accumulated above the maximum two hundred forty hours?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 14, 2009, at 8:30 a.m.

Date of Intended Adoption: May 14, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 7, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 7, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The following proposed rule modification clarifies when the statement of necessity must be submitted and clarifies the existing example.

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.

April 1 [March 31], 2009

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-215 When may vacation leave be accumulated above the maximum ((two hundred forty hours) 240 hours)? There are two circumstances in which vacation leave may be accumulated above the maximum of ((thirty) 30 working days (240 hours).

(1) If an employee's request for vacation leave is denied by the employer, and the employee is close to the maximum vacation leave (240 hours), the employer must grant an extension for each month that the employer defers the employee's request for vacation leave. The employer must maintain a statement of necessity justifying the extension.

(2) As an alternative to subsection (1), employees may also accumulate vacation leave in excess of ((two hundred forty (240))) 240 hours as follows:

(a) An employee may accumulate the vacation leave days between the time ((thirty) 30 days is accrued and his/her next anniversary date of state employment.

(b) Leave accumulated above ((two hundred forty hours) 240 hours) must be used by the next anniversary date and in accordance with the employer's leave policy. If such leave is not used before the employee's anniversary date, the excess leave is automatically lost and considered to have never existed.

(c) ((Any leave accumulated above two hundred forty hours without a statement of necessity between anniversary dates must not, regardless of circumstances, be deferred by the employer by a statement of necessity as described in (1) above.)) A statement of necessity, as described in (1) above, can only defer leave that the employee has not accrued as of the date of the statement of necessity. Any accrued leave in excess of 240 hours as of the date of the statement of necessity cannot be deferred regardless of circumstances. For example:

((On June 15, an employee is assigned to work on a special project. It is expected that the assignment will last six months. Due to an ambitious timeline and strict deadlines, the employee will not be able to take any vacation leave during that time. On June 15, the employee's vacation leave balance is 260 hours. The employee accrues 10 hours monthly and his/her anniversary date is October 16. If a statement of necessity is filed in June, his/her leave accrual for the four months between June and October will be deferred and not lost as long the employee uses those 40 deferred hours by his/her next anniversary date (October 16 of the following year). The hours of excess vacation leave the employee has on June 15 (20 hours) will not be deferred and will be lost if not used by the approaching anniversary date (October 16 of

the present year.)) On June 15th, an employee is assigned to work on a special project. It is expected that the assignment will last six months. Due to an ambitious timeline and strict deadlines, the employee will not be able to take any vacation leave during that time.

- On June 15, the employee's vacation leave balance is 260 hours.
- The employee accrues 10 hours monthly.
- The employee's anniversary date is October 16.

Because the employee will not be able to use leave from June 15th through December 15th the employee files a statement of necessity asking to defer the leave accrued during this time. This deferred leave will not be lost as long the employee uses the deferred hours by their next anniversary date (October 16 of the following year).

The 20 hours of excess vacation leave the employee had on June 15 are not covered by the statement of necessity. These hours will not be deferred and will be lost unless they are used before October 16th of the current year.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 09-08-095
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed March 31, 2009, 9:41 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-525 What is an employee entitled to under the Family and Medical Leave Act of 1993?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 14, 2009, at 8:30 a.m.

Date of Intended Adoption: May 14, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 7, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 7, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On January 28, 2008, President Bush signed into law amendments to the Family and Medical Leave Act, which grant additional leave to employees who have family members in the military. Two new types of leave were added.

The first type is "military caregiver leave." This addition allows up to twenty-six weeks of leave for an eligible employee who is the spouse, child, parent, or next of kin of a covered service member. This leave is used to care for a covered service member who is suffering from a serious illness

or injury arising from injuries incurred in the line of duty. We modified WAC 357-31-525 to include this type of leave effective June 10, 2008. We are now proposing modifications to clarify the definition of "next of kin" and other clarifications.

The second is "exigency leave" which allows a fifth qualifying reason for the leave entitlement of twelve weeks of family medical leave due to a qualifying exigency arising from the fact that a spouse, child or parent of an employee is on active duty or has been notified of pending call to active duty in the National Guard or reserves in support of a contingency operation. This provision became effective January 16, 2009. We are proposing modifications to WAC 357-31-525 to address exigency leave.

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.

April 1 [March 31], 2009

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 08-11-008, filed 5/9/08, effective 6/10/08)

WAC 357-31-525 What is an employee entitled to under the Family and Medical Leave Act of 1993? (1) The Family and Medical Leave Act of 1993 (29 USC 2601 et seq) and its implementing rules, 29 CFR Part 825, provide that an eligible employee must be granted, during a twelve-month period, a total of twelve work weeks of absence:

(a) As a result of the employee's serious health condition;
(b) To care for an employee's parent, spouse, or minor/dependent child who has a serious health condition;
~~((and/or))~~

(c) For the birth of and to provide care to an employee's newborn, adopted or foster child as provided in WAC 357-31-460(-); and/or

(d) Due to a qualifying exigency (as described in the Family and Medical Leave Act of 1993 and its amendments (29 USC 2601 et seq) and its implementing rules, 29 CFR Part 825) arising from the fact that the employee's spouse, child of any age, or parent is on active duty or has been notified of pending call to active duty in the armed forces in support of a contingency operation.

(i) This subsection only applies if the spouse, child, or parent of the employee is a member of the National Guard or Reserves, and certain retired members of the regular armed forces and retired reserves. This section does not apply if the

spouse, child, or parent of the employee is a member of the regular armed forces on active duty.

(ii) This section only applies to federal calls to active duty.

(2) An eligible employee who is the spouse, son, daughter, parent of a child of any age, or next of kin of a covered service member shall be entitled to a total of twenty-six work weeks of leave during a twelve-month period to care for the service member who is suffering from a serious illness or injury arising from injuries incurred in the line of duty. The leave described in this paragraph shall only be available during a single twelve-month period. This twelve-month period begins on the first day leave is taken pursuant to this subsection.

(a) For purposes of this section, "next of kin" with respect to an individual means the nearest blood relative of that individual other than the individual's spouse, parent, or child in the following order of priority:

(i) Blood relatives who have been granted legal custody of the service member;

(ii) Siblings;

(iii) Grandparents;

(iv) Aunts and uncles;

(v) Cousins;

(vi) The service member can designate another blood relative as the "nearest blood relative" and that designation takes precedent over the above list.

(b) For purposes of this section, "covered service member" is a member of the armed forces, including the National Guard or reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on a temporary disability retired list for a serious illness or injury.

(c) For purposes of this section, "serious illness or injury" means an injury or illness incurred by the covered service member in the line of duty while on active duty in the armed forces that may render the service member medically unfit to perform the duties of the service member's office, grade, rank, or rating.

(3) During the twelve-month period described in subsection (2) above, an eligible employee shall be entitled to a combined total of twenty-six work weeks of leave under subsections (1) and (2) above. Nothing in this section shall be construed to limit the availability of leave under subsection (1) during any other twelve-month period.

(4) For general government employers, the twelve-month period in subsections (1) and (2) above is measured forward from the date the requesting employee begins leave under the Family and Medical Leave Act of 1993. The employee's next twelve-month period would begin the first time leave under the Family and Medical Leave Act is taken after completion of the previous twelve-month period. Higher education employers must define within their family and medical leave policy how the twelve months are measured.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 09-08-096
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed March 31, 2009, 9:42 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-150 Can an employee be paid for accrued sick leave?, 357-31-345 How does leave without pay affect a general government employee's anniversary date, unbroken service date, ~~((and))~~ periodic increment date and seniority date?, 357-58-245 Must an employee appointed to a project position serve a review period?, and 357-58-285 When must a WMS employee serve a review period?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 14, 2009, at 8:30 a.m.

Date of Intended Adoption: May 14, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 7, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 7, 2009, TTY (360) 753-4107 or (360) 586-8260.

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

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

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

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

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

April 1 [March 31], 2009

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 05-08-138, filed 4/6/05, effective 7/1/05)

WAC 357-31-345 How does leave without pay affect a general government employee's anniversary date, unbroken service date, ~~(and)~~ periodic increment date and seniority date? (1) For a general government employee, the anniversary date, unbroken service date, and periodic increment date is adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

(a) Military leave of absence without pay as provided in WAC 357-31-370;

(b) Compensable work-related injury or illness leave;

(c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; and/or

(e) Voluntarily reducing the effect of an employer's lay-off.

(2) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's anniversary date, unbroken service date and periodic increment date must be moved forward in an amount equal to the number of calendar days on leave without pay.

(3) For a general government employee the seniority date is adjusted for leave without pay in accordance with WAC 357-46-055.

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

WAC 357-58-245 Must an employee appointed to a project position serve a review period? ~~((An employee who does not have permanent status in classified service must serve a review period when appointed to a project WMS position. The employee gains permanent status upon completion of the review period.~~

~~Permanent employees who promote to a project WMS position must serve a review period.)~~ (1) An employee appointed to a WMS project position must serve a review period when:

(a) The employee does not have permanent status in classified service; or

(b) The employee is a permanent employee who has promoted to a project WMS position.

(2) An employee who does not have permanent status prior to appointment to a project WMS position will gain permanent status.

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

WAC 357-58-285 When must a WMS employee serve a review period? (1) A review period must be served when:

~~((+))~~ (a) A permanent employee promotes to a permanent WMS position or

~~((=))~~ (b) An employee who does not have permanent status in the classified service is appointed to a permanent WMS position.

(2) An employee appointed to a WMS project position must serve a review period in accordance with WAC 357-58-245.

WSR 09-08-098

PROPOSED RULES

BOARD OF

PILOTAGE COMMISSIONERS

[Filed March 31, 2009, 9:44 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.

Hearing Location(s): 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121, on May 19, 2009, at 9:30 a.m.

Date of Intended Adoption: May 19, 2009.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by May 7, 2009.

Assistance for Persons with Disabilities: Contact Judy Bell by May 14, 2009, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a Puget Sound pilotage district annual tariff.

The proposed rule reflects a range of adjustments to be charged for pilotage services in the Puget Sound pilotage district for the 2009-2010 tariff year. The low end of the range is proposed by the Pacific Merchant Shipping Association (PMSA) and the high end of the range is proposed by the Puget Sound pilots (PSP). Upon consideration of all written and oral testimony, it is anticipated that the adopted rule will reflect an adjustment to the tariff in a range between a decrease of 6% and an increase of 5%.

Exceptions include two tariff categories specified below:

- The proposed rule reflects no adjustment to the \$10 *Training Surcharge* which supports pilot training stipends.
- The proposed rule reflects no adjustment to the \$2.00 per mile charge for *Transportation to Vessels on Puget Sound* at any new facility or other seldom used terminal.

The board may consider separately such categories as *Transportation to Vessels on Puget Sound* and/or *British Columbia Direct Transit Charge* to which a different adjustment or no adjustment may be made.

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

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Puget Sound pilotage district expire on June 30, 2009. New rates must be set annually.

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

Name of Proponent: Puget Sound Pilots and Pacific Merchant Shipping Association, private

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services.

The application of the range of proposed adjustments is clear in the description of the proposal and its anticipated effects as well as the proposed tariff shown below.

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

March 30, 2009

Peggy Larson

Administrator

AMENDATORY SECTION (Amending WSR 08-12-018, filed 5/28/08, effective 7/1/08)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours July 1, (~~2008~~) 2009, through 2400 hours June 30, (~~2009~~) 2010.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Boarding charge:	((\$47.00)) <u>\$44.00 to \$49.00</u>
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	

Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.

CLASSIFICATION	RATE
Compass Adjustment	((\$339.00)) <u>\$319.00 to \$356.00</u>
Radio Direction Finder Calibration	((\$339.00)) <u>\$319.00 to \$356.00</u>

CLASSIFICATION	RATE
Launching Vessels	((\$509.00)) <u>\$478.00 to \$534.00</u>
Trial Trips, 6 hours or less (minimum ((\$954.00)) <u>\$894.00 to \$1,002.00</u>)	((\$159.00)) <u>\$149.00 to \$167.00</u> per hour
Trial Trips, over 6 hours (two pilots)	((\$318.00)) <u>\$299.00 to \$334.00</u> per hour
Shilshole Bay – Salmon Bay	((\$199.00)) <u>\$187.00 to \$209.00</u>
Salmon Bay – Lake Union	((\$154.00)) <u>\$145.00 to \$162.00</u>
Lake Union – Lake Washington (plus LOA zone from Webster Point)	((\$199.00)) <u>\$187.00 to \$209.00</u>
Cancellation Charge	LOA Zone I
Cancellation Charge – Port Angeles:	LOA Zone II
(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)	

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of (~~(\$250.00)~~) \$235.00 to \$263.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of (~~(\$119.00)~~) \$112.00 to \$125.00 per bridge.

Ships 90' beam and/or over:

A charge of (~~(\$340.00)~~) \$320.00 to \$357.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of (~~(\$237.00)~~) \$223.00 to \$249.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus (~~(\$258.00)~~) \$243.00 to \$271.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is (~~(\$258.00)~~) \$243.00 to \$271.00 for every hour or fraction thereof.

Sailing Delay:

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is (~~(\$258.00)~~) \$243.00 to \$271.00 for every hour or fraction thereof. The assessment of the standby

charge shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of (~~(\$258.00)~~) \$243.00 to \$271.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival – Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of (~~(\$258.00)~~) \$243.00 to \$271.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of (~~(\$0.0080)~~) \$0.0075 to \$0.0084 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of (~~(\$0.0821)~~) \$0.0772 to \$0.0862 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be (~~(\$0.0983)~~) \$0.0924 to \$0.1032 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Seattle	((15.00))
	<u>14.00 to 16.00</u>
Tacoma	((71.00))
	<u>67.00 to 75.00</u>

Transportation to Vessels on Puget Sound:

March Point or Anacortes	\$((157.00))
	<u>148.00 to 165.00</u>
Bangor	((153.00))
	<u>144.00 to 161.00</u>
Bellingham	((181.00))
	<u>170.00 to 190.00</u>
Bremerton	((135.00))
	<u>127.00 to 142.00</u>
Cherry Point	((209.00))
	<u>196.00 to 219.00</u>
Dupont	((97.00))
	<u>91.00 to 102.00</u>
Edmonds	((35.00))
	<u>33.00 to 37.00</u>
Everett	((59.00))
	<u>55.00 to 62.00</u>
Ferndale	((199.00))
	<u>187.00 to 209.00</u>
Manchester	((131.00))
	<u>123.00 to 138.00</u>
Mukilteo	((53.00))
	<u>50.00 to 56.00</u>
Olympia	((125.00))
	<u>118.00 to 131.00</u>
Point Wells	((35.00))
	<u>33.00 to 37.00</u>
Port Gamble	((185.00))
	<u>174.00 to 194.00</u>
Port Townsend (Indian Island)	((223.00))
	<u>210.00 to 234.00</u>

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - ((~~15.00~~)) \$14.00 to \$16.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or disembark a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

Direct Transit Charge

((~~\$2,046.00~~))
\$1,923.00 to \$2,148.00

Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.

((~~\$275.00~~))
\$259.00 to \$289.00 per hour

Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities.

((~~\$275.00~~))
\$259.00 to \$289.00 per hour

Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses.

((~~\$510.00~~))
\$479.00 to \$536.00

Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia. ~~(\$476.00)~~
\$447.00 to \$500.00

Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range. ~~(\$602.00)~~
\$566.00 to \$632.00

Training Surcharge:

A surcharge of \$10.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

(LOA (Length Overall))	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
UP to 449	248	384	655	977	1,315	1,706
450-459	258	391	659	991	1,336	1,715
460-469	260	395	670	1,008	1,354	1,722
470-479	269	407	678	1,028	1,358	1,725
480-489	277	414	681	1,047	1,367	1,733
490-499	281	419	691	1,066	1,383	1,742
500-509	295	427	701	1,078	1,394	1,752
510-519	297	435	708	1,094	1,409	1,759
520-529	301	450	718	1,099	1,421	1,773
530-539	310	456	727	1,112	1,444	1,793
540-549	315	462	744	1,123	1,466	1,810
550-559	321	478	749	1,140	1,478	1,827
560-569	333	497	763	1,150	1,491	1,844
570-579	340	501	766	1,155	1,507	1,856
580-589	354	509	784	1,164	1,516	1,875
590-599	371	520	789	1,170	1,538	1,897
600-609	384	536	800	1,174	1,557	1,906
610-619	406	541	814	1,179	1,572	1,923
620-629	421	548	821	1,193	1,590	1,946
630-639	441	557	830	1,196	1,604	1,962
640-649	458	570	839	1,198	1,617	1,977
650-659	490	580	854	1,208	1,637	1,997
660-669	500	587	861	1,215	1,655	2,013
670-679	518	602	870	1,237	1,674	2,025
680-689	525	612	882	1,247	1,688	2,045
690-699	541	621	895	1,269	1,706	2,087
700-719	565	642	912	1,285	1,739	2,111
720-739	598	659	935	1,303	1,773	2,146
740-759	621	691	953	1,315	1,810	2,184
760-779	646	713	977	1,336	1,844	2,213
780-799	678	745	991	1,354	1,875	2,252
800-819	705	766	1,011	1,361	1,906	2,286
820-839	727	794	1,034	1,383	1,946	2,313
840-859	758	826	1,054	1,399	1,975	2,352
860-879	786	854	1,073	1,435	2,013	2,386

(LOA (Length Overall))	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
880-899	814	879	1,094	1,468	2,045	2,421
900-919	838	908	1,113	1,506	2,087	2,454
920-939	864	935	1,140	1,538	2,109	2,488
940-959	895	959	1,156	1,572	2,146	2,518
960-979	916	987	1,177	1,604	2,184	2,556
980-999	946	1,011	1,197	1,637	2,213	2,589
1000-1019	1,004	1,076	1,250	1,724	2,317	2,701
1020-1039	1,031	1,108	1,289	1,773	2,387	2,780
1040-1059	1,062	1,135	1,327	1,827	2,455	2,862
1060-1079	1,094	1,175	1,366	1,882	2,532	2,947
1080-1099	1,127	1,208	1,406	1,936	2,606	3,036
1100-1119	1,159	1,245	1,449	1,996	2,684	3,127
1120-1139	1,195	1,284	1,493	2,054	2,765	3,220
1140-1159	1,229	1,320	1,536	2,116	2,849	3,318
1160-1179	1,266	1,358	1,584	2,180	2,933	3,416
1180-1199	1,305	1,400	1,630	2,245	3,022	3,519
1200-1219	1,345	1,442	1,678	2,313	3,113	3,623
1220-1239	1,383	1,485	1,727	2,382	3,204	3,732
1240-1259	1,424	1,529	1,778	2,452	3,301	3,843
1260-1279	1,466	1,574	1,832	2,526	3,401	3,958
1280-1299	1,510	1,622	1,888	2,602	3,500	4,078
1300-1319	1,556	1,668	1,943	2,679	3,606	4,198
1320-1339	1,603	1,719	2,003	2,759	3,713	4,325
1340-1359	1,649	1,771	2,062	2,841	3,824	4,455
1360-1379	1,699	1,822	2,123	2,928	3,937	4,586
1380-1399	1,749	1,877	2,188	3,014	4,056	4,726
1400-1419	1,802	1,934	2,251	3,103	4,177	4,867
1420-1439	1,855	1,992	2,319	3,197	4,304	5,013
1440-1459	1,913	2,052	2,390	3,292	4,432	5,162
1460-1479	1,966	2,112	2,460	3,390	4,565	5,315
1480-1499	2,026	2,175	2,533	3,491	4,700	5,475
1500 & Over	2,087	2,241	2,608	3,598	4,840	5,638))

LOW RANGE

<u>LOA</u> (Length Overall)	<u>ZONE</u> I Intra Harbor	<u>ZONE</u> II 0-30 Miles	<u>ZONE</u> III 31-50 Miles	<u>ZONE</u> IV 51-75 Miles	<u>ZONE</u> V 76-100 Miles	<u>ZONE</u> VI 101 Miles & Over
<u>UP to 449</u>	<u>233</u>	<u>361</u>	<u>616</u>	<u>918</u>	<u>1,236</u>	<u>1,604</u>
<u>450 - 459</u>	<u>243</u>	<u>368</u>	<u>619</u>	<u>932</u>	<u>1,256</u>	<u>1,612</u>
<u>460 - 469</u>	<u>244</u>	<u>371</u>	<u>630</u>	<u>948</u>	<u>1,273</u>	<u>1,619</u>
<u>470 - 479</u>	<u>253</u>	<u>383</u>	<u>637</u>	<u>966</u>	<u>1,277</u>	<u>1,622</u>
<u>480 - 489</u>	<u>260</u>	<u>389</u>	<u>640</u>	<u>984</u>	<u>1,285</u>	<u>1,629</u>
<u>490 - 499</u>	<u>264</u>	<u>394</u>	<u>650</u>	<u>1,002</u>	<u>1,300</u>	<u>1,637</u>
<u>500 - 509</u>	<u>277</u>	<u>401</u>	<u>659</u>	<u>1,013</u>	<u>1,310</u>	<u>1,647</u>

<u>LOA</u> (Length Overall)	<u>LOW RANGE</u>					
	<u>ZONE</u> I Intra Harbor	<u>ZONE</u> II 0-30 Miles	<u>ZONE</u> III 31-50 Miles	<u>ZONE</u> IV 51-75 Miles	<u>ZONE</u> V 76-100 Miles	<u>ZONE</u> VI 101 Miles & Over
<u>510 - 519</u>	<u>279</u>	<u>409</u>	<u>666</u>	<u>1,028</u>	<u>1,324</u>	<u>1,653</u>
<u>520 - 529</u>	<u>283</u>	<u>423</u>	<u>675</u>	<u>1,033</u>	<u>1,336</u>	<u>1,667</u>
<u>530 - 539</u>	<u>291</u>	<u>429</u>	<u>683</u>	<u>1,045</u>	<u>1,357</u>	<u>1,685</u>
<u>540 - 549</u>	<u>296</u>	<u>434</u>	<u>699</u>	<u>1,056</u>	<u>1,378</u>	<u>1,701</u>
<u>550 - 559</u>	<u>302</u>	<u>449</u>	<u>704</u>	<u>1,072</u>	<u>1,389</u>	<u>1,717</u>
<u>560 - 569</u>	<u>313</u>	<u>467</u>	<u>717</u>	<u>1,081</u>	<u>1,402</u>	<u>1,733</u>
<u>570 - 579</u>	<u>320</u>	<u>471</u>	<u>720</u>	<u>1,086</u>	<u>1,417</u>	<u>1,745</u>
<u>580 - 589</u>	<u>333</u>	<u>478</u>	<u>737</u>	<u>1,094</u>	<u>1,425</u>	<u>1,763</u>
<u>590 - 599</u>	<u>349</u>	<u>489</u>	<u>742</u>	<u>1,100</u>	<u>1,446</u>	<u>1,783</u>
<u>600 - 609</u>	<u>361</u>	<u>504</u>	<u>752</u>	<u>1,104</u>	<u>1,464</u>	<u>1,792</u>
<u>610 - 619</u>	<u>382</u>	<u>509</u>	<u>765</u>	<u>1,108</u>	<u>1,478</u>	<u>1,808</u>
<u>620 - 629</u>	<u>396</u>	<u>515</u>	<u>772</u>	<u>1,121</u>	<u>1,495</u>	<u>1,829</u>
<u>630 - 639</u>	<u>415</u>	<u>524</u>	<u>780</u>	<u>1,124</u>	<u>1,508</u>	<u>1,844</u>
<u>640 - 649</u>	<u>431</u>	<u>536</u>	<u>789</u>	<u>1,126</u>	<u>1,520</u>	<u>1,858</u>
<u>650 - 659</u>	<u>461</u>	<u>545</u>	<u>803</u>	<u>1,136</u>	<u>1,539</u>	<u>1,877</u>
<u>660 - 669</u>	<u>470</u>	<u>552</u>	<u>809</u>	<u>1,142</u>	<u>1,556</u>	<u>1,892</u>
<u>670 - 679</u>	<u>487</u>	<u>566</u>	<u>818</u>	<u>1,163</u>	<u>1,574</u>	<u>1,904</u>
<u>680 - 689</u>	<u>494</u>	<u>575</u>	<u>829</u>	<u>1,172</u>	<u>1,587</u>	<u>1,922</u>
<u>690 - 699</u>	<u>509</u>	<u>584</u>	<u>841</u>	<u>1,193</u>	<u>1,604</u>	<u>1,962</u>
<u>700 - 719</u>	<u>531</u>	<u>603</u>	<u>857</u>	<u>1,208</u>	<u>1,635</u>	<u>1,984</u>
<u>720 - 739</u>	<u>562</u>	<u>619</u>	<u>879</u>	<u>1,225</u>	<u>1,667</u>	<u>2,017</u>
<u>740 - 759</u>	<u>584</u>	<u>650</u>	<u>896</u>	<u>1,236</u>	<u>1,701</u>	<u>2,053</u>
<u>760 - 779</u>	<u>607</u>	<u>670</u>	<u>918</u>	<u>1,256</u>	<u>1,733</u>	<u>2,080</u>
<u>780 - 799</u>	<u>637</u>	<u>700</u>	<u>932</u>	<u>1,273</u>	<u>1,763</u>	<u>2,117</u>
<u>800 - 819</u>	<u>663</u>	<u>720</u>	<u>950</u>	<u>1,279</u>	<u>1,792</u>	<u>2,149</u>
<u>820 - 839</u>	<u>683</u>	<u>746</u>	<u>972</u>	<u>1,300</u>	<u>1,829</u>	<u>2,174</u>
<u>840 - 859</u>	<u>713</u>	<u>776</u>	<u>991</u>	<u>1,315</u>	<u>1,857</u>	<u>2,211</u>
<u>860 - 879</u>	<u>739</u>	<u>803</u>	<u>1,009</u>	<u>1,349</u>	<u>1,892</u>	<u>2,243</u>
<u>880 - 899</u>	<u>765</u>	<u>826</u>	<u>1,028</u>	<u>1,380</u>	<u>1,922</u>	<u>2,276</u>
<u>900 - 919</u>	<u>788</u>	<u>854</u>	<u>1,046</u>	<u>1,416</u>	<u>1,962</u>	<u>2,307</u>
<u>920 - 939</u>	<u>812</u>	<u>879</u>	<u>1,072</u>	<u>1,446</u>	<u>1,982</u>	<u>2,339</u>
<u>940 - 959</u>	<u>841</u>	<u>901</u>	<u>1,087</u>	<u>1,478</u>	<u>2,017</u>	<u>2,367</u>
<u>960 - 979</u>	<u>861</u>	<u>928</u>	<u>1,106</u>	<u>1,508</u>	<u>2,053</u>	<u>2,403</u>
<u>980 - 999</u>	<u>889</u>	<u>950</u>	<u>1,125</u>	<u>1,539</u>	<u>2,080</u>	<u>2,434</u>
<u>1000 - 1019</u>	<u>944</u>	<u>1,011</u>	<u>1,175</u>	<u>1,621</u>	<u>2,178</u>	<u>2,539</u>
<u>1020 - 1039</u>	<u>969</u>	<u>1,042</u>	<u>1,212</u>	<u>1,667</u>	<u>2,244</u>	<u>2,613</u>
<u>1040 - 1059</u>	<u>998</u>	<u>1,067</u>	<u>1,247</u>	<u>1,717</u>	<u>2,308</u>	<u>2,690</u>
<u>1060 - 1079</u>	<u>1,028</u>	<u>1,105</u>	<u>1,284</u>	<u>1,769</u>	<u>2,380</u>	<u>2,770</u>
<u>1080 - 1099</u>	<u>1,059</u>	<u>1,136</u>	<u>1,322</u>	<u>1,820</u>	<u>2,450</u>	<u>2,854</u>
<u>1100 - 1119</u>	<u>1,089</u>	<u>1,170</u>	<u>1,362</u>	<u>1,876</u>	<u>2,523</u>	<u>2,939</u>
<u>1120 - 1139</u>	<u>1,123</u>	<u>1,207</u>	<u>1,403</u>	<u>1,931</u>	<u>2,599</u>	<u>3,027</u>
<u>1140 - 1159</u>	<u>1,155</u>	<u>1,241</u>	<u>1,444</u>	<u>1,989</u>	<u>2,678</u>	<u>3,119</u>
<u>1160 - 1179</u>	<u>1,190</u>	<u>1,277</u>	<u>1,489</u>	<u>2,049</u>	<u>2,757</u>	<u>3,211</u>

LOW RANGE

<u>LOA</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>
<u>(Length Overall)</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
	<u>Intra Harbor</u>	<u>0-30 Miles</u>	<u>31-50 Miles</u>	<u>51-75 Miles</u>	<u>76-100 Miles</u>	<u>101 Miles & Over</u>
<u>1180 - 1199</u>	<u>1,227</u>	<u>1,316</u>	<u>1,532</u>	<u>2,110</u>	<u>2,841</u>	<u>3,308</u>
<u>1200 - 1219</u>	<u>1,264</u>	<u>1,355</u>	<u>1,577</u>	<u>2,174</u>	<u>2,926</u>	<u>3,406</u>
<u>1220 - 1239</u>	<u>1,300</u>	<u>1,396</u>	<u>1,623</u>	<u>2,239</u>	<u>3,012</u>	<u>3,508</u>
<u>1240 - 1259</u>	<u>1,339</u>	<u>1,437</u>	<u>1,671</u>	<u>2,305</u>	<u>3,103</u>	<u>3,612</u>
<u>1260 - 1279</u>	<u>1,378</u>	<u>1,480</u>	<u>1,722</u>	<u>2,374</u>	<u>3,197</u>	<u>3,721</u>
<u>1280 - 1299</u>	<u>1,419</u>	<u>1,525</u>	<u>1,775</u>	<u>2,446</u>	<u>3,290</u>	<u>3,833</u>
<u>1300 - 1319</u>	<u>1,463</u>	<u>1,568</u>	<u>1,826</u>	<u>2,518</u>	<u>3,390</u>	<u>3,946</u>
<u>1320 - 1339</u>	<u>1,507</u>	<u>1,616</u>	<u>1,883</u>	<u>2,593</u>	<u>3,490</u>	<u>4,066</u>
<u>1340 - 1359</u>	<u>1,550</u>	<u>1,665</u>	<u>1,938</u>	<u>2,671</u>	<u>3,595</u>	<u>4,188</u>
<u>1360 - 1379</u>	<u>1,597</u>	<u>1,713</u>	<u>1,996</u>	<u>2,752</u>	<u>3,701</u>	<u>4,311</u>
<u>1380 - 1399</u>	<u>1,644</u>	<u>1,764</u>	<u>2,057</u>	<u>2,833</u>	<u>3,813</u>	<u>4,442</u>
<u>1400 - 1419</u>	<u>1,694</u>	<u>1,818</u>	<u>2,116</u>	<u>2,917</u>	<u>3,926</u>	<u>4,575</u>
<u>1420 - 1439</u>	<u>1,744</u>	<u>1,872</u>	<u>2,180</u>	<u>3,005</u>	<u>4,046</u>	<u>4,712</u>
<u>1440 - 1459</u>	<u>1,798</u>	<u>1,929</u>	<u>2,247</u>	<u>3,094</u>	<u>4,166</u>	<u>4,852</u>
<u>1460 - 1479</u>	<u>1,848</u>	<u>1,985</u>	<u>2,312</u>	<u>3,187</u>	<u>4,291</u>	<u>4,996</u>
<u>1480 - 1499</u>	<u>1,904</u>	<u>2,045</u>	<u>2,381</u>	<u>3,282</u>	<u>4,418</u>	<u>5,147</u>
<u>1500 & Over</u>	<u>1,962</u>	<u>2,107</u>	<u>2,452</u>	<u>3,382</u>	<u>4,550</u>	<u>5,300</u>

HIGH RANGE

<u>LOA</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>	<u>ZONE</u>
<u>(Length Overall)</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VI</u>
	<u>Intra Harbor</u>	<u>0-30 Miles</u>	<u>31-50 Miles</u>	<u>51-75 Miles</u>	<u>76-100 Miles</u>	<u>101 Miles & Over</u>
<u>UP to 449</u>	<u>260</u>	<u>403</u>	<u>688</u>	<u>1,026</u>	<u>1,381</u>	<u>1,791</u>
<u>450 - 459</u>	<u>271</u>	<u>411</u>	<u>692</u>	<u>1,041</u>	<u>1,403</u>	<u>1,801</u>
<u>460 - 469</u>	<u>273</u>	<u>415</u>	<u>704</u>	<u>1,058</u>	<u>1,422</u>	<u>1,808</u>
<u>470 - 479</u>	<u>282</u>	<u>427</u>	<u>712</u>	<u>1,079</u>	<u>1,426</u>	<u>1,811</u>
<u>480 - 489</u>	<u>291</u>	<u>435</u>	<u>715</u>	<u>1,099</u>	<u>1,435</u>	<u>1,820</u>
<u>490 - 499</u>	<u>295</u>	<u>440</u>	<u>726</u>	<u>1,119</u>	<u>1,452</u>	<u>1,829</u>
<u>500 - 509</u>	<u>310</u>	<u>448</u>	<u>736</u>	<u>1,132</u>	<u>1,464</u>	<u>1,840</u>
<u>510 - 519</u>	<u>312</u>	<u>457</u>	<u>743</u>	<u>1,149</u>	<u>1,479</u>	<u>1,847</u>
<u>520 - 529</u>	<u>316</u>	<u>473</u>	<u>754</u>	<u>1,154</u>	<u>1,492</u>	<u>1,862</u>
<u>530 - 539</u>	<u>326</u>	<u>479</u>	<u>763</u>	<u>1,168</u>	<u>1,516</u>	<u>1,883</u>
<u>540 - 549</u>	<u>331</u>	<u>485</u>	<u>781</u>	<u>1,179</u>	<u>1,539</u>	<u>1,901</u>
<u>550 - 559</u>	<u>337</u>	<u>502</u>	<u>786</u>	<u>1,197</u>	<u>1,552</u>	<u>1,918</u>
<u>560 - 569</u>	<u>350</u>	<u>522</u>	<u>801</u>	<u>1,208</u>	<u>1,566</u>	<u>1,936</u>
<u>570 - 579</u>	<u>357</u>	<u>526</u>	<u>804</u>	<u>1,213</u>	<u>1,582</u>	<u>1,949</u>
<u>580 - 589</u>	<u>372</u>	<u>534</u>	<u>823</u>	<u>1,222</u>	<u>1,592</u>	<u>1,969</u>
<u>590 - 599</u>	<u>390</u>	<u>546</u>	<u>828</u>	<u>1,229</u>	<u>1,615</u>	<u>1,992</u>
<u>600 - 609</u>	<u>403</u>	<u>563</u>	<u>840</u>	<u>1,233</u>	<u>1,635</u>	<u>2,001</u>
<u>610 - 619</u>	<u>426</u>	<u>568</u>	<u>855</u>	<u>1,238</u>	<u>1,651</u>	<u>2,019</u>
<u>620 - 629</u>	<u>442</u>	<u>575</u>	<u>862</u>	<u>1,253</u>	<u>1,670</u>	<u>2,043</u>
<u>630 - 639</u>	<u>463</u>	<u>585</u>	<u>872</u>	<u>1,256</u>	<u>1,684</u>	<u>2,060</u>
<u>640 - 649</u>	<u>481</u>	<u>599</u>	<u>881</u>	<u>1,258</u>	<u>1,698</u>	<u>2,076</u>

<u>LOA</u>	<u>HIGH RANGE</u>					
	<u>ZONE</u> I (Length Overall) <u>Intra Harbor</u>	<u>ZONE</u> II <u>0-30 Miles</u>	<u>ZONE</u> III <u>31-50 Miles</u>	<u>ZONE</u> IV <u>51-75 Miles</u>	<u>ZONE</u> V <u>76-100 Miles</u>	<u>ZONE</u> VI <u>101 Miles & Over</u>
<u>650 - 659</u>	<u>515</u>	<u>609</u>	<u>897</u>	<u>1,268</u>	<u>1,719</u>	<u>2,097</u>
<u>660 - 669</u>	<u>525</u>	<u>616</u>	<u>904</u>	<u>1,276</u>	<u>1,738</u>	<u>2,114</u>
<u>670 - 679</u>	<u>544</u>	<u>632</u>	<u>914</u>	<u>1,299</u>	<u>1,758</u>	<u>2,126</u>
<u>680 - 689</u>	<u>551</u>	<u>643</u>	<u>926</u>	<u>1,309</u>	<u>1,772</u>	<u>2,147</u>
<u>690 - 699</u>	<u>568</u>	<u>652</u>	<u>940</u>	<u>1,332</u>	<u>1,791</u>	<u>2,191</u>
<u>700 - 719</u>	<u>593</u>	<u>674</u>	<u>958</u>	<u>1,349</u>	<u>1,826</u>	<u>2,217</u>
<u>720 - 739</u>	<u>628</u>	<u>692</u>	<u>982</u>	<u>1,368</u>	<u>1,862</u>	<u>2,253</u>
<u>740 - 759</u>	<u>652</u>	<u>726</u>	<u>1,001</u>	<u>1,381</u>	<u>1,901</u>	<u>2,293</u>
<u>760 - 779</u>	<u>678</u>	<u>749</u>	<u>1,026</u>	<u>1,403</u>	<u>1,936</u>	<u>2,324</u>
<u>780 - 799</u>	<u>712</u>	<u>782</u>	<u>1,041</u>	<u>1,422</u>	<u>1,969</u>	<u>2,365</u>
<u>800 - 819</u>	<u>740</u>	<u>804</u>	<u>1,062</u>	<u>1,429</u>	<u>2,001</u>	<u>2,400</u>
<u>820 - 839</u>	<u>763</u>	<u>834</u>	<u>1,086</u>	<u>1,452</u>	<u>2,043</u>	<u>2,429</u>
<u>840 - 859</u>	<u>796</u>	<u>867</u>	<u>1,107</u>	<u>1,469</u>	<u>2,074</u>	<u>2,470</u>
<u>860 - 879</u>	<u>825</u>	<u>897</u>	<u>1,127</u>	<u>1,507</u>	<u>2,114</u>	<u>2,505</u>
<u>880 - 899</u>	<u>855</u>	<u>923</u>	<u>1,149</u>	<u>1,541</u>	<u>2,147</u>	<u>2,542</u>
<u>900 - 919</u>	<u>880</u>	<u>953</u>	<u>1,169</u>	<u>1,581</u>	<u>2,191</u>	<u>2,577</u>
<u>920 - 939</u>	<u>907</u>	<u>982</u>	<u>1,197</u>	<u>1,615</u>	<u>2,214</u>	<u>2,612</u>
<u>940 - 959</u>	<u>940</u>	<u>1,007</u>	<u>1,214</u>	<u>1,651</u>	<u>2,253</u>	<u>2,644</u>
<u>960 - 979</u>	<u>962</u>	<u>1,036</u>	<u>1,236</u>	<u>1,684</u>	<u>2,293</u>	<u>2,684</u>
<u>980 - 999</u>	<u>993</u>	<u>1,062</u>	<u>1,257</u>	<u>1,719</u>	<u>2,324</u>	<u>2,718</u>
<u>1000 - 1019</u>	<u>1,054</u>	<u>1,130</u>	<u>1,313</u>	<u>1,810</u>	<u>2,433</u>	<u>2,836</u>
<u>1020 - 1039</u>	<u>1,083</u>	<u>1,163</u>	<u>1,353</u>	<u>1,862</u>	<u>2,506</u>	<u>2,919</u>
<u>1040 - 1059</u>	<u>1,115</u>	<u>1,192</u>	<u>1,393</u>	<u>1,918</u>	<u>2,578</u>	<u>3,005</u>
<u>1060 - 1079</u>	<u>1,149</u>	<u>1,234</u>	<u>1,434</u>	<u>1,976</u>	<u>2,659</u>	<u>3,094</u>
<u>1080 - 1099</u>	<u>1,183</u>	<u>1,268</u>	<u>1,476</u>	<u>2,033</u>	<u>2,736</u>	<u>3,188</u>
<u>1100 - 1119</u>	<u>1,217</u>	<u>1,307</u>	<u>1,521</u>	<u>2,096</u>	<u>2,818</u>	<u>3,283</u>
<u>1120 - 1139</u>	<u>1,255</u>	<u>1,348</u>	<u>1,568</u>	<u>2,157</u>	<u>2,903</u>	<u>3,381</u>
<u>1140 - 1159</u>	<u>1,290</u>	<u>1,386</u>	<u>1,613</u>	<u>2,222</u>	<u>2,991</u>	<u>3,484</u>
<u>1160 - 1179</u>	<u>1,329</u>	<u>1,426</u>	<u>1,663</u>	<u>2,289</u>	<u>3,080</u>	<u>3,587</u>
<u>1180 - 1199</u>	<u>1,370</u>	<u>1,470</u>	<u>1,712</u>	<u>2,357</u>	<u>3,173</u>	<u>3,695</u>
<u>1200 - 1219</u>	<u>1,412</u>	<u>1,514</u>	<u>1,762</u>	<u>2,429</u>	<u>3,269</u>	<u>3,804</u>
<u>1220 - 1239</u>	<u>1,452</u>	<u>1,559</u>	<u>1,813</u>	<u>2,501</u>	<u>3,364</u>	<u>3,919</u>
<u>1240 - 1259</u>	<u>1,495</u>	<u>1,605</u>	<u>1,867</u>	<u>2,575</u>	<u>3,466</u>	<u>4,035</u>
<u>1260 - 1279</u>	<u>1,539</u>	<u>1,653</u>	<u>1,924</u>	<u>2,652</u>	<u>3,571</u>	<u>4,156</u>
<u>1280 - 1299</u>	<u>1,586</u>	<u>1,703</u>	<u>1,982</u>	<u>2,732</u>	<u>3,675</u>	<u>4,282</u>
<u>1300 - 1319</u>	<u>1,634</u>	<u>1,751</u>	<u>2,040</u>	<u>2,813</u>	<u>3,786</u>	<u>4,408</u>
<u>1320 - 1339</u>	<u>1,683</u>	<u>1,805</u>	<u>2,103</u>	<u>2,897</u>	<u>3,899</u>	<u>4,541</u>
<u>1340 - 1359</u>	<u>1,731</u>	<u>1,860</u>	<u>2,165</u>	<u>2,983</u>	<u>4,015</u>	<u>4,678</u>
<u>1360 - 1379</u>	<u>1,784</u>	<u>1,913</u>	<u>2,229</u>	<u>3,074</u>	<u>4,134</u>	<u>4,815</u>
<u>1380 - 1399</u>	<u>1,836</u>	<u>1,971</u>	<u>2,297</u>	<u>3,165</u>	<u>4,259</u>	<u>4,962</u>
<u>1400 - 1419</u>	<u>1,892</u>	<u>2,031</u>	<u>2,364</u>	<u>3,258</u>	<u>4,386</u>	<u>5,110</u>
<u>1420 - 1439</u>	<u>1,948</u>	<u>2,092</u>	<u>2,435</u>	<u>3,357</u>	<u>4,519</u>	<u>5,264</u>
<u>1440 - 1459</u>	<u>2,009</u>	<u>2,155</u>	<u>2,510</u>	<u>3,457</u>	<u>4,654</u>	<u>5,420</u>

<u>LOA</u>	<u>HIGH RANGE</u>					
	<u>ZONE</u> I	<u>ZONE</u> II	<u>ZONE</u> III	<u>ZONE</u> IV	<u>ZONE</u> V	<u>ZONE</u> VI
(Length Overall)	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
1460 - 1479	2,064	2,218	2,583	3,560	4,793	5,581
1480 - 1499	2,127	2,284	2,660	3,666	4,935	5,749
1500 & Over	2,191	2,353	2,738	3,778	5,082	5,920

WSR 09-08-099
PROPOSED RULES
DEPARTMENT OF PERSONNEL

[Filed March 31, 2009, 9:45 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-46-070 Which employees are eligible to have their name placed on an employer's internal layoff list?, 357-46-080 Which employees are eligible to have their name placed on an employer's statewide layoff list?, 357-01-080 Class series/occupational category, 357-01-135 Elevation, 357-16-155 Can an eligible's name be removed from an applicant or candidate pool for a class or all classes in an occupational category/class series?, 357-16-157 Is an eligible's name removed from applicant and/or candidate pools when he/she is appointed to a position?, 357-46-035 Layoff option, 357-46-135 What causes an individual's name to be removed from a layoff list?, 357-46-055 How is a general government employee's seniority date determined?, 357-46-095 Who is eligible for the general government transition pool program?, 357-46-058 Is an employee who is rehired following layoff considered to have had a break in state service?, 357-58-477 Is a WMS employee who is rehired following layoff considered to have had a break in state service?, 357-58-305 When does a WMS employee attain permanent status?, 357-58-310 When may a WMS employee who transfers or voluntarily demotes be required to serve a WMS review period?, 357-46-110 Must employees who are appointed to a position through the layoff process serve any type of review period?, 357-46-120 What are the employer's obligations when the employer requires a transition review period?, 357-31-355 How does leave without pay affect the duration of an employee's probationary period, or trial service period or transition review period?, 357-46-067 What is an employee's status during temporary layoff?, and 357-01-215 Occupational category/class series.

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on May 14, 2009, at 8:30 a.m.

Date of Intended Adoption: May 14, 2009.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 7, 2009. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 7, 2009, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rule changes is to clarify layoff rights of Washington general service and Washington management service (WMS) employees. The rule changes are in regard to layoff list eligibility, general government transition pool program eligibility, calculation of part-time employees' seniority dates, WMS rehire from layoff lists, temporary layoff, and WMS review periods. In addition, these proposed changes will eliminate any reference to the term "occupational category" in Title 357 WAC and replace it with "class series."

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.

April 1 [March 31], 2009

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-070 Which employees are eligible to have their name placed on an employer's internal layoff list? (1) Permanent employees of the employer who satisfy the following criteria must have their name placed on the employer's internal layoff list if the employee exercises this option within the two-year eligibility period:

(a) **Employees who are laid off or have been notified in writing by the employer that they are scheduled to be laid off** are eligible to be on the internal layoff list for classes in which they held permanent status during the current period of unbroken service at the same or lower salary range and lower classes in the same (~~occupational category/class series~~) class series. Permanent status is not required for the

lower classes in the ~~((occupational category/class series)) class series~~. For purposes of this subsection "employees" includes Washington management service (WMS) employees who are laid off or have been notified by the employer that they are scheduled to be laid off and who have held permanent status in Washington general service during the current period of unbroken service. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff.

(b) **Employees who accept a voluntary demotion in lieu of layoff** are eligible to be on the internal layoff list for the class from which they demoted and classes at that salary range and lower salary ranges in which the employee held permanent status during the current period of unbroken service and lower classes in the same ~~((occupational category)) class series~~. Permanent status is not required for the lower classes in the ~~((occupational category)) class series~~. Washington management service (WMS) employees who accept a voluntary demotion in lieu of layoff are eligible to be on the internal layoff list for classes in which they held permanent status during the current period of unbroken service. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of the demotion.

(c) **Employees who accepted less than comparable positions** as defined by the employer's layoff procedure are eligible to be on the internal layoff list for classes in which they held permanent status at the same or lower salary range and lower classes in the same ~~((occupational category)) class series~~. Permanent status is not required for the lower classes in the ~~((occupational category)) class series~~.

(d) **Employees who have not successfully completed a trial service period and are placed in a nonpermanent position following reversion** are eligible to be on the internal layoff list for classes in which the employee previously held permanent status during the current period of unbroken service.

(e) **Employees who remain in a position reallocated to a lower salary range** are eligible to be on the internal layoff list for the class the employee held permanent status in prior to the reallocation.

(2) Employees who have been demoted for cause from a class are **not** eligible to be on the internal layoff list for that class.

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-080 Which employees are eligible to have their name placed on an employer's statewide layoff list? (1) Permanent employees who satisfy the following criteria must have their name placed on the statewide layoff list for other employers if the employee exercises this option within the two-year eligibility period:

(a) Employees who are laid off or notified in writing by the employer that they are scheduled to be laid off are eligible to be on the statewide layoff list for classes in which they held permanent status during the current period of unbroken service at the same or lower salary range and lower classes in the

same ~~((occupational category/class series)) class series~~. Permanent status is not required in the lower classes in the ~~((occupational category/class series)) class series~~. For purposes of this subsection "employees" includes Washington management service (WMS) employees who are laid off or have been notified by the employer that they are scheduled to be laid off and who have held permanent status in Washington general service during the current period of unbroken service. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of layoff or notification of layoff.

(b) Employees who accept a voluntary demotion in-lieu of layoff are eligible to be on the statewide layoff list for the class from which they demoted and classes at that salary range and lower salary ranges in which the employees held permanent status and lower classes in the same ~~((occupational category/class series)) class series~~. Permanent status is not required for the lower classes in the ~~((occupational category/class series)) class series~~. Washington management service (WMS) employees who accept a voluntary demotion in lieu of layoff are eligible to be on the statewide layoff list for classes in which they held permanent status during the current period of unbroken service. WMS employees only have layoff list rights to classes which the highest step of the salary range is equal to or below the WMS salary at the time of the demotion.

(c) Employees who accepted less-than-comparable positions at the time of layoff are eligible to be on the statewide layoff list for classes in which they held permanent status at the current or lower salary range and lower classes in the same ~~((occupational category/class series)) class series~~. Permanent status is not required for the lower classes in the ~~((occupational category/class series)) class series~~.

(2) Employees who have been demoted for cause from a class are **not** eligible to be on the statewide layoff list for that class.

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-080 ~~((Class series/occupational category)) Class series~~. A grouping of job functions having similar purpose and knowledge requirements~~((-))~~, but different levels of difficulty and responsibility.

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-135 Elevation. An employer-initiated action that moves an employee to a position in either:

(1) A higher class in which the employee held permanent status prior to a demotion; or

(2) A class in the same ~~((class series/occupational category)) class series~~ which is between the current class and the class from which the employee demoted.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-155 Can an eligible's name be removed from an applicant or candidate pool for a class or all

classes in ~~((an occupational category/class series))~~ a class series? An employer or the department may disqualify an individual by removing the individual's name from an applicant and/or candidate pool for a class or all classes in ~~((an occupational category/class series))~~ a class series at anytime for good and sufficient reason.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

WAC 357-16-157 Is an eligible's name removed from applicant and/or candidate pools when he/she is appointed to a position? An eligible's name is removed from the applicant and/or candidate pool for the class to which he/she is appointed and all lower classes in the same ~~((class series/occupational category))~~ class series.

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-035 Layoff option. (1) What option does a permanent employee have to take a position when the employee is scheduled for layoff?

Within the layoff unit, a permanent employee scheduled for layoff must be offered the option to take a position, if available, that meets the following criteria:

(a) The position is allocated to the class in which the employee holds permanent status at the time of the layoff. If no option to a position in the current class is available, the employee's option is to a position in a class in which the employee has held permanent status that is at the same salary range. If the employee has no option to take a position at the same salary range, the employee must be given an opportunity to take a position in a lower class in ~~((an occupational category/class series))~~ a class series in which the employee has held permanent status, in descending salary order. The employee does not have to have held permanent status in the lower class in order to be offered the option to take a position in the class.

(b) The position is comparable to the employee's current position as defined by the employer's layoff procedure.

(c) The employee satisfies the competencies and other position requirements.

(d) The position is funded and vacant, or if no vacant funded position is available, the position is occupied by the employee with the lowest employment retention rating.

(2) What if the employee has no option under subsection 1?

(a) If a permanent employee has no option available under subsection (1) of this section, the employer must determine if there is an available position in the layoff unit to offer the employee in lieu of separation that meets the following criteria:

(i) The position is at the same or lower salary range maximum as the position from which the employee is being laid off ~~((from))~~;

(ii) The position is vacant and less than comparable or held by a probationary employee or an employee in a nonpermanent appointment; and

(iii) The position is one for which the employee meets the competencies and other position requirements.

(b) If more than one qualifying position is available, the position with the highest salary range maximum is the one that must be offered.

(3) What happens when a class in which the employee previously held permanent status has been revised or abolished?

If a class in which an employee has previously held permanent status has been revised or abolished, the employer shall determine the closest matching class to offer as a layoff option. The closest matching class must be at the same or lower salary range maximum as the class from which the employee is being laid off.

AMENDATORY SECTION (Amending WSR 06-15-064, filed 7/13/06, effective 8/14/06)

WAC 357-46-135 What causes an individual's name to be removed from a layoff list? (1) An individual's name **must** be removed from an internal layoff list or statewide layoff list at the request of the individual or upon an employee's retirement, resignation, expiration of eligibility or dismissal from the employer.

(2) An individual's name **may** be removed from the internal and/or statewide layoff list for a class when:

(a) The individual is appointed to a permanent position in the class. The individual may also be removed from the internal and/or statewide layoff list for any classes with a lower salary range maximum in that ~~((class series/occupational category))~~ class series.

(b) The individual is appointed to a permanent position in a class with a higher salary range maximum in a different ~~((class series/occupational category))~~ class series.

(c) The individual has been certified from the layoff list and waives consideration for a position in the class three times.

(d) The employer determines good and sufficient reason exists.

AMENDATORY SECTION (Amending WSR 05-08-135, filed 4/6/05, effective 7/1/05)

WAC 357-46-055 How is a general government employee's seniority date determined? (1) For a full-time general government employee, the seniority date is the employee's most recent date of hire into state service as adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:

(a) Military leave as provided in WAC 357-31-370;

(b) Compensable work-related injury or illness leave;

(c) Government service leave not to exceed two years and one month;

(d) Educational leave, contingent upon successful completion of the coursework; and/or

(e) Reducing the effects of layoff.

(f) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's seniority date must be moved forward in an amount equal to the number of calendar days on leave without pay.

(2) For a part-time general government employee, the seniority date is calculated by determining the number of actual hours worked and/or in paid status((-)), excluding compensatory time off. Actual hours worked includes overtime hours regardless of whether or not the employee receives monetary payment or compensatory time for the hours worked. Time spent in leave without pay status is not credited unless the leave without pay is taken for:

- (a) Military leave as provided in WAC 357-31-370;
- (b) Compensable work-related injury or illness leave;
- (c) Government service leave not to exceed two years and one month;
- (d) Educational leave, contingent upon successful completion of the coursework; and/or
- (e) Reducing the effects of layoff.

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 05-21-058, filed 10/13/05, effective 11/15/05)

WAC 357-46-095 Who is eligible for the general government transition pool program? The following individuals are eligible to participate in the general government transition pool program:

(1) All general government permanent employees separated by layoff or notified by their employer that they are at risk of layoff((;)). This includes Washington management service permanent employees who are separated by layoff or notified by their employer that they are at risk of layoff.

(2) All general government permanent employees who are reverted and not returned to a permanent position in the class in which the employee last held permanent status;

(3) Employees who are eligible to participate in the return-to-work initiative program in accordance with chapter 357-19 WAC;

(4) Permanent Washington management service employees who accept a position in Washington general service and are being voluntarily or involuntarily reverted during the trial service period;

(5) Former permanent classified general government employees who have submitted a written request for reemployment within two (2) years of disability separation and who have met the reemployment requirements of WAC 357-19-475;

(6) General government employee business unit members whose contract has expired or been terminated; and

(7) Permanent Washington management service employees who accept acting appointments and who do not return on the agreed upon date in accordance with WAC 357-58-275.

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 05-12-073, filed 5/27/05, effective 7/1/05)

WAC 357-46-058 Is an employee who is rehired following layoff considered to have had a break in state ser-

vice? (1) An employee laid off in accordance with the provisions of WAC 357-46-010 or WAC 357-58-445 is not considered to have had a break in continuous state service if within two years of separation the employee is appointed to a position:

(a) From a layoff list or the general government transition pool; or

(b) As a promotional candidate in accordance with the employer's promotional policy.

(2) Upon appointment, the employee is reinstated with the seniority and unbroken service the employee had at the time of layoff. For a general government employee, the time spent off the payroll due to layoff is treated like leave without pay and seniority and unbroken service dates must be adjusted in accordance with WAC 357-31-345 and 357-46-055 respectively.

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.

NEW SECTION

WAC 357-58-477 Is a WMS employee who is rehired following layoff considered to have had a break in state service? (1) An employee laid off in accordance with the provisions of WAC 357-58-445 is not considered to have had a break in continuous state service if within two years of separation the employee is appointed to a position:

(a) From the general government transition pool; or

(b) As a promotional candidate in accordance with the employer's promotional policy.

(2) Upon appointment, the employee is reinstated with the seniority and unbroken service the employee had at the time of layoff. Time spent off the payroll due to layoff is treated like leave without pay and seniority and unbroken service dates must be adjusted in accordance with WAC 357-31-345 and 357-46-055 respectively.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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

WAC 357-58-305 When does a WMS employee attain permanent status? Upon successful completion of the review period, the employee will attain permanent status in the position. If a review period is not required in Title 357 WAC and the employer chooses to not require a review period the employee will attain permanent status upon appointment.

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

WAC 357-58-310 When may a WMS employee (~~who transfers or voluntarily demotes~~) be required to serve a WMS review period? An appointing authority may require an employee who transfers, ~~((or))~~ voluntarily demotes, or accepts a layoff option to another WMS position to serve a review period.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

WAC 357-46-110 Must employees who are appointed to a position through the layoff process serve any type of review period? An employer may require a six-month transition review period when an employee is appointed to a position as a layoff option or is appointed from the internal or statewide layoff list or the general government transition pool. (See WAC 357-46-115 for exceptions to this rule.) The transition review period may be extended for leave without pay in accordance with WAC 357-31-355.

AMENDATORY SECTION (Amending WSR 04-18-114, filed 9/1/04, effective 7/1/05)

WAC 357-46-120 What are the employer's obligations when the employer requires a transition review period? (1) When an employer requires a transition review period (~~(is required for a position)~~), the employer must provide the employee with written notice of the transition review period.

(2) During the transition review period, the employer must provide the employee with instruction and/or training in the duties of the new position.

(3) For purposes of this rule, written notice may be provided using alternative methods such as e-mail, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 05-08-138, filed 4/6/05, effective 7/1/05)

WAC 357-31-355 How does leave without pay affect the duration of an employee's probationary period, ~~(or)~~ trial service period or transition review period? If an employee uses leave without pay for an entire workshift while serving a probationary period, ~~(or)~~ trial service period or transition review period, the probationary period, ~~(or)~~ trial service period or transition review period is extended by one work day for each workshift of leave without pay.

AMENDATORY SECTION (Amending WSR 05-12-074, filed 5/27/05, effective 7/1/05)

WAC 357-46-067 What is an employee's status during temporary layoff? (1) (~~(Hours not worked due to temporary layoff are not treated as leave without pay, therefore:)~~) The following applies during a temporary layoff:

(a) An employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff; ~~(and)~~

(b) An employee continues to accrue vacation and sick leave in accordance with chapter 357-31 WAC(-); and

(c) The duration of an employee's probationary period or trial service period shall not be extended for periods of time spent on temporary layoff.

(2) An employee(s) who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for his/her vacation leave balance; and

(c) Use of his/her accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds.

(3) If the temporary layoff was not due to lack of funds, an employer may allow an employee to use accrued vacation leave in lieu of temporary layoff.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-01-215	Occupational category/class series.
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WSR 09-08-100
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 31, 2009, 9:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-074.

Title of Rule and Other Identifying Information: WAC 181-78A-540 describes the standard for skills and knowledge of teachers with certification. New section WAC 181-78A-125 describes field placement agreements. WAC 181-78A-132 is a new section describing requirements for out-of-state institutions of higher education wishing to develop field placements within Washington state.

Hearing Location(s): Maple Hall Auditorium, 1st and Commerce Street, LaConner, Washington 98257, on May 20, 2009, at 8:30 a.m.

Date of Intended Adoption: May 20, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 16, 2009.

Assistance for Persons with Disabilities: Contact David Brenna by May 18, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule change removes the language "ethical practice" from required demonstrated skills and knowledge in WAC 181-78A-540.

New section WAC 181-78A-125 provides rules for educator preparation programs to establish and maintain field placement agreements with all Washington school districts. Agreements to include duties, qualifications, length of placement and authorizing signatures.

New section WAC 181-78A-132 provides rules for out-of-state institution developing field placements. Requirements include documentation of the institutions' regional status, state approval and, for programs offering degrees, higher

education coordinating board approval. Rules further require program description in applications, start date and enrollment projections. Rule includes data and demonstration of regional demand as well as Washington state school district support. The field experience program must be based on Washington state standards for educator preparation. Out-of-state programs must prepare and submit agreements per WAC 181-78A-125, report to the professional educator standards board (PESB) as required and the PESB is required to post information on field experience programs in Washington state developed under this section on their web site.

Reasons Supporting Proposal: Demonstrated skill and knowledge do not include ethical practice; issue of teacher conduct is addressed in WAC 181-87-005.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05-.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

March 25, 2009

David Brenna

Legislative and
Policy Coordinator

NEW SECTION

WAC 181-78A-125 Field placement agreements. All educator preparation programs approved by the professional educator standards board shall establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement.

Each field placement agreement shall include, but not be limited to:

- (1) Qualifications of the proposed site supervisor for each site and qualifications of each school's cooperating teacher/administrator;
- (2) Duties and responsibilities of site supervisor and cooperating teacher/administrator;
- (3) Anticipated length and nature of field experience;
- (4) Signatures from district representative.

NEW SECTION

WAC 181-78A-132 Programs approved in other states operating field experiences in Washington state. State approved preparation programs at a regionally accredited college or university in the professional field for which

certification is issued that wish to enroll candidates for certification or endorsement in a supervised field experience within Washington state shall comply with the following:

(1) Application for approval. Each institution must submit a proposal that addresses components adopted and published by the professional educator standards board, including:

- (a) Verification of regional accreditation;
- (b) Verification of state approval;
- (c) Verification of higher education coordinating board approval (if offering degree program);
- (d) Planned certification or endorsement program;
- (e) Proposed start date;
- (f) Projected enrollment;
- (g) Data indicating need for program related to geographic location or nature of program offered;
- (h) Indication of Washington school district support for program;
- (i) Explanation of means by which program will ensure candidates have formalized learning opportunities rooted in Washington state standards.

(2) Field placement agreements. Institutions must comply with requirements of WAC 181-78A-125.

(3) Annual data reporting.

(4) The professional educator standards board shall publish on its web site a list of those out-of-state programs approved to offer field experiences within Washington state.

(5) The professional educator standards board shall publish on its web site relevant program approval status information on the out-of-state program from the state in which the program is approved.

(6) Institutions will comply with applicable annual data reporting requirements requested by the professional educator standards board.

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

WAC 181-78A-540 Approval standard—Knowledge and skills. (1) **Teacher.** A successful candidate for the teacher professional certificate shall demonstrate:

(a) The knowledge and skills for effective teaching which ensure student learning by:

(i) Using instructional strategies that make learning meaningful and show positive impact on student learning;

(ii) Using a variety of assessment strategies and data to monitor and improve instruction;

(iii) Using appropriate classroom management principles, processes and practices to foster a safe positive, student-focused learning environment;

(iv) Designing and/or adapting challenging curriculum that is based on the diverse needs of each student;

(v) Demonstrating cultural sensitivity in teaching and in relationships with students, families, and community members;

(vi) Integrating technology into instruction and assessment; and

(vii) Informing, involving, and collaborating with families and community members as partners in each student's

educational process including using information about student achievement and performance.

(b) A successful candidate for the professional certificate shall demonstrate the knowledge and skills for professional development by:

(i) Evaluating the effects of his/her teaching through feedback and reflection;

(ii) Using professional standards and district criteria to assess professional performance, and plan and implement appropriate growth activities; and

(iii) Remaining current in subject area(s), theories, practice((s)) and research ((~~and ethical practice~~)).

(c) A successful candidate for the professional certificate shall demonstrate professional contributions to the improvement of the school, community, and the profession by:

(i) Advocating for curriculum, instruction, and learning environments that meet the diverse needs of each student;

(ii) Participating collaboratively in school improvement activities and contributing to collegial decision making.

(2) **Principal/program administrator.** A successful candidate for the principal/program administrator professional certificate shall demonstrate the knowledge and skills at the professional certificate benchmark levels for the six standards pursuant to WAC 181-78A-270 (2)(b).

(3) **Educational staff associate - school counselor, school psychologist, or school social worker.** A successful candidate for the ESA professional certificate shall demonstrate the knowledge and skills at the professional certificate benchmark levels for the standards in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).

Assistance for Persons with Disabilities: Contact David Brenna by May 18, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Permits participants in a certification assessment pilot to receive professional certification as a result of successfully completing the pilot and meeting criteria developed for the pilot.

Reasons Supporting Proposal: Responds to the development model for professional certification portfolio 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: David Brenna, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

March 25, 2009

David Brenna

Legislative and
Policy Coordinator

WSR 09-08-103

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed March 31, 2009, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-13-099.

Title of Rule and Other Identifying Information: WAC 181-79A-206 describes qualifications and experience for teachers for residency and professional certification. This rule change responds to (RCW 28A.410.220(2)) creating a pilot project for teacher portfolio assessment and grants professional certification to pilot participants if they have met the criteria of the assessment pilot and, therefore will not be required to attend a program.

Hearing Location(s): Maple Hall Auditorium, 1st and Commerce Street, LaConner, Washington 98257, on May 20, 2009, at 8:30 a.m.

Date of Intended Adoption: May 20, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 16, 2009.

AMENDATORY SECTION (Amending WSR 08-16-003, filed 7/23/08, effective 8/23/08)

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 portfolio evidence of assessment pilot participants who have not attended a program but received a "met criteria" on all entries submitted to the pilot assessment would receive the professional certificate and not be required to attend a program.

(d) Prior to January 1, 2010, candidates pursuing the professional certificate will submit a portfolio to the professional educator standards board approved professional certificate program.

~~((e))~~ (e) Between January 1, 2010, and September 1, 2011, candidates pursuing the professional certificate will have two options:

(i) Submit a portfolio for evaluation to the college or university professional certificate program. The college or university has until December 31, 2011, to verify completion.

(ii) Submit a portfolio for evaluation to the uniform and external portfolio of evidence assessment as administered by the professional educator standards board.

~~((f))~~ (f) After September 1, 2011, candidates pursuing the professional certificate must submit a portfolio for evaluation to the uniform and external portfolio of evidence assessment as administered by the professional educator standards board.

WSR 09-08-104
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 31, 2009, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-035.

Title of Rule and Other Identifying Information: Psychiatric ARNPs as providers of psychiatric services; WAC 296-20-071 Concurrent care, 296-21-270 Psychiatric services, and 296-23-241 Can advanced registered nurse practitioners independently perform the functions of an attending provider?

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501, on May 15, 2009, at 9:00 a.m.

Date of Intended Adoption: June 16, 2009.

Submit Written Comments to: Jami Lifka, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321, e-mail lifk235@lni.wa.gov, fax (360) 902-6315, by May 22, 2009.

Assistance for Persons with Disabilities: Contact office of information and assistance by May 1, 2009, TTY (360) 902-5797 or (360) 902-4941.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is being proposed in response to a petition for a rule change. The proposal is to allow psychiatric advanced registered nurse practitioners (ARNPs) to provide psychiatric services to injured workers. Currently only psychiatrists and psychologists can provide psychiatric services. The proposed amendments also clarify that concurrent care providers, like psychiatrists and psychiatric ARNPs, can prescribe medication while providing concurrent care. The effect of such a change is that workers will have better access to care for psychiatric services.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 51.04.020 and 51.04.030.

Statute Being Implemented: RCW 51.04.020 and 51.04.030.

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

Name of Proponent: Carla Weston, petitioner, private.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes to WAC 296-20-071, 296-21-270, and 296-23-241 will not impose any costs on businesses, therefore no small business economic impact statement is required.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes to WAC 296-20-071, 296-

21-270, and 296-23-241 will not impose any costs on businesses; therefore, no cost-benefit analysis is required.

March 31, 2009
Judy Schurke
Director

AMENDATORY SECTION (Amending Order 86-19, filed 2/28/86, effective 4/1/86)

WAC 296-20-071 Concurrent treatment. In some cases, treatment by more than one practitioner may be allowed. The department or self-insurer will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system and/or require specialty or multidisciplinary care.

When requesting consideration for concurrent treatment, the attending doctor must provide the department or self-insurer with the following:

The name, address, discipline, and specialty of all other practitioners assisting in the treatment of the injured worker and an outline of their responsibility in the case and an estimate of the length of the period of concurrent care.

When concurrent treatment is allowed, the department or self-insurer will recognize one primary attending (~~doctor~~) provider, who will be responsible for (~~prescribing all medications;~~) directing the over-all treatment program(=), including monitoring or prescribing medications when appropriate, providing copies of all reports and other data received from the involved practitioners and, in time loss cases, providing adequate certification evidence of the worker's inability to work. The concurrent care provider shall provide copies of all required reports to the attending provider as well as to the department or self-insurer.

The department or self-insurer will approve concurrent care on a case-by-case basis. Consideration will be given to all factors in the case including availability of providers in the worker's geographic location.

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-21-270 Psychiatric services. The following rule(s) supplements information contained in the fee schedules regarding coverage and reimbursement for psychiatric services.

Treatment of mental conditions to workers is to be goal directed, time limited, intensive, and limited to conditions caused or aggravated by the industrial condition. Psychiatric services to workers are limited to those provided by psychiatrists (~~and licensed~~), psychologists, and psychiatric advanced registered nurse practitioners and according to department policy. Psychiatrists and psychiatric advanced registered nurse practitioners may prescribe medications while providing concurrent care. For purposes of this rule, the term "psychiatric" refers to treatment by psychologists (~~as well as~~), psychiatric advanced registered nurse practitioners, and psychiatrists.

Initial evaluation, and subsequent treatment must be authorized by department staff, as outlined by department policy. The report of initial evaluation, including test results,

and treatment plan are to be sent to the worker's attending provider, as well as to the department or self-insurer. A copy of sixty-day narrative reports are to be sent to the department (~~is also to be sent~~) or self-insurer and to the attending provider.

All providers are bound by the medical aid rules in chapter 296-20 WAC. Reporting requirements are defined in chapter 296-20 WAC. In addition, the following are required: Testing results with scores, scales, and profiles; report of raw data sufficient to allow reassessment by a panel or independent medical examiner. Use of the current Diagnostic and Statistical Manual of the American Psychiatric Association axis format in the initial evaluation and sixty-day narrative reports, and explanation of the numerical scales are required.

A report to the department will contain, at least, the following elements:

Subjective complaints;

Objective observations;

Assessment of the worker's condition and goals accomplished; and

Plan of care.

The codes, reimbursement levels, and other policies for psychiatric services are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 08-04-094, filed 2/5/08, effective 2/22/08)

WAC 296-23-241 Can advanced registered nurse practitioners independently perform the functions of an attending provider? (1) Advanced registered nurse practitioners (ARNPs) may independently perform the functions of an attending provider under the Industrial Insurance Act, with the exception of rating permanent impairment. These functions are referenced in the medical aid rules as those of an attending or treating provider, and include, but are not limited to:

- Completing and signing the report of accident or provider's initial report, where applicable;
- Certifying time-loss compensation;
- Completing and submitting all required or requested reports;
- Referring workers for consultations;
- Performing consultations;
- Facilitating early return to work offered by and performed for the employer(s) of record;
- Doing all that is possible to expedite the vocational process, including making an estimate of the worker's physical or mental capacities that affect the worker's employability.

(2) Psychiatric advanced registered nurse practitioners can provide psychiatric services as defined in WAC 296-21-270.

(3) ARNPs can state whether a worker has permanent impairment, such as on the department's activity prescription form (APF). ARNPs cannot rate permanent impairment or perform independent medical examinations (IMEs).

~~((2) Advanced registered nurse practitioners cannot:~~

~~• Rate permanent impairment; or~~

~~• Perform independent medical examinations (IMEs).))~~

WSR 09-08-107
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 (Board of Boiler Rules)

[Filed March 31, 2009, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-078.

Title of Rule and Other Identifying Information: Board of boiler rules—Substantive, chapter 296-104 WAC.

Hearing Location(s): Department of Labor and Industries, 950 Broadway, Suite 200, Tacoma, WA, on May 6, 2009, at 10:00 a.m.

Date of Intended Adoption: May 27, 2009.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by 5:00 p.m. on May 6, 2009.

Assistance for Persons with Disabilities: Contact Sally Elliott by April 15, 2009, yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to make clarification and technical changes to the Board of boiler rules—Substantive, chapter 296-104 WAC, based on actions and requests of the board of boiler rules. The changes will:

- Reduces board meetings from five times a year to four and allows the department to set times, date and location of board meetings with board approval, as the department has access to meeting room calendars.
- Keep the requirements for rules interpretation but moves the procedure to the boiler web site.
- Establish rules for applying for Washington state specials and extension of inspection frequency.
- Amend the rule to conform with the adopted API-510 and the NBIC.
- Eliminate confusion of the term "agent."
- Remove conflict between rules and adopted code.
- Remove installation standards from construction codes.
- Remove International Building Code (IBC) requirement from the boiler rules.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.79.030, 70.79.040, 70.79.150, 70.79.290, 70.79.330, and 70.79.350.

Statute Being Implemented: Chapter 70.79 RCW.

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

Name of Proponent: Board of boiler rules, governmental.

Name of Agency Personnel Responsible for Drafting: Board of Boiler Rules, Tumwater, Washington, (360) 902-5270; Implementation and Enforcement: Linda Williamson, Tumwater, Washington, (360) 902-5270.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The board of boiler rules has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they

do not require a small business economic impact statement because the costs associated with the proposed rules will not place a more than minor impact on any business or contractor and/or they are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310(4)) from the small business economic impact requirements.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared because the costs associated with the proposed changes are exempted by law since the proposed changes are updating the rule for clarification (see RCW 19.85.025 referencing RCW 34.05.310(4) and 34.05.328 (5)(b)(vi)).

March 31, 2009

Steven E. Bacon, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 99-22-026, filed 10/26/99, effective 11/26/99)

WAC 296-104-015 Administration—When and where are the board meetings held? The board of boiler rules shall hold its regular meetings in ~~((January))~~ February, ~~((March,))~~ May, September and November of each year. The time, place, and date of each regular meeting shall be set by the ~~((chairman of the board))~~ department, approved by the board chair and published annually. Special meetings may be called by the chair.

AMENDATORY SECTION (Amending WSR 07-11-137, filed 5/22/07, effective 6/30/07)

WAC 296-104-018 Administration—How are rules interpreted and revised? Stakeholders ~~((may))~~ requests for clarifications and interpretations of these rules ~~((by contacting))~~ shall be made to the chief inspector in writing upon the form furnished by the chief inspector located on the boiler program web site. Interpretations will be brought to the board in the same manner if the inquirer is aggrieved by the interpretation of the chief inspector (RCW 70.79.360). ~~((The))~~ For board ~~((will consider written requests for interpretations and revisions to these definitions, rules, and regulations. Inquiries shall be limited to requests for interpretation of the rules or to proposed revisions to the existing rules and shall be submitted to the department of labor and industries forty five days prior to the board of boiler rules meeting date. The requests shall be in writing upon the form furnished by the chief inspector located on the boiler program web site. Requests not using the form must be in the following format:~~

(1) Scope. Identify a single rule or closely related rules that are in dispute.

(2) Background. State the purpose of the inquiry, which should be either to obtain an interpretation or to propose a revision to existing rules. Provide concise information needed for the board's understanding of the inquiry, including references to the WAC section as well as other code and/or standards paragraphs.

(3) Inquiry structure. Provide statements in a condensed and precise question format and, where appropriate, compose in such a way that "yes" or "no" (perhaps with provisos) would be an acceptable reply.

~~(4) Proposed reply. State what it is believed the rule requires. If in the inquirer's opinion a revision to the definitions, rules, and regulations is needed, recommended wording should be provided.~~

~~Inquiries shall be submitted by mail to:
Board of Boiler Rules
e/o Chief Inspector
Department of Labor & Industries
Boiler Section
P.O. Box 44410
Olympia, WA 98504-4410~~

~~or~~

~~Inquiries shall be submitted by delivery to:
Board of Boiler Rules
e/o Chief Inspector
Department of Labor & Industries
Boiler Section
7273 Linderson Way SW
Tumwater, WA 98501~~

~~or~~

~~Inquiries shall be submitted electronically to:
Board of Boiler Rules
e/o Chief Inspector
BoilerBoardInquires@mi.wa.gov)) consideration the form must be submitted to the department of labor and industries forty-five days prior to the board of boiler rules meeting date. Forms may also be requested by contacting the department.~~

NEW SECTION

WAC 296-104-019 Administration—How are Washington state specials and extensions of inspection frequencies for boilers and pressure vessels obtained? Stakeholders may request a Washington state special or an extension of inspection frequencies for boilers and pressure vessels by submitting a written request to the board of boiler rules. The request shall be in writing upon the appropriate form furnished by the chief inspector located on the boiler program web site. These requests shall be submitted to the department of labor and industries forty-five days prior to the board of boiler rules meeting date.

(1) Washington state specials may be granted for boilers and pressure vessels that meet the requirements of RCW 70.79.060, WAC 296-104-205, 296-104-210, and 296-104-220.

(2) Extension of inspection frequencies may be granted for boilers and pressure vessels that meet the requirements of RCW 70.79.240 and 70.79.260.

AMENDATORY SECTION (Amending WSR 02-23-036, filed 11/13/02, effective 12/14/02)

WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation? A "boiler and pressure vessel installation/reinstallation permit," as defined in WAC 296-104-010 shall be submitted by the owner or

~~((agent and)) designee on a form approved by the chief inspector.~~

AMENDATORY SECTION (Amending WSR 08-12-015, filed 5/27/08, effective 6/30/08)

WAC 296-104-100 Inspection—How often must boilers and unfired pressure vessels be inspected? In accordance with RCW 70.79.080, 70.79.090, and 70.79.240 the following inspection requirements shall apply:

(1) **Power boilers** shall be inspected:

(a) Externally while under pressure - Annually.

(b) Internally and externally while not under pressure - Annually, except as noted in the following paragraph.

A power boiler in a national board accredited owner-user inspection program may have the internal inspection intervals extended by the owner-user inspection organization to five years maximum under the following conditions:

(i) The boiler water treatment and specific chemical limits are prescribed and monitored by an individual or company that specializes in the water treatment field;

(ii) Nondestructive examination (NDE) is performed along with the internal inspections;

(iii) The boiler is monitored within a manned operating facility;

(iv) Inspection, maintenance, and water treatment records are maintained;

(v) There is sufficient inspection history for the boiler or a boiler in similar service to justify the increase in the inspection interval; and

(vi) This provision shall not apply to a black liquor recovery boiler or any boiler with an unsuitable corrosion rate, remaining life, and/or repair history.

(2) **Organic vapor boilers** shall be inspected:

(a) Externally while under pressure - Annually.

(b) Internally and externally while not under pressure - Biennially.

(3) **Low pressure heating boilers** shall be inspected:

(a) Externally while in operation and under pressure - Biennially.

(b) Where construction permits, internally while not under pressure. Also, as a minimum, an internal of their low water fuel cutoff(s) must be completed, where construction permits - Biennially.

(4) **Hot water heaters** shall be inspected:

(a) Externally - Biennially.

(b) Internally - None required.

(5) **Unfired pressure vessels** shall be inspected:

(a) Externally - Biennially.

(b) Internally:

(i) When subject to corrosion and construction permits - Biennially. Vessels in an owner-user inspection program may follow intervals established by the NBIC or API-510 ninth edition with addenda (~~provided nondestructive examination (NDE) is performed at the biennial external inspection~~)).

(ii) Pulp or paper dryer rolls may be inspected on a five-year basis in accordance with TAPPI TIP 0402-16 2001 edition, provided the owner has established a written inspection program accepted by the inspector that meets the minimum requirements of TAPPI TIP 0402-16 2001 edition.

(iii) Vessels not subject to corrosion do not require an internal.

AMENDATORY SECTION (Amending WSR 08-24-072, filed 12/1/08, effective 1/1/09)

WAC 296-104-200 Construction—What are the standards for new construction? The standards for new construction are:

(1) ASME Boiler and Pressure Vessel Code, 2007 edition, with addenda Sections I, III, IV, VIII, Division 1, 2, 3, X, XII;

(2) ASME PVHO-1 2007 Safety Standard for Pressure Vessels for Human Occupancy; and

(3) ~~((ASME CSD-1 Part CF 2004 edition with addenda; and~~

~~(4) NFPA 85 Boiler and Combustion Systems Hazards Code 2004 edition (for use with boilers with fuel input ratings of 12, 500,000 BTU/hr) or greater; and~~

~~(5)) Standards of construction approved by the chief inspector and meeting the National Board Criteria for Registration of Boilers, Pressure Vessels and Other Pressure Retaining Items.~~

These codes and standards may be used on or after the date of issue and become mandatory twelve months after adoption by the board as specified in RCW 70.79.050(2). ASME Code Cases may be approved for use when accepted by the chief inspector. The board recognizes that the ASME Code states that new editions of the code become mandatory on issue and that subsequent addenda become mandatory six months after the date of issue. For nuclear systems, components and parts the time period for addenda becoming mandatory is defined in the Code of Federal Regulations.

AMENDATORY SECTION (Amending WSR 01-24-061, filed 11/30/01, effective 12/31/01)

WAC 296-104-205 Construction—What are the requirements for nonstandard new construction? Those boilers and unfired pressure vessels that are exempted by the codes adopted in WAC 296-104-200 due to volume, temperature or pressure requirements, and are not to be constructed to those codes, must be certified to a nationally recognized testing agency or constructed to WAC 296-104-230. See WAC ~~((296-104-307))~~ 296-104-316 for safety pressure relief devices.

Other boilers and unfired pressure vessels that are not to be constructed to the codes adopted in WAC 296-104-200 may be treated as special designs at the discretion of the board. Nonstandard construction shall not be permitted to avoid standard construction.

AMENDATORY SECTION (Amending WSR 02-23-036, filed 11/13/02, effective 12/14/02)

WAC 296-104-273 Installation—What inspections are required for reinstalled standard boilers or unfired pressure vessels? When a stationary standard boiler or unfired pressure vessel is moved and reinstalled it must be inspected and documented on the inspection report by an inspector. The following will be required:

~~(1) ((The fittings and appliances must comply with the latest codes adopted in WAC 296-104-200.~~

~~(2))~~ An installation permit must be submitted in accordance with WAC 296-104-020.

~~(2) The fittings and appliances must comply with the latest codes adopted in WAC 296-104-200. For automatically fired boilers, fuel controls and other limit devices as listed in WAC 296-104-303 shall be provided.~~

~~(3) For any boiler or unfired pressure vessel not currently registered with the department, the following are required ((to be documented and submitted)) unless waived by the inspector:~~

~~(a) A hydrostatic or pressure test ((up to 150% of the maximum allowable working pressure, MAWP)) as prescribed in the original code of construction.~~

~~(b) An internal inspection.~~

~~(c) An operational test.~~

~~(d) Any repairs deemed necessary.~~

~~(e) A complete history of inspection, operation and repairs/alterations.~~

~~((4) The following are required unless waived by the inspector:~~

~~(a))~~ ~~(f)~~ Additional examination or nondestructive testing.

~~((b))~~ ~~(g)~~ A written evaluation by a professional engineer knowledgeable with boilers and pressure vessels, an ASME certificateholder, or a National Board R certificateholder.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-104-310

Installation—How many exits are required in boiler rooms?

WSR 09-08-111

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed March 31, 2009, 1:50 p.m.]

WAC 388-448-0030 and 388-448-0040, proposed by the department of social and health services in WSR 08-19-044 appearing in issue 08-19 of the State Register, which was distributed on October 1, 2008, 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 09-08-112
WITHDRAWAL OF PROPOSED RULES
WASHINGTON STATE PATROL
 (By the Code Reviser's Office)
 [Filed March 31, 2009, 1:51 p.m.]

WAC 446-65-040, proposed by the Washington state patrol in WSR 08-19-076 appearing in issue 08-19 of the State Register, which was distributed on October 1, 2008, 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 09-08-113
WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION
 (By the Code Reviser's Office)
 [Filed March 31, 2009, 1:52 p.m.]

WAC 230-15-050, proposed by the gambling commission in WSR 08-19-097 appearing in issue 08-19 of the State Register, which was distributed on October 1, 2008, 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 09-08-114
PROPOSED RULES
DEPARTMENT OF LICENSING
 [Filed March 31, 2009, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-24-035.

Title of Rule and Other Identifying Information: Commercial driver's license—Serious traffic violation—Definition.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on May 5, 2009, at 3:00 p.m.

Date of Intended Adoption: May 6, 2009.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by May 4, 2009.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by May 4, 2009, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 308-100-130(3) to update the definition of "serious traffic violation" for commercial driver's license purposes to delete references to sections of statute that requires stops at railroad

grade crossings. These offenses are now covered in a separate section of statute, RCW 46.25.090(8).

Reasons Supporting Proposal: A recent federal audit of the state's commercial driver's license program determined that including these offenses in the definition of "serious traffic violation" constituted potential noncompliance with federal regulations.

Statutory Authority for Adoption: RCW 46.25.010, 46.25.140, and 46.01.110.

Statute Being Implemented: RCW 46.25.010.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Becky Loomis, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

March 30, 2009

Becky Loomis
 Assistant Director

AMENDATORY SECTION (Amending WSR 00-18-068, filed 9/1/00)

WAC 308-100-130 Serious traffic violations. In addition to the violations enumerated in RCW 46.25.010(16), "Serious traffic violation" shall include:

(1) Negligent driving in the first or second degree, as defined by RCW 46.61.5249 or 46.61.525;

(2) Following too closely, as defined by RCW 46.61.145;

(3) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, (~~46.61.340, 46.61.345, 46.61.350,~~) 46.61.365, 46.61.370, or 46.61.375;

(4) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;

(5) Speed too fast for conditions, as defined by RCW 46.61.400;

(6) Improper lane change or travel, as defined by RCW 46.61.140; and

(7) Improper or erratic lane changes, including:

(a) Improper overtaking on the right, as defined by RCW 46.61.115;

(b) Improper overtaking on the left, as defined by RCW 46.61.120; and

(c) Improper driving to left of center of roadway, as defined by RCW 46.61.125.

WSR 09-08-117
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed March 31, 2009, 5:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-072.

Title of Rule and Other Identifying Information: The department is amending WAC 388-502-0150 Time limits for providers to bill MAA, 388-550-2800 Payment methods and limits—Inpatient hospital services for medicaid and state children's health insurance program (SCHIP) clients, 388-550-3000 Payment method—Diagnosis related groups (DRG), 388-550-3010 Payment method—Per diem payment, 388-550-3020 Payment method—Bariatric surgery—Per case payment, 388-550-3460 Payment method—Per diem rate, 388-550-3900 Payment method—Bordering city hospitals and critical border hospitals, and 388-550-4000 Payment method—Emergency services—Out-of-state hospitals.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 26, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 27, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 26, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 12, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes update and clarify hospital-related and provider-related sections and are intended to address the anticipated levels of funding from the legislature, inform providers of program changes, and clarify and update current language. These rules:

- Add language putting providers on notice that the department will make adjustments to existing inpatient hospital rates and/or payment methods, by applying an "inpatient adjustment factor," when directed by the legislature to achieve targeted budget expenditure levels;
- Add language regarding the department's intent to apply the inpatient adjustment factor in a proportional manner across the inpatient hospital rates and payment methods;
- Add language that makes a delivery by cesarean section without complications and comorbidities payable at the same rate as a vaginal birth with complicated diagnosis;

- Expand the types of facilities and/or programs to which an acute care hospital or distinct unit can transfer an eligible client and receive a prorated diagnosis related group (DRG) payment from the department;
- Add clarifying language that the department uses the per diem payment method to pay for hospital stays that have insufficient data available to determine stable relative weights and for other specified specialty services;
- Add language that the department may adjust the DRG conversion factor when directed by the legislature to achieve budgetary targets;
- Add language that the department may adjust the per diem rate when directed by the legislature to achieve budgetary targets;
- Add language that the department may adjust a per case payment when directed by the legislature to achieve budgetary targets;
- Put in rule how per diem rates are determined for chronic pain services;
- Remove "emergency services" from the title of WAC 388-550-4000 and clarify that the section applies to both emergency and nonemergency services provided by out-of-state hospitals;
- Add language that the department may adjust the outlier threshold or the percentages of outlier adjustment factors when directed by the legislature to achieve budgetary targets;
- Reduce the total period allowed for resubmission or modification of a claim, other than a prescription drug or major trauma claim, from thirty-six months to twenty-four months from the date of service, effective with dates of services or admission on and after July 1, 2009;
- Add language specifying a three-hundred sixty-five-day limit for resubmission or modification of a claim for major trauma services, consistent with the limit set in WAC 388-550-5450 and 388-531-2000; and
- Update, clarify, and rearrange current language for improved readability.

Reasons Supporting Proposal: The department must meet the legislature's targeted budget expenditure levels for payment of hospital and hospital-related services provided to medical assistance clients.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

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

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45505, Olympia WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Carolyn Adams, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1854.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These 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 Carolyn Adams, Health and Recovery Services Administration, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1854, fax (360) 753-9152, e-mail adamscr@dshs.wa.gov.

March 30, 2009
Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-09 issue of the Register.

WSR 09-08-118
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed March 31, 2009, 5:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-072.

Title of Rule and Other Identifying Information: Amending WAC 388-550-3600 Diagnosis-related group (DRG) payment—Hospital transfers, 388-550-3700 DRG high-cost and low-cost outliers, and new system DRG and per diem high outliers, 388-550-4500 Payment method—Inpatient RCC rate, administrative day rate, hospital outpatient rate, and swing bed rate, 388-550-7050 OPPS definitions, 388-550-7100 OPPS—Exempt hospitals, 388-550-7500 OPPS conversion factor, and 388-550-7600 OPPS payment calculation; and new sections WAC 388-550-4550 Administrative day rate and swing bed day rate and 388-550-7450 OPPS budget target adjustor.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 26, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 27, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 26, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 12, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes update and clarify hospital-related sections and are intended to address the anticipated levels of funding from the

legislature, inform providers of program changes, and clarify and update current language. These rules:

- Update and clarify how the department pays a hospital when an acute care hospital or distinct unit transfers a client to another acute care hospital or distinct unit, or when a client transfers from an acute care hospital or distinct unit to another acute care hospital or distinct unit or other places as identified in the rule;
- Remove "neonatal" from the list of DRG service categories for claims that group to a medical, surgical, or burn diagnosis related services (DRG) category; remove "prepay" from "retrospective prepay utilization review" and clarify that the department may perform these reviews;
- Define "outpatient adjustment factor" and add that the inpatient adjustment factor does not apply to hospitals paid under the certified public expenditure (CPE) payment method, except to payments for repriced claims adjusted according to WAC 388-550-4670 (2)(a)(ii); update and clarify how the department calculates and uses the ratio of costs-to-charges (RCC) payment method to pay inpatient hospital claims;
- Remove language for "administrative day rate and swing bed rate" from WAC 388-550-4500 and place it into a new section;
- Add language that the department may change the method for calculating OPPS rates to achieve the legislature's targeted expenditure levels for outpatient hospital services;
- Add language that the legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the department in the Biennial Appropriations Act;
- Update the definitions for "budget target adjustor," outpatient code editor (OCE), and "outpatient prospective payment system (OPPS) conversion factor";
- Add definitions for "nationwide rate," and "outpatient prospective payment system (OPPS) rate";
- Add language that incorporates into rule which hospitals are no longer exempted from the outpatient prospective payment system (OPPS) method and that the department pays all covered outpatient hospital services, except for those provided in critical access hospitals (CAHs), under the OPPS methodology;
- Add a new section "OPPS budget target adjustor" that describes the budget target adjustor and how the department calculates the OPPS budget target adjustor;
- Clarify how the department calculates the hospital-specific OPPS rates;
- Add language that the department may change the method for calculating OPPS payments to achieve the legislature's targeted expenditure levels; and
- Update and clarify current language for improved readability.

Reasons Supporting Proposal: The department must meet the legislature's targeted budget expenditure levels for payment of hospital and hospital-related services provided to medical assistance clients.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, and 74.09.500.

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

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45505, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Carolyn Adams, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1854.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These 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 Carolyn Adams, Health and Recovery Services Administration, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1854, fax (360) 753-9152, e-mail adamsr@dshs.wa.gov.

March 30, 2009
Stephanie E. Schiller
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-09 issue of the Register.

WSR 09-08-119
PROPOSED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed April 1, 2009, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-158.

Title of Rule and Other Identifying Information: WAC 246-817-510 Definitions for WAC 246-817-501 through 246-817-570, adding definition of volunteer dental assistant providing services in a charitable dental clinic.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 152/152 [153], Tumwater, WA 98501, on June 5, 2009, at 8:00 a.m.

Date of Intended Adoption: June 5, 2009.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by May 29, 2009.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by May 29, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will provide a definition of volunteer dental assistant provid-

ing services in a charitable dental clinic. The proposed rule will define a volunteer dental assistant who is exempt from registration requirements.

Reasons Supporting Proposal: HB 3088 (chapter 150, Laws of 2008) creates an exemption from dental assistant registration for volunteer dental assistants providing services under supervision of a licensed dentist in a charitable dental clinic. A definition of volunteer dental assistant was necessary to clearly distinguish who would meet this definition.

Statutory Authority for Adoption: RCW 18.32.0365, 18.260.120, and 18.260.110.

Statute Being Implemented: RCW 18.260.110.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jennifer Santiago, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

March 31, 2009
Jennifer Santiago
Program Manager
Dental Quality
Assurance Commission

AMENDATORY SECTION (Amending WSR 08-14-010, filed 6/19/08, effective 7/1/08)

WAC 246-817-510 Definitions for WAC 246-817-501 through 246-817-570. (1) **"Close supervision"** means that a licensed dentist whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. A dentist shall be physically present in the treatment facility while the procedures are performed. Close supervision does not require a dentist to be physically present in the operatory; however, an attending dentist must be in the treatment facility and be capable of responding immediately in the event of an emergency.

(2) **"Coronal polishing"** means a procedure limited to the removal of plaque and stain from exposed tooth surfaces, utilizing an appropriate instrument and polishing agent.

This procedure shall not be intended or interpreted as an oral prophylaxis as defined in WAC 246-817-510 a procedure specifically reserved to performance by a licensed dentist or dental hygienist. Coronal polishing may, however, be performed by dental assistants under close supervision as a portion of the oral prophylaxis. In all instances, however, a licensed dentist shall determine that the teeth need to be polished and are free of calculus or other extraneous material

prior to performance of coronal polishing by a dental assistant.

(3) **"Debridement at the periodontal surgical site"** means curettage or root planing after reflection of a flap by the supervising dentist. This does not include cutting of osseous tissues.

(4) **"Elevating soft tissues"** is defined as part of a surgical procedure involving the use of the periosteal elevator to raise flaps of soft tissues. Elevating soft tissue is not a separate and distinct procedure in and of itself.

(5) **"General supervision"** means supervision of dental procedures based on examination and diagnosis of the patient and subsequent instructions given by a licensed dentist but not requiring the physical presence of the supervising dentist in the treatment facility during the performance of those procedures.

(6) **"Incising"** is defined as part of the surgical procedure of which the end result is removal of oral tissue. Incising, or the making of an incision, is not a separate and distinct procedure in and of itself.

(7) **"Luxation"** is defined as an integral part of the surgical procedure of which the end result is extraction of a tooth. Luxation is not a distinct procedure in and of itself. It is the dislocation or displacement of a tooth or of the temporomandibular articulation.

(8) **"Oral prophylaxis"** means the preventive dental procedure of scaling and polishing which includes complete removal of calculus, soft deposits, plaque, stains and the smoothing of unattached tooth surfaces. The objective of this treatment shall be creation of an environment in which hard and soft tissues can be maintained in good health by the patient.

(9) **"Periodontal soft tissue curettage"** means the closed removal of tissue lining the periodontal pocket, not involving the reflection of a flap.

(10) **"Root planing"** means the process of instrumentation by which the unattached surfaces of the root are made smooth by the removal of calculus or deposits.

(11) **"Supportive services"** means services that are related to clinical functions in direct relationship to treating a patient.

(12) **"Suturing"** is defined as the readaption of soft tissue by use of stitches as a phase of an oral surgery procedure. Suturing is not a separate and distinct procedure in and of itself.

(13) **"Treatment facility"** means a dental office or connecting suite of offices, dental clinic, room or area with equipment to provide dental treatment, or the immediately adjacent rooms or areas. A treatment facility does not extend to any other area of a building in which the treatment facility is located.

(14) **"Noncredentialed person"** means a person who is not a dentist licensed under chapter 18.32 RCW; dental hygienist licensed under chapter 18.29 RCW; expanded function dental auxiliary licensed under chapter 18.260 RCW; or a dental assistant registered under chapter 18.260 RCW.

(15) "Volunteer dental assistant" means an individual who, without compensation, provides the supportive services set forth in WAC 246-817-520 in a charitable dental clinic.

WSR 09-08-125
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed April 1, 2009, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-034.

Title of Rule and Other Identifying Information: WAC 220-150-010 through 220-150-080, ballast water management.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on May 8-9, 2009, at 8:45 a.m.

Date of Intended Adoption: June 5, 2009.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, phone (360) 902-2930, fax (360) 902-2155, by May 1, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by May 1, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making replaces existing ballast water management rules found in WAC 220-77-090 and 220-77-095 with updated information and requirements as directed by E2SSB 5923 (chapter 350, Laws of 2007), Aquatic Invasive Species, which revised and added new ballast-water management statutes under chapter 77.120 RCW. WAC 220-77-090 and 220-77-095 will be repealed.

Reasons Supporting Proposal: The proposed rules do not require the creation of new infrastructure or other than minimal increases in services than currently exist. The rules will help to significantly reduce environmental impacts from nonindigenous-species discharges in the ballast water of vessels of three hundred gross tons or more, whether United States- or foreign-owned or operated.

Statutory Authority for Adoption: RCW 77.120.030, 77.120.040, 77.120.070, 77.12.047.

Statute Being Implemented: RCW 77.120.030, 77.120.-040, 77.120.070, 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: 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

Finding: One small business. A survey of twenty-one Washington state businesses with vessels regulated under these rules found on only one small business: B & N Fisheries (Appendix 1). Identification of these businesses was based on ownership of vessels that have filed ballast water

reporting forms with the department since 2004 and best efforts to only list those that are currently owned and operated independently from all other businesses. B & N Fisheries reported owning seven commercial fishing vessels that meet the minimum 300 gross tons requirement and that they all work out of Dutch Harbor, Alaska. Of the seven vessels, only four have made Washington port visits (three only once; one only twice) and discharged only minimal amounts of ballast water (Appendix 2).

Minimum three hundred gross ton criterion eliminates most small businesses. The minimum vessel size criterion established by the department in 2000, and similar to California regulations, indirectly appears to have nearly eliminated the impact of these regulations on Washington state small businesses that own vessels capable of discharging ballast water.

No regulatory differences for small businesses. Small businesses with vessels over three hundred gross tons must comply with the same regulations as those required by businesses with greater than fifty employees.

1. Description of the Business Reporting, Record-Keeping, and Other Compliance Requirements of the Proposed Rule: The proposed rules substantively change the rule format from the previous WAC 220-77-090 and 220-77-095. Many of the previous requirements have been modified to improve clarity of intent and process for compliance. Rule requirements are therefore divided into two groups: (a) Those that carry over from previous rules and do not substantively increase workload; and (b) new requirements necessary to meet statute directives. A rough estimate, by percentage of vessel arrivals (based on an average of 4,000 per year), is provided at the end of each bullet to show potentially affected vessels.

(a) Existing or Carry-over Requirements:

- **WAC 220-150-030 Reporting forms, waivers, safety exemptions, and recordkeeping.**
 - o Subsections (2) and (3), ballast water reporting form and request for reporting form waiver are consistent with previous rule requirements. (100%)
 - o Subsection (5), ballast water management plan is a one-time state requirement, but is already necessary by United States Coast Guard law. Replaces previous "Interim report for implementing 2007 ballast water exchange program" requirement. (100%)
- **WAC 220-150-033 Vessel inspections.**
 - o Vessel inspections by department clarifies requirements consistent with previous rule requirements. (5-10%)
- **WAC 220-150-040 Interim open sea exchange requirements.**
 - o Subsection (2), open sea exchange methodology is consistent with previous requirements for empty/refill and flow-through procedures. (100%)
 - o Subsection (3), open sea exchange areas are consistent with previous requirements (except (d) – see below). (100%)

- o Subsection (4), common water exemption is consistent with previous requirements. (100%)
 - o Subsection (5), safety exemptions is [are] consistent with previous requirements. (< 0.1%)
 - **WAC 220-150-060 Treatment notification and promising treatment waiver process.**
 - o Subsection (2), notification modifies existing one-time reporting requirement for vessels using treatment technologies. (100%)
 - o Subsection (3), waiver for promising-treatment technology use revises existing types of vessels that may apply and reduces many previous reporting and compliance requirements. (< 1%)
 - o Subsections (4) – (7), notification and waiver application form content, submission, acceptance, and conditions modify existing requirements. (100%)
 - **WAC 220-150-070 Ballast tank sediment.**
 - o Subsection (1), purpose clarifies requirements not to discharge ballast tank sediment or fouling organisms consistent with statute authority. (100%)
 - **WAC 220-150-080 Penalties and enforcement.**
 - o Subsection (1) – (5), clarifies existing requirements for compliance with notices of correction and notice of penalty consistent with statute authority. (100%)
- (b) New Requirements:**
- **WAC 220-150-030 Reporting forms, waivers, safety exemptions, and recordkeeping.**
 - o Subsection (4), vessels claiming safety exemptions provides: (b) Minor documentation requirements on established ballast water reporting form; (c) department review process to determine need for a compliance plan or alternative strategy; (d) a discharge authorization requirement; and (e) a safety exemption filing fee of \$500. (< 0.1%)
 - o Subsection (6), ballast water log or record book is state requirement, but is already in common practice and rules allow alternative means of recordkeeping to minimize any additional requirements. (100%)
 - **WAC 220-150-035 Vessels carrying high risk ballast water.**
 - o Subsection (3), provides delisting options for specified high risk vessels placed on list by the department. (< 10%)
 - **WAC 220-150-037 Temporary compliance plans and alternative strategies.**
 - o Temporary compliance plans and alternative strategies provide requirements for specific vessels as identified in subsections (7) or (8). (< 2%)
 - **WAC 220-150-040 Interim open sea exchange requirements.**
 - o Subsection (3)(d), pacific coast region definition requires only vessels originating from

coastal areas outside this region to go out two hundred miles to exchange; consistent with California. (< 1%)

- o Subsection (6), alternative discharge areas may be required in limited situations, but likely to benefit vessel operators from not having to go out fifty miles to conduct an open sea exchange. (< 1%)
- o Subsection (7), prohibited discharge areas is [are a] requirement to protect sensitive areas, but highly unlikely location for vessels to currently discharge ballast water. (< 1%)
- **WAC 220-150-043 Interim open sea exchange alternative.**
 - o Provides option to encourage use of treatment systems instead of conducting exchange. (< 10%)
- **WAC 220-150-070 Ballast tank sediment.**
 - o Subsection (2), ballast tank sediment removal options provides methods allowed for compliance. (< 10%)
 - o Subsection (3), reporting requirements part of WAC 220-150-030(6). (< 10%)
- **WAC 220-150-080 Penalties and enforcement.**
 - o Subsection (4), calculation and payment of civil penalties sets base penalties between \$2,000 and \$5,000 and provides protocols for increasing penalties up to \$27,500 per day of violation - increase from maximum \$5,000 prior to July 1, 2007. (1-5%)

2. Kinds of Professional Services That a Business Is Likely to Need in Order to Comply with Such Requirements:

- **Compliance plans.** A business MAY benefit from contracting with a marine engineer to rectify equipment limitation or failure issues in meeting exchange requirements for those circumstances.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:

- **No new reporting and record-keeping costs,** except for those that become listed as high risk or require compliance plans or alternative strategies if they cannot meet state regulations. (< 5%)
- **New fees for filing safety exemption.** The department must assess a minor \$500 fee on vessels claiming a safety exemption. Very low frequency (<0.1%) currently claiming a safety exemption.
- **No new required costs for equipment, supplies, or labor expected to meet regulations.** Vessel operators have option to retain, exchange, use exchange alternatives to meet regulations, or identify how they plan to meet requirements over time using compliance plans or alternative strategies.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue?

- **No new or minor impacts to sales or revenue expected.**

5. Cost of Compliance for the 10% of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.
- **Minimal reporting and record-keeping costs,** except for those that become listed as high risk or require compliance plans or alternative strategies if they cannot meet state regulations.
- **\$500 fee for safety exemptions,** minimal cost based on frequency 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:

- **Minimum three hundred gross tons criteria,** vessel size is an adequate criterion for reducing the impact on small businesses with vessels capable of discharging ballast water.
- **Ballast Water Work Group,** the department developed proposed rules in consultation with its Ballast Water Work Group, consisting of state and federal agencies, tribal governments, affected industries, environmental organizations, academia, and technical interests.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:

- **Ballast Water Work Group,** the department will continue to consult with the Ballast Water Work Group to minimize small business impacts.
- **Technical assistance,** the department will offer technical assistance to B & N Fisheries and any other future small business to help them meet state requirements as necessary.

8. A List of Industries (Small and Large Businesses) That Will Be Required to Comply with the Rule:

- **Cargo, tanker, bulker, passenger, large fishing* and other shipping industries.** *Only vessels equal to or over three hundred gross tons.

Appendix 1

List of all Washington state registered businesses with vessels regulated under chapter 77.120 RCW

	Owner	Address
1	Alaska Ocean (Totem Ocean Express, Inc.)	500 Alexander Avenue Tacoma, WA 98421
2	American Seafoods Co.	2025 1st Avenue, #900 Seattle, WA 98121
3	Arctic Fjord, Inc.	400 North 34th Sreet #306 Seattle, WA 98103
4	B & N Fisheries Co.*	1959 NW Dock Pl. #3000 Seattle, WA 98107
5	Clipper Seafoods	641 West Ewing Street Seattle, WA 98119-1528
6	Coastal Transportation Inc.	4025 13th Avenue West Seattle, WA 98119

Chapter 220-150 WAC

BALLAST WATER MANAGEMENT

NEW SECTION

WAC 220-150-010 Purpose, stakeholder consultation, and cooperative management. (1) Purpose.

(a) These rules apply to vessels as recognized under RCW 77.120.020. Owners or operators of vessels to which this chapter does not apply are encouraged to voluntarily comply to the extent possible.

(b) These rules are provided to fulfill the legislative general directives under chapter 77.120 RCW and the specific directives under RCW 77.120.030(3), "to ensure that the discharge of ballast water poses minimal risk of introducing nonindigenous species."

(c) As directed by statute and in response to scientific evidence gathered since the state ballast water management program was first established in 2000, the approach to meet this directive is to encourage vessel owners or operators to reduce the volume of ballast water discharged, phase-out the ballast water open sea exchange requirement, and replace open sea exchange with an effective ballast water discharge performance standard.

(d) The legislature, in recognizing the complexity, evolving science, and technological challenges of ballast water management, gave the department broad authority under RCW 77.120.030(3) and 77.120.040(5) to develop discharge standards that pose minimum risk of introducing non-indigenous species. To assure the legislature that this authority is applied in a transparent and accountable manner, the department met the three key conditions required by statute. First, the rules were developed in consultation with advisors from the regulated industries and potentially affected parties as required in RCW 77.120.040(5) and as identified in subsection (2) of this section. Second, the rules were developed in consideration of the extent to which the requirement for a discharge performance standard is technologically and practically feasible. Third, the rules were developed to complement, to the extent practical and appropriate, current ballast water management regulations of the United States Coast Guard (USCG), the International Maritime Organization (IMO), and the state of Oregon.

(e) In the absence of a national discharge performance standard, these rules were developed to complement, and promote consistency along the west coast in accordance with, the West Coast Governor's Agreement on Ocean Health 2008 Action Plan, Action 2.3, and the Puget Sound Partnership's 2008 Action Agenda, Priority A.5.2, Near-term Actions 1 and 2. When a national discharge standard is developed, the department will assess these rules for consistency, as practical and appropriate.

(2) **Ballast water work group consultation.** The department will establish the ballast water work group (BWWG) or a similar forum to advise the department on developing, revising, and implementing chapter 77.120 RCW and this chapter regarding ballast water management. The department, at a minimum, will invite the participation of shipping interests, ports, shellfish growers, fisheries, envi-

7	Conoco Phillips (Polar Tankers, Inc.)	P.O. Box 8 Ferndale, WA 98248
8	Crowley Marine Services	1102 Massachusetts Street Seattle, 98119
9	Foss Maritime Co.	660 West Ewing Street Seattle, WA 98119
10	Glacier Fish Company LLC	1200 Westlake Avenue North #900 Seattle, WA 98109
11	Icicle Vessel Holding	4019 21st Avenue West Seattle, WA 98199
12	Iquique	4257 24th Avenue West Seattle, WA 98199-1214
13	K-Sea, Pacific Division	2700 West Commodore Way Seattle, WA 98199
14	Northern Hawk LLC (Northern Hawk Partners LP)	1200 Market Pl Tower 2025 1st Avenue Seattle, WA 98121
15	NVLC Freight, LLC (Northland Services, Inc.)	P.O. Box 24527 Seattle, WA 98124
16	Olympic Tug and Barge, Inc.	P.O. Box 24006 Seattle, WA 98124
17	Phoenix Processor LP	111 West Harrison Seattle, WA 98119
18	Signature Seafoods	5517 Seaview Avenue N.W. Seattle, WA 98107
19	Totem Ocean Trailer Express	500 Alexander Avenue Tacoma, WA 98421
20	Trident Seafoods (Nor Quest Seafoods)	5303 Shiilshole Avenue N.W. Seattle, WA 98107
21	University of Washington	Box 1503 N.E. Boat Street Seattle, WA 98195

*WA small business with fifty or fewer employees

Appendix 2

B & N Fisheries Vessels and Discharge History
(Since December 2004)

Vessel Name	Vessel Size (Gross Tons)	Ballast Water Reporting History
Arctic Explorer	892	2006 - Discharged 286 m ³
Bristol Explorer	727	2006 - Discharged 238 m ³ 2008 - Discharged 238 m ³
Epic Explorer	338	No reports found
Intrepid Explorer	538	No reports found
Northwest Explorer	816	2006 - Discharged 577 m ³
Ocean Explorer	896	No reports found
Pacific Explorer	896	2007 - Discharged 346 m ³

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 Lori.preuss@dfw.wa.gov.

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

April 1, 2009
Lori Preuss
Rules Coordinator

ronmental interests, citizens who have knowledge of the issues, and appropriate governmental representatives, including the USCG and the tribes per RCW 77.120.040(5).

To assist the department in making every reasonable effort to protect state waters from introduction of nonindigenous species, the BWWG may advise the department on:

(a) Issues to bring forward to the state invasive species council;

(b) Developing and implementing the ballast water management plan;

(c) Providing science-based recommendations and technical information;

(d) Adjusting laws, rules, or policies if and when necessary or advisable;

(e) Enhancing the predictability and stability of the process so that stakeholders can anticipate and prepare for change; and

(f) Working with regional and national ballast water regulators to strive for a coordinated and integrated program.

(3) **Cooperative ballast water management.** The department communicates and cooperates with the USCG and other federal and state agencies to standardize regulations to the extent practical and appropriate, minimize duplication of efforts, and share information. The goal is to provide transparency and accountability in the regulatory process, protect state resources, and facilitate collaboration among federal and state agencies. The department also communicates and cooperates to the extent practical and appropriate with international ballast water management entities. Agencies that the department works with directly include:

(a) The Washington department of ecology. Pursuant to RCW 77.120.030(3), the department of fish and wildlife will consult and coordinate with the department of ecology on Clean Water Act issues related to ballast water management.

(b) The Washington department of health. The department of fish and wildlife will consult with the department of health on public health issues related to ballast water management.

(c) The Puget Sound partnership. Pursuant to chapter 90.71 RCW, the department will consult and coordinate with the Puget Sound partnership on biennial budget needs related to the ballast water program, cross-border coordination, policy, and research and monitoring needs to protect and restore Puget Sound by 2020.

(d) Tribes. Pursuant to RCW 77.120.040(5), the department of fish and wildlife will consult and coordinate with federally recognized Indian tribes in the state of Washington on ballast water management issues to assist in the protection of aquatic resources. The department will inform tribes of any ballast water management regulatory changes. The department also will notify tribes of any ballast water technologies as accepted under WAC 220-150-060 and supply the tribes with available supporting documentation.

(e) State of Oregon. Pursuant to RCW 77.120.040(5), the department will consult and coordinate with the state of Oregon on ballast water management in the Columbia River system. The department will strive to enter into cooperative management agreements with the state of Oregon to implement provisions of Washington, Oregon, and other appropriate federal ballast water laws. The agreements may include,

but are not limited to, arrangements for cooperative enforcement, inspection, research, and monitoring.

(f) United States Coast Guard (USCG). Pursuant to RCW 77.120.030(3) and 77.120.040 (5)(a), the department will strive to enter into cooperative management agreements with the USCG to implement ballast water management objectives. The agreements may include, but are not limited to, arrangements for cooperative enforcement, inspection, research, and monitoring.

(g) United States Environmental Protection Agency (EPA). The department, as practical and appropriate, will consult and coordinate with the EPA on Clean Water Act issues related to ballast water management.

(h) Pacific Coast states. Pursuant to RCW 77.120.040 (5)(a), the department will consult and coordinate with the Pacific Coast states of Alaska, California, Hawaii, and Oregon on ballast water issues. In general, this will be through the Pacific ballast water group or a similar cooperative forum.

(i) Canada. As practical and appropriate, the department will strive for consistency and cooperation with the Canadian government through the province of British Columbia or other appropriate venues to manage ballast water risks.

(j) International Maritime Organization (IMO). As practical and appropriate, the department will strive for consistency and cooperation with the IMO to manage ballast water risks.

(4) **Other state and federal laws.** Nothing in this chapter shall supersede more stringent state or federal regulations, including public health and Clean Water Act criteria. Nothing in these regulations negates the need to comply with other state and federal regulations regarding the management of ballast water or any other vessel-related discharges.

NEW SECTION

WAC 220-150-020 Definitions. (1) **In general.** The definitions herein are provided solely for the purposes of ballast water management unless otherwise noted. Nonindigenous species and ballast water management definitions from RCW 77.08.010 and 77.120.010 are included as noted to provide a comprehensive listing of terms used in this chapter.

(2) **"Ballast tank"** means any vessel tank or hold used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(3) **"Ballast water"** means any water and matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried. This includes matter suspended in such water per USCG regulations under Title 33 CFR, Part 151.1504.

(4) **"Ballast water capacity"** means the total volumetric capacity of any tanks, spaces, or compartments on a vessel used for carrying, loading or discharging ballast water, including any multiuse tank, space or compartment designed to allow carriage of ballast water.

(5) **"Ballast Water Reporting Form" or "reporting form"** means either a USCG or an IMO ballast water reporting form pursuant to USCG regulations under Title 33 CFR, Part 151.2045.

(6) "**Commission**" means the state fish and wildlife commission.

(7) "**Concurrent waters of the Columbia River**" means those waters of the Columbia River that coincide with the Washington-Oregon state boundary.

(8) "**Constructed**" means a stage of vessel construction wherein:

(a) The keel is laid;

(b) Construction identifiable with a specific vessel begins;

(c) Assembly of the vessel has commenced and comprises at least fifty tons or one percent of the estimated mass of all structural material, whichever is less; or

(d) The vessel undergoes a major conversion.

(9) "**Department**" means the Washington department of fish and wildlife.

(10) "**Detectable**" means a scientifically credible measurement as determined by the department, resulting in a mathematical count of aquatic organisms greater than zero or an approved measurement of a surrogate criterion, and assumes:

(a) Measurements reflect a specific point in time;

(b) Organisms may exist that are below detectable or reasonably credible limits;

(c) The term is temporal and likely to require adjustment as scientific methods improve in ability to measure the criteria;

(d) A reasonableness criteria also applies to the level of effort to find and enumerate organisms in large volumes of ballast water; and

(e) Measurements resulting in a mathematical count of zero are considered to have no detectable organisms.

(11) "**Exchange**" means to replace the water in a ballast tank using either flow through exchange, empty/refill exchange, or other exchange methodology recommended or required under USCG Title 33 CFR, Part 151.2035.

(12) "**Gross tons,**" "**GT,**" or "**GT ITC**" means a vessel's gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor convention, as required under USCG Navigation and Vessel Circular No. 11-93, CH. 3, Section 2. GT is the metric used on the USCG ballast water reporting form, used to qualify a "vessel" under this chapter, and is generally calculated differently than other tonnage metrics such as gross regulatory tons, gross registered tons (GRT), net tons, displacement, or deadweight. It is the vessel owner's or operator's responsibility to determine his or her vessel's applicability to this chapter if using alternative tonnage measurements, as there are no standard conversion metrics to GT.

(13) "**International Maritime Organization**" or "**IMO**" means a specialized agency of the United Nations with one hundred sixty-seven Member States and three Associate Members and based in the United Kingdom. Reference to IMO herein applies to its International Convention for the Control and Management of Ships' Ballast Water and Sediments adopted in 2004.

(14) "**Living organism**" means a whole or minimally damaged organism that exhibits signs of viability such as

energy, activity, reproductive ability, or function at the time of observation.

(15) "**Major conversion**" means a conversion of an existing vessel that:

(a) Changes its ballast water carrying capacity by fifteen percent or greater;

(b) Changes the vessel type;

(c) As determined by the department, is projected to prolong its life by ten years or more; or

(d) Results in modifications to its ballast water system other than component replacement-in-kind. Conversion of a vessel to meet the provisions of this chapter will not be deemed to constitute a major conversion.

(16) "**Nonindigenous species**" means any species or other viable biological material that enters an ecosystem beyond its natural range. This also includes the seeds, eggs, spores, and other biological material capable of reproducing that species, or any other viable biological material that enters an ecosystem beyond its natural range.

(17) "**Person**" means an individual, firm, public or private corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

(18) "**Port**" means a terminal or group of terminals or any place or facility that has been designated as a port by a USCG captain of the port. For purposes of this chapter, port may also mean a commonly associated anchorage or a common anchorage in the Columbia river if the next destination port is not known to the vessel owner or operator.

(19) "**Recognized marine trade association**" means those trade associations in Washington state that promote improved ballast water management practices by educating their members on the provisions of this chapter, participating in regional ballast water coordination through the Pacific ballast water group, assisting the department in the collection of ballast water exchange forms, and the monitoring of ballast water. This includes members of the Puget Sound marine committee for Puget Sound and the Columbia River Steamship Operators Association for the Columbia River or other marine trade association that meets the same criteria.

(20) "**Sediments**" means any matter settled out of ballast water within a vessel.

(21) "**Technical assistance**" means information or training provided by the department in a nonenforcement capacity on ballast water laws, rules, and compliance methods and technologies.

(22) "**Treatment**" means the mechanical, physical, chemical, and biological technology or processes used, either singularly or in combination, to remove, render harmless, or avoid the discharge of living organisms and pathogens within ballast water and sediment.

(23) "**Untreated ballast water**" means exchanged or unexchanged ballast water that has not undergone treatment.

(24) "**Vessel**" means a ship, boat, barge, or other floating craft of three hundred gross tons or more, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in RCW 77.120.020.

(25) "**Vessel owner**" or "**operator**" means the owner, operator, master, or person-in-charge of a vessel.

(26) "**Voyage**" means any transit by a vessel destined for any Washington port.

(27) "**Waters of the state**" means any surface waters, including internal waters contiguous to state shorelines, within the boundaries of the state.

NEW SECTION

WAC 220-150-030 Reporting forms, waivers, safety exemptions, and recordkeeping. (1) **Purpose.** These rules apply to all vessels subject to ballast water management provisions under chapter 77.120 RCW. The intent of the state's ballast water management program is to minimize the risk of introducing nonindigenous species from ballast water and ballast tank sediment into Washington state waters. Reporting and recordkeeping are designed to assess a vessel owner or operator's compliance with, and monitor the effectiveness of, these regulations as defined in RCW 77.120.030, 77.120-040, 77.120.070, and 77.120.100. Nothing in this section negates the need to comply with any other state or federal regulations.

(2) **Ballast water reporting form requirements.**

(a) In general. Vessel owners or operators shall file ballast water management information using a Ballast Water Reporting Form (reporting form) that is acceptable to the USCG and prior to entering waters of the state whether or not they intend to discharge ballast water. Refer to WAC 220-150-040 for interim exchange, WAC 220-150-043 for interim exchange alternative, and WAC 220-150-050 for discharge performance standard requirements. Once within waters of the state, vessel owners or operators shall file reporting forms for voyages between state ports. This is necessary for timely enforcement of regulations and to allow risk analysis by port. Vessel owners or operators who do not regularly discharge ballast water may apply for a reporting form waiver as directed in subsection (3) of this section.

Reporting forms will be used by the department to identify both random and high risk vessels for inspection and to monitor overall compliance, quantities, distribution, voyage patterns and other information associated with potential vessel-related introductions of nonindigenous species.

(b) Prior to entering waters of the state. At least twenty-four hours prior to entering waters of the state, vessel owners or operators must file a reporting form with the department. If filing twenty-four hours prior is not possible due to voyage distance or change in destination, vessel owners or operators must file at the time of first known or predictable Washington port visit. A vessel owner or operator filing a reporting form for a Columbia River visit and stating its destination as a state of Oregon port must file a new reporting form if its itinerary changes to a Washington port or for a subsequent voyage from an Oregon port to a Washington port. The reporting form should be completed according to the following instructions:

(i) The reporting form should only have information related to discharges expected into Washington state waters.

(ii) If submitting a USCG reporting form, it must be completed per USCG regulation under Title 33 CFR, Part 151.2041, for each port visit.

(iii) If submitting an IMO reporting form, it must be completed per USCG regulation under Title 33 CFR, Part 151.2045(11), and additional information must be included, showing the total number of tanks being discharged.

(c) Within waters of the state. After meeting the requirements of (b) of this subsection, a new reporting form must be filed by the vessel owner or operator for each subsequent port, if any, in waters of the state. Vessel owners or operators must file a new reporting form at least twenty-four hours prior to arrival at the next Washington port or at the time of first known or predictable port visit if filing twenty-four hours prior is not possible due to voyage distance or change in destination. A new reporting form does not need to be filed where:

(i) A vessel moves multiple times between an anchorage and the same port for which the discharge is accurately attributed on the reporting form; or

(ii) The ballast water or sediment to be discharged was taken up at the same port from where it originated within a single port visit and did not mix with ballast water or sediment from areas other than open sea waters.

(d) Amended reporting forms. Vessel owners or operators shall file an amended reporting form where there are information errors or where the results of actual operations are different from the information contained in their last filed reporting form under (b) or (c) of this subsection. An amended reporting form shall be filed at the time of first known or predictable change of destination, and immediately upon the completion of discharge operations resulting in changes to actual volume of ballast water discharged.

(e) Submission. Reporting forms must be submitted in a standard electronic format to the department by e-mail at ballastwater@dfw.wa.gov or, if e-mail is not possible, by fax to 360-902-2845. Reporting forms that cannot be opened electronically or are illegible may not be considered as received in a timely manner and requires filing a new reporting form. Vessel owners or operators who rely on a third party to collect and forward ballast water reporting forms are responsible for ensuring that the department receives the ballast water management information as required in this subsection.

(3) **Ballast Water Reporting Form waiver.**

(a) In general. Vessel owners or operators who do not, under normal operating conditions, discharge ballast water may request a reporting form waiver from the department. A waiver request form letter, as provided by the department, may be requested for multiple vessels under the authority of a single vessel owner or operator. The waiver request must be received by the department at least thirty days prior to a vessel entering Washington waters and does not release the vessel owners or operators from meeting other federal or state ballast water reporting laws.

(b) Contents. The waiver becomes effective upon department approval. The department will approve or deny approval of the request within thirty days of receipt. The letter must include the following information:

(i) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or USCG registry number), owner, agent, and vessel type(s);

(ii) A statement that the vessel owner or operator will not discharge ballast water into Washington state waters;

(iii) A statement that the vessel owner or operator will comply with the requirements in subsection (2) of this section if discharge becomes necessary;

(iv) A statement that the vessel owner or operator of the vessel(s) will file for a new waiver if there are any changes in the information required in this subsection; and

(v) The signature of the vessel owner or operator.

(c) Submission. Send the completed form to the department by e-mail to ballastwater@dfw.wa.gov or, if e-mail is not possible, by fax to 360-902-2845, or by U.S. mail to: WDFW, AIS Unit, 600 Capitol Way N., Olympia, Washington 98501-1090, USA. Incomplete forms will be returned and waiver approval denied until a completed form has been received.

(d) Availability. Vessel owners or operators shall maintain a copy of the waiver in the vessel's ballast water management plan.

(4) Vessels claiming safety exemptions.

(a) In general. Vessel owners or operators claiming a safety exemption under RCW 77.120.030(4) must file a reporting form and provide sufficient additional information for the department to evaluate the claim, determine whether an alternative exchange or emergency ballast water treatment strategy is warranted, and determine whether a temporary compliance plan is necessary to prevent or reduce the likelihood of future claims. The intent of these rules is to prevent or minimize the discharge of unexchanged or untreated ballast water.

(b) Reporting requirements. Vessel owners or operators claiming a safety exemption must notify the department of their intent to do so on the ballast water reporting form as required in subsection (2) 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." In addition:

(i) Vessel owners or operators are not required to request a safety exemption if the vessel does not intend to discharge unexchanged or untreated ballast water and the vessel owner or operator follows the reporting requirements under subsection (2) of this section.

(ii) Vessel owners or operators may rescind a safety exemption claim by filing an amended ballast water reporting form and notifying the department as required in subsection (2)(d) of this section.

(iii) Vessel owners or operators required to meet discharge performance standards under WAC 220-150-050 and claiming a safety exemption due to equipment failure must conduct an open sea exchange or provide evidence to establish why that was not possible.

(iv) The department will waive the twenty-four hour advance notification as required in subsection (2) of this section for circumstances where the vessel, crew or passengers are in imminent danger. In these situations, the vessel owner

or operator must file the ballast water reporting form at the earliest opportunity.

(c) Department review. The department will review safety exemption claims and determine whether a compliance plan and/or alternative strategy per WAC 220-150-037 is required to minimize potential discharge of future unexchanged ballast water until compliance with this section can be met. Reviews will be completed within sixty days of safety exemption notification on their ballast water reporting form.

(d) Discharge authorization requirement. Except where discharging is necessary to prevent jeopardy to the vessel, crew or passengers, the vessel owner or operator shall not discharge unexchanged or untreated ballast water without department authorization. The department will determine and require the vessel owner or operator to conduct one or more of the following actions:

(i) Hold its ballast water;

(ii) Conduct an emergency ballast water treatment response;

(iii) Discharge into a reception facility;

(iv) Discharge into specified alternative waters; or

(v) Discharge only the minimum amount necessary to complete a safe operation.

(e) Safety exemption filing fee. The department will assess a safety exemption filing fee of five hundred dollars for administrative costs to assess compliance, unless covered under WAC 220-150-037, or within the sixty-day notice period under WAC 220-150-037. Furthermore:

(i) Payment of the fee is due within thirty days after the date of the written notice by the department.

(ii) The fee is not a formal enforcement action, is not appealable, and is a public record.

(iii) The fee may be withdrawn if the vessel owner or operator files an amended report by the payment deadline stating that no ballast water or sediment was discharged into state waters.

(5) Ballast water management plan.

(a) In general. Vessel owners or operators shall develop, and maintain on board, a ballast water management plan that has been developed specifically for the vessel and that will allow those responsible for the plan's implementation to understand and follow the vessel's ballast water management strategy. The plans of unmanned barges may be kept on board the towing vessel or incorporated into the towing vessel's own plan.

The plan should detail safe and effective shipboard procedures for ballast water management, and the central elements of the plan should be the processes, equipment, and vessel safety measures used for implementing the vessel's ballast water management strategy and following the required ballast water management practices. Vessel owners and operators should seek assistance from their class societies, marine surveyors, or other appropriate marine services during the development of the plan.

(b) Contents. At a minimum, the plan should include:

(i) Detailed ballast water management safety procedures;

(ii) Actions for implementing the mandatory ballast water management requirements and practices;

(iii) Detailed fouling maintenance and sediment removal procedures for areas on the vessel where ballast water can be carried;

(iv) Identification of the designated officer(s) in charge of ensuring that the plan is properly implemented;

(v) Detailed reporting requirements and procedures for ports in Washington state where the vessel may visit; and

(vi) A translation of the plan into English if the ship's working language is another language.

(c) Training. The vessel owners or operators and appropriate crew must be trained in the application of the vessel's ballast water and sediment management strategies.

(d) Availability. Vessel owners or operators shall make the ballast water management plan readily available for examination by the department at all reasonable times. The vessel owner or operator shall readily transmit the management plan or any other specific information to the department regarding the vessel's ballast operations as the department may request.

(e) Alternative means of recordkeeping. The ballast water management plan may be an electronically recorded system or integrated into another management plan or system. At a minimum, any alternative method shall meet the provisions of this subsection.

(f) Alternative means of recordkeeping. The ballast water log or record book may be an electronically recorded system or integrated into another record book or system. At a minimum, any alternative method shall meet the provisions of this subsection.

(6) Ballast water log or record book.

(a) In general. Vessel owners or operators shall record all ballast water and sediment management operations in the vessel's ballast water log, record book, or other suitable documentation system. This information is used by the department to assess compliance, review ballast water and sediment management history, and recommend practices that can improve ballast water management compliance and efficiency.

(b) Content. Vessel owners or operators shall maintain a version of the ballast water log, record book, or other suitable documentation system in English on board the vessel that, at a minimum:

(i) Records each operation involving ballast water or sediment management;

(ii) Describes each such operation, including the location and circumstances of, and the reason for, the operation;

(iii) Records the exact time and position of the start and stop of ballast water exchange or treatment operations for each tank;

(iv) Describes the nature and circumstances of any situation under which any operation was conducted under a safety exemption set forth in subsection (4) of this section; and

(v) Records ballast water and sediment management training.

(c) Availability. Vessel owners or operators shall make the ballast water log or record book readily available for examination by the department at all reasonable times. The vessel owner or operator shall transmit such information to the department regarding the ballast operations of the vessel as the department may require.

(d) Retention period. The ballast water log or record book shall be retained on board the vessel for a minimum of two years after the date on which the last entry in the book is made.

(e) Required signatures. The department will require, at a minimum, that each completed page and each completed vessel exchange or treatment operation in the ballast water log or record book be signed and dated by the vessel owner or operator or responsible officer; and that such owner, operator, or responsible officer attests to the accuracy of the information provided and certifies compliance with the requirements of this subsection.

(f) Alternative means of recordkeeping. The ballast water log or record book may be an electronically recorded system or integrated into another record book or system. At a minimum, any alternative method shall meet the provisions of this subsection.

NEW SECTION

WAC 220-150-033 Vessel inspections. (1) In general.

Department employees shall have the right to board and inspect vessels, without advance notice, to provide technical assistance, assess compliance, and enforce the requirements of this chapter as provided in RCW 77.120.070, so long as such inspections are conducted in accordance with the standards set forth herein.

The department intends, as resources allow, to board between five and ten percent of all vessels arriving at Washington ports each year, with a priority for inspections of vessels carrying high risk ballast water as described in WAC 220-150-035. Multiple boardings of an individual vessel may occur throughout the year, depending on the vessel's risk and compliance history.

(2) **Conditions.** Department inspections shall be conducted under the following conditions:

(a) Authorized inspectors: Inspections shall be conducted only by department employees or contractors specifically authorized by the department to conduct such inspections.

(b) Time: Inspections may be conducted at any time, due to the twenty-four hour nature of the regulated industry. In general, the department will not unduly interrupt normal cargo operations of the vessel. However, the department may interrupt vessel cargo operations where facts indicate that the discharge of unexchanged or untreated ballast water or sediment is occurring or is likely imminent.

(c) Location: Inspections may be conducted when the vessel is at anchor within waters of the state or in port within waters of the state.

(d) Scope of inspection: The department inspector shall limit inspection of the vessel to those areas reasonably necessary to inspect management plans, logs, or other ballast water and sediment-related records required by these rules and maintained on board the vessel, and to areas in which ballast water or sediment is contained, pumped, or treated. Inspectors may examine records related to ballast water management plans, logs, or other ballast water and sediment-related records and make copies of such records.

(e) **Identification:** Department inspectors must have official identification, announce their presence and intent at the time of inspection, perform their duties in a safe and professional manner, and follow all appropriate ship safety requirements.

(f) **Vessel escort:** The vessel owner or operator will provide an employee to escort the department inspector to those areas of the vessel that are subject to inspection under these rules.

(g) **Safety:** Nothing in this section relieves the vessel owner or operator of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers.

(3) **Technical assistance.** Technical assistance is generally provided during every vessel boarding by a department ballast water inspector, but may also be the sole reason for a boarding. The purpose is to explain and provide details of state law to the officers and crew responsible for implementing the vessel's ballast water management plan. Based on the crew's familiarity with state law and ballast water management practices, the department inspector may provide a thorough overview or a brief update and be available to answer any questions they might have regarding the ballast management on board their specific vessel. The inspector will leave a state ballast water management information pamphlet with contact information on board so the vessel may contact the department directly to address any other questions that may come up regarding state requirements.

(4) **Ballast water management audit.** The department inspector may board a vessel and conduct an audit of its ballast water management documentation to verify compliance with state laws. An audit consists of reviewing the vessel's ballast water reporting form, management plan, and record book as required in this section. In addition, the inspector may request and review any other records that relate to ballast management operations, including: The Deck Log, GPS Log, Soundings Log, Stability Reports, Engine Room Log, and Oil Record Book. A vessel owner or operator who maintains a concise record of its ballast water management will expedite the audit. The department will provide a copy of a vessel audit checklist and findings to the vessel owner or operator prior to leaving the vessel.

(5) **Sampling ballast tanks.** Department inspectors may take samples from a vessel's ballast tanks in addition to the audit. These samples are used to help evaluate the risk that vessel poses for introducing nonindigenous species into waters of the state. Sampling may require the vessel's crew to provide safe access to ballast tanks for sampling, including lighting and ventilation of cargo holds, spaces, and voids as needed. The vessel's crew will provide the labor to open ballast tank manhole covers and present the tank for sample access. This may involve taking the head off of the tank level as necessary, to preclude overflowing the tank. If tank certification is necessary for access, the vessel owner or operator will be responsible for any costs incurred. At least one member of the vessel's crew will accompany the department ballast inspector at all times during the sampling process. A department inspector may also require a sample of tank sediment, where safe and practical, that can be collected by the

vessel owner or operator under department observation or by the department inspector.

(6) **Exchange alternative and discharge standard performance inspections and testing.** The department may review operations data and take ballast water or sediment samples from a vessel's equipment that is used to meet exchange alternative requirements under WAC 220-150-043 or discharge performance standards under WAC 220-150-050. Vessel owners or operators must provide in-line discharge sampling ports that allow for this testing.

(7) **Investigation of violations.** Where there is evidence that a violation has occurred, the department may investigate those suspected violations. In doing so, the department may use all appropriate and practical measures of detection and environmental monitoring. Where the department determines that a violation has occurred, the department will follow the protocols under WAC 220-150-080.

(8) **Petition for civil enforcement.** If a department inspector is denied access to any vessel where access was sought for the purposes of this subsection, the department may file a petition for civil enforcement pursuant to RCW 77.120.070(3) and 34.05.578.

NEW SECTION

WAC 220-150-035 Vessels carrying high risk ballast water. (1) **In general.** The department will identify, publish, and maintain a list of vessels that pose an elevated risk of discharging ballast water or sediment containing nonindigenous species into the waters of the state. Vessels on this list will be prioritized for evaluation and boarding under WAC 220-150-033 and may require completion of an approved temporary compliance plan and/or temporary alternative strategy under WAC 220-150-037.

(2) **Listing.** The department will identify vessels that are carrying high risk ballast water using factors including but not limited to:

- (a) A nonindigenous species profile of originating waters;
- (b) The volume and frequency of exchanged ballast water normally discharged;
- (c) Design limitations in vessels that prevent effective exchanges;
- (d) Frequency of voyages within coastal areas where exchange outside fifty nautical miles is not a viable option;
- (e) Frequency and severity of vessel or vessel owner or operator violation history; and
- (f) Frequency of vessel claims for safety exemptions.

(3) **Delisting.** The department will delist a vessel on the high risk list where the vessel owner or operator:

- (a) Demonstrates that its management operations meet or exceed interim open sea exchange requirements under WAC 220-150-040 or 220-150-043, unless WAC 220-150-050 applies; or
- (b) Demonstrates that its management operations meet or exceed the discharge performance standards under WAC 220-150-050; or
- (c) Completes an approved compliance plan and/or alternative strategy per WAC 220-150-037.

NEW SECTION

WAC 220-150-037 Temporary compliance plans and alternative strategies. (1) **In general.** The department may require a vessel owner or operator to submit a temporary compliance plan or a temporary alternative strategy to bring its vessel into compliance with state ballast water management law. Temporary compliance plans and alternative strategies are only utilized when it is not feasible to otherwise comply with regulatory requirements, and then, only for the minimum time necessary to bring a vessel into compliance. If the department approves, at its sole discretion, a compliance plan or alternative strategy, the department will issue a formal waiver exempting the vessel owner or operator from specified provisions in these rules for a specified period of time, not to exceed two years from the approval date of the waiver, to allow the vessel owner or operator to implement corrective action to bring the vessel into full compliance with the statute and rules. Forms and guidance may be adopted by department policy to assist in the implementation of this subsection.

(2) **Compliance plan.** A temporary compliance plan describes how the vessel owner or operator plans to correct vessel equipment problems causing ballast water or sediment discharges that are not in compliance with state law. These temporary compliance plans are generally related to vessels that claim safety exemptions for design limitations or equipment failure, and vessels that are listed as carrying high risk ballast water and require accelerated implementation of WAC 220-150-050 to meet the state discharge performance standard. At a minimum, a temporary compliance plan will document the responsible vessel representative, objectives and expectations, scope of work to be performed, tasks to be completed by timeline, any deliverables, interim ballast water and sediment management plan, reporting requirements, and the total time period for which a waiver is requested, up to two years. Additional information may be required by the department on a case-by-case basis. An extension of the plan beyond two years may be granted by the department in its sole discretion.

(3) **Alternative strategy.** A temporary alternative strategy describes how the vessel owner or operator plans to conduct ballast management operations to sufficiently reduce the risk of introducing nonindigenous species into waters of the state to a level determined acceptable by the department. These temporary alternative strategies are generally related to vessels that cannot otherwise meet the full regulatory requirements due to extenuating circumstances. At a minimum, a temporary alternative strategy will document the responsible vessel owner or operator, objectives and expectations, scope of actions to be performed, tasks to be completed by timeline, any deliverables or reporting requirements, and the total time period for which a waiver is requested, not to exceed two years. Additional information may be required by the department on a case-by-case basis. An extension of the strategy beyond two years may be granted by the department, in its sole discretion.

(4) **Submission.** To seek a waiver of specified rules, a vessel owner or operator shall submit to the department a completed and signed temporary compliance plan or temporary alternative strategy at their convenience if not required

by the department, or within sixty days of department notice under either WAC 220-150-030(4) or 220-150-035, to avoid being in violation of these rules. Additional time may be allowed on a case-by-case basis. The department will notify the ballast water work group when a submission has been received and provide a copy if requested.

(5) **Review and approval.** The department will review a vessel's proposed temporary compliance plan or alternative strategy within sixty days of receipt, for completeness and suitability in accomplishing objectives. The department will then make one of the following determinations:

(a) **Approval** - the compliance plan or alternative strategy is acceptable for the period of time noted in the document. The department will then return the approved plan or strategy to the vessel owner or operator, attached to a waiver signed by the department;

(b) **Incomplete** - the document will be returned to the vessel owner or operator for revision or additional information under the original sixty-day review timeline unless otherwise extended; or

(c) **Deny approval** - the department determines, in its sole discretion, that the document is not suitable for meeting its regulatory objectives. The department may also deny the request if the parties do not come to agreement on an acceptable plan or strategy within sixty days of receipt of the plan by the department, unless such time frame is extended by the department in its sole discretion.

(6) **Availability.** Vessel owners or operators shall make a copy of the signed temporary compliance plan or alternative strategy document readily available for examination by the department as part of the vessel's ballast water management plan per WAC 220-150-030(5). The department will make all approved compliance plans and alternative strategies available on the department's web site or electronically, as requested.

(7) **Revocation of approval.** The department may revoke the waiver if the vessel owner or operator is not meeting the terms of the temporary compliance plan or alternative strategy. The department may agree to revise the temporary compliance plan or alternative strategy if appropriate, reasonable, and practical. In the event the department issues a notice of revocation, the vessel owner or operator will cease discharging ballast water into waters of the state unless it can meet the applicable regulations. The vessel owner or operator may appeal the decision to revoke the waiver. The appeal must be made to the director within twenty days of notice, by electronic or hard copy written form, according to the procedures set forth in chapter 34.05 RCW, Part IV, and chapter 10.08 WAC.

NEW SECTION

WAC 220-150-040 Interim open sea exchange requirements. (1) **Purpose.** Until otherwise required to meet performance standards under WAC 220-150-050 and prior to discharging ballast water into Washington waters, vessel owners or operators must exchange their ballast water to meet or exceed state interim open sea exchange requirements or use an approved exchange alternative. An open sea exchange is intended to reduce the number of higher risk

coastal organisms in a ballast tank by replacing them with open sea organisms that are less likely to invade waters of the state, and by changing the salinity and other ambient water conditions to further reduce populations of remaining coastal species. Vessel owners or operators who do not discharge ballast water into waters of the state are exempt from this section but must continue to meet the reporting and other requirements under WAC 220-150-030.

(2) Open sea exchange methodology.

(a) In general. An open sea exchange must result in an efficiency of at least ninety-five percent volumetric exchange of the total ballast water capacity for each tank. An open sea exchange requires using either an empty/refill method or a flow through method.

(b) Empty/refill exchange. Preferred - this type of exchange requires, for each ballast tank that contains ballast water to be discharged into waters of the state, at least one empty/refill cycle in an open sea exchange area designated by the department under subsection (3) of this section. Vessel owners or operators should remove as close to one hundred percent, but not less than ninety-five percent, of the ballast water as is safe to do so. If this is not possible, then perform a flow through exchange under (c) of this subsection.

(c) Flow through exchange. This type of exchange requires, for each ballast tank that contains ballast water to be discharged into waters of the state, pumping or otherwise forcing a minimum of three times the total ballast tank capacity's volume in an open sea exchange area designated by the department under subsection (3) of this section. For example, a ballast tank with a one thousand cubic meter capacity, regardless of actual ballast water in the tank, would require pumping three thousand cubic meters of open sea water through the tank. In all flow through exchange operations, open sea water must be pumped into the bottom and discharged out the top of the tank. Where department evaluation determines more flow through volume is required to meet the ninety-five percent exchange requirements, a compliance plan or alternative strategy may be required under WAC 220-150-037.

(3) Open sea exchange areas.

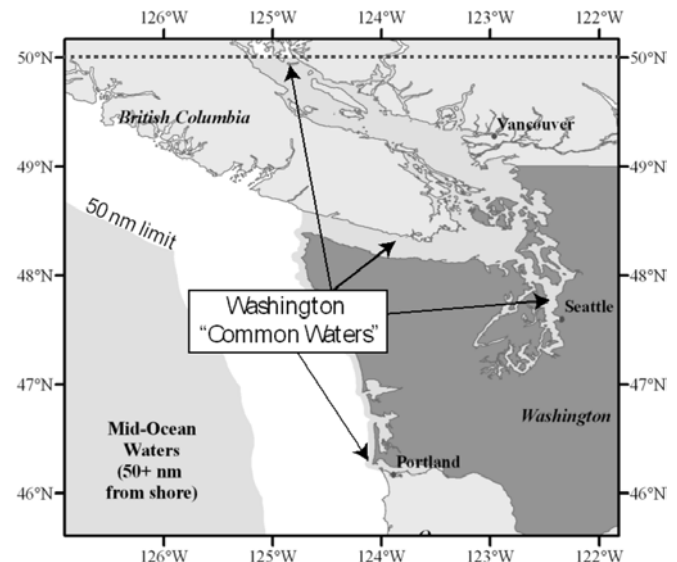
(a) In general. Ballast water exchanges must be conducted in open sea (also called midocean or mid-ocean) areas based upon originating port as defined herein. In all exchange situations, the vessel owner or operator must file a ballast water reporting form per WAC 220-150-030(2).

(b) Voyages from outside the United States Exclusive Economic Zone (EEZ). A vessel owner or operator en route to a state of Washington port or place, from a port or place outside the United States EEZ, shall conduct an open sea exchange:

- (i) Before entering waters of the state;
 - (ii) At least two hundred nautical miles from any shore; and
 - (iii) In waters greater than two thousand meters deep.
- (c) Coastal voyages. A vessel owner or operator who does not voyage two hundred nautical miles or greater from any shore shall conduct ballast water exchange:

- (i) Before entering waters of the state;
- (ii) At least fifty nautical miles from any shore; and
- (iii) In water at least two hundred meters deep.

(4) Common water exemption. Vessels voyaging from a port within the common water zone to a port in Washington state are exempt from having to conduct a ballast water exchange if the ballast water and sediment originated solely from a valid exchange prior to entering the common waters or from uptake within an area that includes only the waters of Washington state, the Oregon portions of the Columbia River system, and the internal waters of British Columbia south of latitude fifty degrees north, including the waters of the Straits of Georgia and Juan de Fuca (Figure 1). The common waters area relates only to vessels voyaging to a Washington state port or place from another Washington state port or place, or from designated Canadian and Oregon waters to waters of the state. It does not imply or provide any regulatory authority for vessels voyaging from waters of the state to Oregon and Canadian waters, or voyages to or between Canada and Oregon. Please refer to Canadian and Oregon ballast water laws for their requirements.



(5) Safety exemptions. Nothing in this chapter relieves the vessel owner or operator from ensuring the safety and stability of the vessel, its crew, or its passengers. A vessel owner or operator is not required to conduct an open sea exchange, in part or in full, if the vessel owner or operator determines that the operation would threaten the safety of the vessel, its crew, or its passengers. In these situations, the vessel operator must file a ballast water reporting form and is subject to all other provisions under WAC 220-150-030(4).

(6) Alternative discharge areas. The department, in consultation with states of concurrent waters, may identify alternative discharge areas as promulgated by department policy.

(7) Prohibited discharge areas. A vessel may not discharge ballast water or sediment within a marine protected or conservation area as designated under chapter 220-16 WAC.

NEW SECTION**WAC 220-150-043 Interim open sea exchange alternative.**

(1) **In general.** For purposes of this section, a vessel owner or operator may use an exchange alternative instead of conducting an open sea exchange, except for Columbia River ports unless specifically approved, provided:

(a) The vessel owner or operator is not otherwise required to meet discharge performance standards under WAC 220-150-050; and

(b) The exchange alternative meets or exceeds the standards provided under Regulation D-2 of the International Convention for the Control and Management of Ships' Ballast Water and Sediment as signed on February 13, 2004.

(2) **Notification.** Vessel owners or operators must file a signed notification form, as provided by the department, stating that they intend to use an exchange alternative to meet state ballast water exchange requirements. A single notification form may cover multiple vessels under the authority of a single vessel owner or operator. The form must include the minimum content as required in subsection (3) of this section. This notification does not release vessel owners or operators from meeting other federal or state ballast water reporting or discharge regulations.

(3) **Notification form contents.** The department's notification of exchange alternative use will, at a minimum, require the following information:

(a) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or USCG registry number), owner, agent, and vessel type(s);

(b) The manufacturer, brand name, model, and other information, as necessary, of the technology on board the vessel, and a brief description of the technology and its process for removing or inactivating organisms in ballast water;

(c) The name of the flag state that has approved the exchange alternative system, a copy of IMO type approval certification or final approval documentation, or other information that reasonably documents how the exchange alternative was tested to ensure it meets state open sea exchange requirements;

(d) If the exchange alternative will not be used on all ballast tanks, the number of tanks and the volume of each tank that will be managed using the exchange alternative;

(e) A recommendation from the state department of ecology, based upon a toxicity report provided in accordance with Appendix H of ecology publication number WQ-R-95-80, setting conditions necessary for the environmentally safe discharge of biocide treated ballast water;

(f) A statement that the vessel owner or operator will file a new notification if there are any changes in the information required in this subsection;

(g) A statement that the vessel will conduct a valid open sea exchange under this section if they do not use the exchange alternative; and

(h) The signature of the vessel owner or operator.

(4) **Submission.** The department will accept notification application forms up to eighteen months prior to the implementation date for that type of vessel under WAC 220-150-050, or a subsequent, delayed implementation date. Applications received within the eighteen-month period may be

accepted, but will not be granted the full grace period as provided in subsection (6)(c) of this section. Send the completed form to the department by e-mail to ballastwater@dfw.wa.gov, or if e-mail is not possible, by fax to 360-902-2845, or by U.S. mail to: WDFW, AIS Unit, 600 Capitol Way N., Olympia, Washington 98501-1090, USA. The vessel owner or operator will be notified of the department's receipt of the form within ten working days.

(5) **Acceptance.** The department will make a final decision on acceptance within forty-five days of receipt. If the notification is illegible or incomplete, it will be returned to the vessel owner or operator as unacceptable, with an explanation of the deficiencies. The notification is effective upon department verification of acceptance by e-mail or in writing to the vessel owner or operator.

(6) **Notification conditions.** To maintain acceptance, the vessel owner or operator must meet all of the following conditions:

(a) All notification form content in subsection (3) of this section remains accurate;

(b) Vessel owners or operators shall maintain a copy of the accepted notification of exchange alternative use in the vessel's ballast water management plan under WAC 220-150-030(5);

(c) Vessel owners or operators may use the exchange alternative for a period of five years from the date on which the equipment was first placed into service or until the vessel must meet discharge performance standards under WAC 220-150-050, whichever is longer;

(d) The exchange alternative equipment is otherwise used as defined in WAC 220-150-050 for installed equipment; and

(e) The department determines through inspections, sampling, investigations, or other methods, that the exchange alternative continues to meet, or is likely to continue to meet, open sea exchange standards.

(7) **Other laws.** Nothing in these rules 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.

NEW SECTION

WAC 220-150-050 Treatment requirements.
Reserved.

NEW SECTION

WAC 220-150-060 Treatment notification and promising treatment waiver process. (1) **Purpose.** This section implements RCW 77.120.040 (5)(a). All vessels using treatment technologies designed to meet state ballast water discharge performance standards are required to notify the department prior to or within thirty days of their first use in waters of the state. A prior notification is preferred to assess compliance with state regulations in using treatment technology to meet discharge performance standards and to assist vessel owners or operators in avoiding the discharge of ballast water that does not meet those standards or that poses other potential violations. It is the responsibility of the vessel

owner or operator to show that the installed equipment meets state discharge performance standards. Vessel owners or operators wishing to use treatment technology that does not meet state standards may apply for a waiver to use the technology as promising technology under subsection (3) of this section.

(2) **Notification.** Vessel owners or operators using treatment technology must file a signed notification form, as provided by the department, stating that their vessel meets state discharge performance standards under WAC 220-150-050. A single notification form may cover multiple vessels under the authority of a single vessel owner or operator. The form must include the minimum content as required in subsection (4) of this section.

(3) **Waiver for promising treatment technology use.**

(a) In general. Vessel owners or operators using promising treatment technology do not need to file a notification, but they must apply for a waiver.

(b) Criteria. The form must include the minimum content as required in subsection (4) of this section and be received by the department at least forty-five days prior to entering waters of the state. In addition, promising technology must meet one or more of the following criteria:

(i) The vessel is enrolled in the USCG Shipboard Technology Evaluation Program (STEP), United States Environmental Protection Agency Environmental Technology Verification (ETV) program, or other department-recognized regional or national program;

(ii) The technology is approved as promising technology or a similar classification by the state of California, Oregon, Hawaii, or Alaska for use in their state waters; or

(iii) The technology is being actively evaluated under the IMO final approval process.

(4) **Notification and waiver application form content.**

(a) In general. Standard notification application and promising technology waiver forms are provided by the department and must be used for this subsection. A single waiver form may cover multiple vessels under the authority of a single vessel owner or operator.

(b) Content. The department's notification of treatment technology use and application for promising treatment technology waiver forms will, at a minimum, require the following information:

(i) Vessel name(s), identification number(s) (International Maritime Organization, Lloyds of London, or USCG registry number), owner, agent, and vessel type(s);

(ii) The manufacturer and brand name of the technology on board the vessel and a brief description of the technology and process for removing or inactivating organisms in ballast water;

(iii) The name of the organization or flag state that has approved the ballast water treatment technology, and the approval or certification number of the technology or other information that reasonably documents how the technology was tested to ensure it meets, or is likely to meet in the case of promising treatment technology, state discharge performance standards for the vessel type on which it is being used;

(iv) If the treatment technology will not be used on all ballast tanks, the number of tanks and the volume of each tank that will be managed using the treatment technology;

(v) A recommendation from the state department of ecology, based upon a toxicity report provided in accordance with Appendix H of ecology publication number WQ-R-95-80, setting conditions necessary for the environmentally safe discharge of biocide-treated ballast water;

(vi) A statement that the vessel owner or operator will file a new notification if there are any changes in the information required in this subsection;

(vii) A statement that the vessel will conduct a valid ballast water exchange, under WAC 220-150-040, if it does not use the treatment technology; and

(viii) The signature of the vessel owner or operator.

(5) **Submission.** The department will accept notification and waiver application forms at any time. Send the completed form to the department by e-mail to ballastwater@dfw.wa.gov, or if e-mail is not possible, by fax to 360-902-2845, or by U.S. mail to: WDFW, AIS Unit, 600 Capitol Way N., Olympia, Washington 98501-1090, USA. The vessel owner or operator will be notified of the department's receipt of the form within ten working days.

(6) **Acceptance.**

(a) Notification. The department will make a final decision on acceptance of a notification application form within forty-five days of receipt. If the notification is illegible or incomplete, it will be returned to the vessel owner or operator as unacceptable, with an explanation of the deficiencies. The notification is effective upon department verification of acceptance by e-mail or in writing to the vessel owner or operator.

(b) Waiver for promising treatment technology use. The department will make a final decision on acceptance for a waiver within forty-five days of receipt. If the application is illegible or incomplete, it will be returned to the vessel owner or operator as incomplete, with an explanation of the deficiencies. The waiver is effective upon department verification of acceptance by e-mail or in writing to the vessel owner or operator.

(7) **Notification and waiver acceptance conditions.**

(a) In general. To maintain acceptance, the vessel owner or operator must meet a minimum set of conditions.

(b) Conditions. Minimum conditions include:

(i) All acceptance form content in subsection (4) of this section remains accurate;

(ii) Vessel owners or operators shall maintain a copy of the accepted notification of treatment technology use or waiver form for promising treatment technology use in the vessel's ballast water management plan under WAC 220-150-030(5);

(iii) The technology is used as defined in WAC 220-150-050 for installed treatment technology; and

(iv) The department determines through inspections, sampling, investigations, or other methods that the technology continues to meet, or is likely to continue to meet, ballast water discharge performance standards under WAC 220-150-050.

(8) **Other laws.** Nothing in these rules 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.

NEW SECTION

WAC 220-150-070 Ballast tank sediment. (1) **Purpose.** A vessel owner or operator may not remove or discharge sediment or tank fouling organisms into waters of the state from spaces carrying ballast water unless that sediment or those organisms are discharged solely in the location from which they originated. Sediment is known to contain nonindigenous species that are otherwise missed during open sea exchange and operations that would otherwise meet ballast water discharge performance standards. These rules implement RCW 77.120.020 (1)(b) and the overall authority under RCW 77.120.030(3) and 77.120.040(5) to set standards by rule that provide a minimal risk of introducing nonindigenous species into the waters of the state.

(2) **Ballast tank sediment removal options.**

(a) In general. Three options are provided for the effective removal of sediment and any fouling organisms in a vessel's ballast tanks, including saltwater flushing, upland disposal, or use of an approved reception facility.

(b) Saltwater flushing. Ballast tanks must be cleaned as necessary in open sea exchange areas consistent with WAC 220-150-040(3) voyage requirements unless common water rules apply under WAC 220-150-040(4) except for ballast-related fouling organisms. Sediment may be removed by saltwater flushing of ballast water tanks by:

(i) Adding open sea water to a ballast water tank that contains residual quantities of ballast waters;

(ii) Mixing the open sea water with the residual ballast water and sediment in the tank through the motion of a vessel or alternative means so that the sediment becomes suspended; and

(iii) Discharging the mixed water so that the salinity of the resulting residual ballast water in the tank exceeds thirty parts per thousand.

(c) Upland disposal. Tank sediment and fouling organisms may be removed from the vessel under controlled arrangements in port or in drydock, and disposed of in accordance with local, state, and federal law.

(d) Sediment reception facilities. The department, in consultation with the department of ecology, will adopt department policies as necessary for sediment reception facilities. These facilities must be approved by the department for use and provide for the disposal of such sediment in a way that effectively eliminates the risk of nonindigenous species and does not impair or damage the environment, human health, property, or resources of the disposal area.

(3) **Reporting.** Sediment cleaning and discharges must be recorded in the vessel's ballast water log or record book as defined in WAC 220-150-030(6), or in another format conforming to the intent of that section.

NEW SECTION

WAC 220-150-080 Penalties and enforcement. (1) **Purpose.** The department may issue a verbal warning, notice of correction, or notice of civil penalty up to twenty-seven thousand five hundred dollars for each day of a continuing violation of the requirements of ballast water management regulations pursuant to RCW 77.120.070. Each and every such violation will be a separate and distinct violation. The

department may also seek criminal penalties where warranted.

(2) **Notice of correction.**

(a) In general. If, in the course of carrying out their duties under chapter 77.120 RCW or this chapter, a department employee becomes aware that a vessel owner or operator is not in compliance with applicable laws and rules enforced by the department, the department may issue a notice of correction as provided in RCW 43.05.100 to the vessel owner or operator.

(b) Content. A notice of correction, at a minimum, will include:

(i) A description of the condition that is not in compliance, and the text of the specific section or subsection of the applicable state law or rule;

(ii) A statement of what is required to achieve compliance;

(iii) The date and time by which the department requires compliance to be achieved;

(iv) Notice of the means to contact any technical assistance services provided by the department; and

(v) A description of when, where, and from whom to request an extension of time to achieve compliance for good cause.

(c) Context. A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(d) Compliance. If the department issues a notice of correction, it shall not issue a civil penalty for the violations identified in the notice of correction unless the responsible party fails to comply with the notice.

(3) **Notice of penalty.**

(a) In general. If, in the course of carrying out their duties under chapter 77.120 RCW or this chapter, a department employee becomes aware that a vessel owner or operator is not in compliance with applicable laws and rules enforced by the department, the department may issue a notice of penalty as provided in RCW 43.05.110 to the vessel owner or operator.

(b) Conditions. The department may issue a notice of penalty without first issuing a notice of correction under subsection (2) of this section to the vessel owner or operator where:

(i) The vessel owner or operator has previously been subject to an enforcement action for the same or a similar type of violation of the same statute or rule or has previously been given a notice of correction for the same or similar type of violation of the same statute or rule;

(ii) Compliance is not achieved by the date established in a previously issued notice of correction, whereupon every day's continuance thereafter will be a separate and distinct violation;

(iii) The violation has a probability of, or actually resulted in, the discharge of ballast water and/or sediments that do not meet the requirements set forth in WAC 220-150-040, 220-150-043, 220-150-050, or 220-150-070; or

(iv) The violation was committed by a business that employs fifty or more employees on at least one day in each of the preceding twelve months.

(c) Context. A notice of penalty is a formal enforcement action, is subject to appeal, and is a public record.

(d) Compliance. If the department issues a notice of penalty, it shall calculate a civil penalty for the violation(s) as provided in subsection (4) of this section.

(4) Calculation and payment of civil penalties.

(a) In general. The department will assess civil penalties for each separate and distinct violation for each day of a continuing violation of the requirements of ballast water management regulations.

(b) Base penalty. There are three base civil penalties:

(i) Two thousand dollars for violations that are not related to or do not result in the discharge of ballast water that does not meet open sea exchange or discharge performance standards;

(ii) Five thousand dollars for failing to comply with a notice of correction issued under subsection (2) of this section; and

(iii) Five thousand dollars for violations that result in a discharge of ballast water that does not meet open sea exchange or discharge performance standards.

(c) Level of intent. Evidence of intent to violate the laws and rules governing ballast water and sediment management may result in an increase in the base penalty up to twenty-seven thousand five hundred dollars for each separate and distinct violation for each day of a continuing violation. Evidence includes, but is not limited to:

(i) Intention. In making a determination of intent, the department will consider, but not be limited to, the following considerations: The vessel owner or operator knowingly violated state laws and rules; whether precautions were taken to avoid the violation; and/or whether an inspection, warning, notice of correction, or enforcement action was served on the violator prior to the violation. For this factor, up to double the base penalty may be added.

(ii) Cooperation. The department will consider whether the violator did or did not make any attempt to correct the problem. Timeliness of action(s) and/or ignoring or evading agency contacts or directives will determine whether the penalty will be increased. For this factor, up to double the base penalty may be added.

(iii) Previous violation(s). The department will consider whether the violator has previous violations of a ballast water rule or regulation as documented in an enforcement action. The department may consider company organizations and assignment of operational responsibilities when evaluating previous violations. A substantially larger penalty will result if the violator has a history of violations with adverse impacts or the potential for adverse impacts or that shows a pattern of ignoring the rules or the act. Enforcement actions for the purposes of this section will include notices of penalty, the amounts of those civil penalties, and criminal citations when those enforcement actions are associated with ballast water violations. For this factor, up to quadruple the base penalty may be added.

(d) Quality and quantity of risk. Evidence showing the potential or actual discharge of high risk ballast water or sediment may result in an increase in the base penalty up to twenty-seven thousand five hundred dollars for each separate

and distinct violation for each day of a continuing violation. Evidence includes, but is not limited to:

(i) Vessels carrying high risk ballast water and/or sediment listed under in WAC 220-150-035. For this factor, up to double the base penalty may be added.

(ii) Volume of ballast water and sediment discharged or potentially discharged. For this factor, up to quadruple the base penalty may be added.

(e) Payment. Unless a timely appeal is filed, all civil penalties imposed must be paid to the department within thirty days after the date of the written notice imposing the civil penalty. If a timely appeal is filed, then all civil penalties imposed must be paid upon the completion of all administrative and judicial review proceedings and the issuance of a final notice affirming the penalty in whole or in part.

(f) Failure to pay. Any determination not timely contested is final and may be reduced to a judgment enforceable in any court with jurisdiction. Where the department prevails, using any judicial process to collect a penalty under this section, the department shall also be awarded its costs and reasonable attorneys' fees.

(5) Appeals.

(a) In general. A person who is subject to a notice of penalty shall have the rights provided by this section to request an adjudicative proceeding to contest the notice. No person other than the recipient of the notice or the recipient's legal representative shall have standing to request an adjudicative proceeding. The adjudicative proceeding shall be in compliance with provisions of chapter 34.05 RCW, the Administrative Procedure Act, except as modified herein by the department.

(b) Timing for request. An adjudicative proceeding to contest a notice of penalty must be requested no later than twenty days from the date of service of the notice. To be timely, the request must be physically received by the department director in Olympia, Washington, during normal business hours on or before the twentieth day following the date of service of the order, except that if the twentieth day falls on a Saturday, Sunday, or state holiday, then the request for hearing shall be timely if received on the next business day. The person requesting an adjudicative proceeding may prove that it was timely requested by obtaining a written receipt of service from the department director, or by providing an affidavit showing personal service on the department director, or by a U.S. mail return receipt requested service showing receipt by the department on or before the last day set by this rule.

(c) Manner and content of request. Each request for adjudicative proceeding shall substantially comply with this subsection.

(i) The request shall be in writing;

(ii) The request shall identify the notice of penalty that the person seeks to contest. This can be done by reference to the number of the notice, by reference to the subject and date of the notice, or by reference to a copy of the notice attached to the request;

(iii) The request shall state the grounds upon which the person contests the notice of penalty. If the person contests the factual basis for the notice, the person shall allege the facts that the person contends are relevant to the appeal; and

(iv) The request shall identify the relief that the person seeks from the adjudicative proceeding by specifying whether the person asks to have the notice vacated, or provisions of the notice corrected.

(6) **Coordination with United States Coast Guard (USCG).** The department will report state violations, penalties and enforcement actions taken on vessels, as requested by cooperative agreement, to the appropriate sector representative of the USCG. The department will also report suspected federal violations to the USCG.

(7) **Other laws.** These regulations are in addition to any other state or federal laws related to ballast water management.

WSR 09-08-126
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)
[Filed April 1, 2009, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-03-002.

Title of Rule and Other Identifying Information: Mortgage Broker Practices Act, chapter 208-660 WAC, expanding the categories of agency actions that may be appealed using the brief adjudicative proceedings (BAP) process available in the Washington Administrative Procedure Act (APA), chapter 34.05 RCW.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Tumwater, WA 98501, on May 7, 2009, at 1:30 - 3:30 p.m.

Date of Intended Adoption: June 2, 2009.

Submit Written Comments to: Elizabeth Stancil, Division of Consumer Services, P.O. Box 41200, Olympia, WA 98504-1200, e-mail estancil@dfi.wa.gov, by 5:00 p.m. May 6, 2009.

Assistance for Persons with Disabilities: Contact Elizabeth Stancil by 5:00 p.m. May 4, 2009, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The BAP is a process in the APA for appealing agency actions. The BAP process is currently available to loan originators on licensing decisions. This rule making would make the BAP appeal process available for more categories of agency actions.

Reasons Supporting Proposal: The BAP provides a quicker and less formal appeal process for certain less complex agency actions.

Statutory Authority for Adoption: RCW 43.320.040.

Statute Being Implemented: Chapter 19.146 RCW.

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

Name of Proponent: Department of financial institutions, division of consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Olympia, WA 98501,

(360) 902-8800; Implementation and Enforcement: Deb Bortner, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-0511.

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.

April 1, 2009

Deborah Bortner, Director
Division of Consumer Services

NEW SECTION

WAC 208-660-009 Application of Administrative Procedure Act. (1) What are my rights when the department begins an administrative enforcement action against me? Under the Administrative Procedure Act (APA), chapter 34.05 RCW, you have the right to request a hearing on the agency's action. Hearings are conducted as either formal adjudicative proceedings or may, under certain circumstances, be handled as a brief adjudicative proceeding (BAP).

(2) What must I do when I want to request a hearing? When you are notified of administrative charges filed against you, you are also notified of your right to request a hearing. At that time, the department will also notify you as to whether the hearing will be conducted as a brief adjudicative proceeding. You are required to notify the department, in writing, within twenty days from the date of the director's notice to you notifying you of the enforcement action against you. This notice must be received by the department by the 20th day following service of the charges on you.

(3) What is a brief adjudicative proceeding? Under the APA, a brief adjudicative proceeding is a hearing that is less formal in nature and typically resolves the charges quickly. The department provides a BAP for violations of the act in which the facts are undisputed and under circumstances where the parties may present their case without the need for witnesses. Typical matters to be heard in a BAP include, but are not limited to, license denials or revocations based on certain undisputed facts, including criminal convictions or misrepresentations on an application.

(4) May I request a brief adjudicative proceeding in response to an administrative enforcement action? Yes, but only if the matter has been designated by the department as one for which a BAP is available. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings. Brief adjudicative proceedings shall be limited to a determination of one or more of the following issues:

(a) Whether an applicant for a loan originator license meets the requirements of RCW 19.146.310 (1)(a), (b), (c), (d), (e), or (h);

(b) Whether an applicant for a mortgage broker license meets the requirements of RCW 19.146.210 (1)(a), (b), (c), (d), or (e); and

(c) Whether a mortgage broker has failed to maintain the bond required by RCW 19.146.205.

(5) In a matter not listed in subsection (4) of this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties, and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding. As used in this section, "persons other than the parties" does not include an attorney or representative for a party, or a witness for a party.

(6) How does the BAP work? Brief adjudicative proceedings are controlled by the provisions of RCW 34.05.482 through 34.05.494. The department will use the following procedure:

(a) Presiding officer. The director shall designate a presiding officer to conduct the brief adjudicative proceedings. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(b) Preliminary records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.

(c) Notice of hearing. The presiding officer will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.

(d) Written documents. The department's staff or representative and the applicant or their representative may present written documentation for consideration by the presiding officer. The presiding officer will designate the date and number of pages allowed for submission of written documents, including supporting exhibits.

(e) Oral argument. The presiding officer may exercise discretion on whether to allow oral argument.

(f) Witnesses. Live witness testimony will not be allowed. Witnesses providing testimony by sworn declaration or affidavit will be allowed at the discretion of the presiding officer.

(g) If, at the time of the hearing, the presiding officer determines that the alleged violations or evidence concerning the violations is such that a formal adjudicative proceeding is necessary, the presiding officer may immediately adjourn the hearing and direct that the matter be scheduled as a formal adjudicative proceeding.

(h) Initial order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any, to include a written statement describing the decision, the reasons for the decision, and describing the right to request review of the decision by the director. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-350 Loan originators—Licensing. (1) How do I apply for a loan originator license? Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system.

(a) **Be eighteen years or older.**

(b) **Have a high school diploma, an equivalent to a high school diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass a test that assesses your knowledge of the mortgage business and related regulations. See WAC 208-660-360, Loan originators—Testing.

(d) **Submit an application.** You must complete an application in a form prescribed by the director.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Pay the application fee.** You must pay an application fee for your application. See WAC 208-660-550, Department fees and costs.

(2) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked within five years of the filing of the present application.

(c) **Criminal history.**

You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within seven years of the filing of the present application.

(d) **Financial background.**

(i) You are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(ii) You may not be eligible to receive a loan originator license if your financial background during the two years prior to the appointment application shows a history of unpaid debts.

(3) What will happen if my loan originator license application is incomplete? After submitting your on-line

application through the NMLSR, the department will notify you of any application deficiencies.

(4) How do I withdraw my application for a loan originator license? Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR application fee.

(5) When will the department consider my loan originator license application to be abandoned? If you do not respond within ten business days to the department's second request for information, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(6) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?

~~((a) The department will notify you if your application is denied.~~

~~(b) If your license application lists any mortgage brokers, the department will also notify the mortgage brokers of the license denial.~~

~~(c) Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request brief adjudicative proceeding. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied.~~

~~(i) Brief Adjudicative Proceeding Adopted. The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings under WAC 208-660-350.~~

~~(ii) Presiding Officer. Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.~~

~~(iii) Preliminary Records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.~~

~~(iv) Notice of Hearing. The department will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.~~

~~(v) Written Documents. The applicant or their representatives may present written documentation. The presiding officer must designate the date for submission of written documents.~~

~~(vi) Oral Argument. The presiding officer may exercise discretion in allowing oral argument.~~

~~(vii) Witnesses. Witnesses will not be allowed to testify.~~

~~(viii) Agency Expertise Considered. The presiding officer may rely upon agency expertise in addition to the written record as a basis for a decision.~~

~~(ix) Initial Order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any. The initial order will become final twenty one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.) See WAC 208-660-009.~~

(7) How will the department provide me with my loan originator license? The department may use any of the following methods to provide you with your loan originator license:

(a) A printed paper license sent to you by regular mail.

(b) A license sent to you electronically that you may print.

(c) A license verification available on the department's web site and accessible for viewing by the public.

(8) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else? No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(9) How do I change information on my loan originator license? You must submit an amendment to your license through the NMLSR. You may be charged a fee.

(10) What is an inactive loan originator license? When a licensed loan originator is not sponsored by a licensed or exempt company, the license is inactive. When a person holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

(11) When my loan originator license is inactive, am I subject to the director's enforcement authority? Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

(12) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year? Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

(13) May I originate loans from a web site when my license is inactive? No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

(14) How do I activate my loan originator license? The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and all the companies you are working with of the new working relationship if approved.

(15) When may the department issue interim loan originator licenses? To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in uni-

formity and provide data repositories of licensing information.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

(16) When does my loan originator license expire?

The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

(17) How do I renew my loan originator license?

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

- (i) Pay the annual assessment fee; and
- (ii) Meet the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(18) If I let my loan originator license expire, must I apply to get a new license? If you complete all the requirements for renewal within forty-five days of the expiration date you may renew an existing license. However, if you renew your license during this forty-five day period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

During this forty-five day period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp within the forty-five days. If you fail to comply with the renewal request requirements within forty-five days, you must apply for a new license.

(19) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period? Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

(20) May I still originate loans if my loan originator license has expired? No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

(21) What happens to the loan applications I originated before my loan originator license expired? Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

(22) May I surrender my loan originator's license? Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for

any administrative actions arising from acts or omission occurring before the license surrender.

(23) Must I display my loan originator license where I work as a loan originator? No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(24) If I operate as a loan originator on the internet, must I display my license number on my web site? Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

(25) Must I include my loan originator license number on any documents? You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

(26) When must I disclose my loan originator license number? In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

(27) May I conduct business under a name other than the name on my loan originator license? No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."