

WSR 10-05-001
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 3, 2010, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-003.

Title of Rule and Other Identifying Information: WAC 181-78A-100, amends rules for appealing professional educator standards board (PESB) decisions from a board process to the office of administrative hearings.

Hearing Location(s): The Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, on March 24, 2010, at 8:30 a.m.

Date of Intended Adoption: March 24, 2010.

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 5, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by March 5, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current rules call for an appeals process that is conducted by a subcommittee of the board. The rule change would provide for the office of administrative hearing[s] to review appeals of PESB decisions.

Reasons Supporting Proposal: Attorney general recommendation.

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 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.

February 3, 2010

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-16-005, filed 7/23/08, effective 8/23/08)

WAC 181-78A-100 Existing approved programs. Chapter 181-78A WAC rules shall govern all policies related to programs upon adoption by the professional educator stan-

dards board, which shall provide assistance to colleges and universities in the revision of their existing programs.

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

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

(3) All school counselor, school psychologist, or school social worker programs shall be approved under the 2004 program approval standards of chapter 181-78A WAC by August 31, 2005. Colleges and universities may permit individuals accepted into the school counselor, school psychologist, or school social worker programs on or before August 31, 2005, to obtain a residency certificate by meeting requirements of programs approved under the 1997 approval standards described in chapter 181-78A WAC if the individuals complete the program on or before August 31, 2007, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2007. Provided that the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

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

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

(6) The professional educator standards board shall determine the schedule for such approval reviews and

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

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

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

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

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

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

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

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

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

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

(viii) Describe the criteria used by the program(s) to assess, in multiple ways over time, its candidates' knowledge and skills, including evidence of positive impact on student learning.

(b) The site visit shall be conducted by a team whose membership is composed of:

(i) One member of the professional educator standards board;

(ii) One peer institution representative;

(iii) One individual with assessment expertise;

(iv) Two K-12 practitioners with expertise related to the programs scheduled for review; and

(v) The professional education and certification division leader, who shall serve as team leader. Substitutions, drawn from (b)(i) through (iv) of this subsection, may be assigned when individuals are not available. Additions to the team shall be drawn from (b)(i) through (iv) of this subsection when necessary. The office of superintendent of public instruction liaison for that institution and the professional certificate program specialist, if a professional certificate program will be reviewed, may be present, but shall not serve in an evaluative role. All members, including substitutes, shall be trained.

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

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

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

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

(g) Institutions may request a hearing in instances where it disagrees with the professional educator standards board's decision. The hearing will be conducted through the office of administrative hearings by an ~~((appeal team whose members shall include three individuals selected from a cadre of trained site visit team members, including at least one higher education representative and one K-12 practitioner))~~ administrative law judge per chapter 34.05 RCW.

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

WSR 10-05-027
PROPOSED RULES
YAKIMA VALLEY
COMMUNITY COLLEGE
 [Filed February 9, 2010, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-098.

Title of Rule and Other Identifying Information: Use of Yakima Valley Community College District 16 facilities for first amendment activities.

Hearing Location(s): Yakima Valley Community College (YVCC), Yakima Campus, M. L. King Room, Hopf Union Building (HUB), South 16th Avenue and Nob Hill Boulevard, Yakima, Washington 98902, on March 23, 2010, at 3:00 p.m.

Date of Intended Adoption: April 8, 2010.

Submit Written Comments to: Suzanne West or Niki Hopkins, YVCC, P.O. Box 22520, Yakima, WA 98908-2520, e-mail swest@yvcc.edu or nhopkins@yvcc.edu, fax (509) 574-4638, by March 24, 2010.

Assistance for Persons with Disabilities: Contact disabilities support services, YVCC, by March 15, 2010, TTY (509) 574-4677 or (509) 574-4961.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these time, place and manner regulations is to establish pro-

cedures and reasonable controls for the use of college facilities for both noncollege and college groups when individuals and groups exercise their right to engage in first amendment activities.

These rules are intended to balance the college's responsibility to fulfill its mission as a state educational institution with the interests of noncollege groups or college groups who are interested in using college campus facilities for purposes of constitutionally protected speech, assembly or expression. The anticipated effect is a more uniform application of rules to all persons and groups wishing to do so.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: YVCC, public.

Name of Agency Personnel Responsible for Drafting: Suzanne West, President's Office, YVCC, South 16th Avenue and Nob Hill Boulevard, Yakima, Washington, (509) 574-4635; Implementation: Teresa Holland, Vice-President for Administrative Services, YVCC, (509) 574-4668; and Enforcement: Patrick Amato, Security Supervisor, (509) 574-4697.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. We anticipate no costs generated by this rule.

February 3, 2010

Suzanne West

Rules Coordinator

Chapter 132P-142 WAC

USE OF YAKIMA VALLEY COMMUNITY COLLEGE DISTRICT 16 FACILITIES FOR FIRST AMENDMENT ACTIVITIES

NEW SECTION

WAC 132P-142-010 Title. This chapter shall be known as Use of Yakima Valley Community College District 16 Facilities for First Amendment Activities.

NEW SECTION

WAC 132P-142-015 Definitions. For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Yakima Valley Community College (YVCC) or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

For purposes of this policy, college groups shall mean individuals who are currently enrolled students or current employees of Yakima Valley Community College or who are affiliated with a recognized student organization or a recognized employee group of the college.

The college is a limited public forum for noncollege groups. The limited public forum does not include college buildings or athletic fields. College buildings, rooms, and

athletic fields may be rented in accordance with the college's facilities use policy.

NEW SECTION

WAC 132P-142-020 Statement of purpose. Yakima Valley Community College District 16 is an educational institution provided and maintained by the people of the state of Washington. The public character of the college does not grant to individuals an unlimited license to engage in activity that limits, interferes with, or otherwise disrupts the normal activities for and to which the college's buildings, facilities, and grounds are dedicated and said buildings, facilities, and grounds are not available for unrestricted use by noncollege groups. While said buildings, facilities, and grounds are not available for unlimited use by college groups, it is recognized that Yakima Valley Community College students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible.

The purpose of these time, place, and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly, or expression.

NEW SECTION

WAC 132P-142-030 First amendment activities and protection of the college mission. The college recognizes and supports the rights of groups and individuals to engage in first amendment activities. This policy shall be interpreted and construed to support such activities while simultaneously balancing the needs and interests of the college to fulfill its mission as an educational institution of the state of Washington.

NEW SECTION

WAC 132P-142-040 Request for use of facilities. Subject to the regulations and requirements of this policy, college or noncollege groups may use the campus limited forum for those activities protected by the first amendment. Examples of first amendment activities would include, but not be limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective, or viewpoints.

Noncollege groups that intend to be on campus to engage in first amendment activities (hereinafter "the event") shall provide notice to the college security department no later than forty-eight hours prior to the event along with the following information:

(1) The name, address, and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and

(2) The name, address, and telephone number of a contact person for the sponsoring organization; and

(3) The date, time, and requested location of the event; and

(4) The nature and purpose of the event; and

(5) The type of sound amplification devices to be used in connection with the event, if any; and

(6) The estimated number of people expected to participate in the event.

Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

If more than thirty people are expected to participate in the event, the college shall specify the campus location.

The use of sound amplification devices is limited to the limited public forum area as long as the sound amplification device is used at a volume that does not disrupt or disturb the normal use of classrooms, offices, or laboratories or any previously scheduled college event or activity.

College groups are encouraged to notify the college security department no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.

Events shall be held within the college's hours of operation. College group events shall not last longer than eight hours from beginning to end. Noncollege events shall not last longer than five hours from beginning to end.

Information may be distributed as long as it is not obscene or libelous or does not advocate unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. To avoid excessive littering of the campus and/or greatly increased work requirements for college physical plant employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site. Leafletting cars in YVCC parking lots is prohibited.

Speech that does no more than propose a commercial transaction shall not occur in connection with the event.

The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.

All fire, safety, sanitation, or special regulations specified for the event are to be obeyed.

The college cannot and will not provide equipment, utility connections, or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.

The event must not create safety hazards or pose unreasonable safety risks.

The event must not interfere with college operations or educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission

and achieving its primary purpose of providing an education to its students.

The event must not materially infringe on the rights and privileges of college students, employees, or invitees to the college.

The event must also be in accordance with any other applicable regulations and policies of Yakima Valley Community College, local ordinances and/or state or federal laws.

The use of intoxicants is prohibited on campus unless expressly authorized by the college. Smoking is not permitted, except in designated areas.

NEW SECTION

WAC 132P-142-050 Additional requirements for noncollege groups. The limited public forum may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that more than one hundred fifty people on the Yakima Campus (one hundred at other college sites) will attend the college event or activity.

NEW SECTION

WAC 132P-142-060 The role of the president in first amendment decisions. The president of the college may authorize first amendment activities that are reasonably determined not to cause disruption of college activities despite a literal violation of this policy statement. Such determinations shall be made without consideration of the content or message of the first amendment activities.

The president of the college or designee may at any time, terminate, cancel, or prohibit the event if it is determined, after proper inquiry, that the event does constitute or will constitute a clear and present danger to the college's orderly operation.

NEW SECTION

WAC 132P-142-070 Criminal trespass. Any person determined to be violating these regulations is subject to an order from the college security department to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.

NEW SECTION

WAC 132P-142-080 Posting of a bond and hold harmless statement. When using college facilities, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

When the college grants permission to a college group or noncollege group to use its facilities, it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

WSR 10-05-028**PROPOSED RULES****BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS**

[Filed February 9, 2010, 9:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-137.

Title of Rule and Other Identifying Information: New chapter 196-13 WAC, PE licensure by comity from non-United States jurisdictions.

Hearing Location(s): Courtyard Marriott, Salon A, 31910 Gateway Center Boulevard South, Federal Way, WA 98003, on June 9, 2010, at 6:00 p.m.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by June 1, 2010.

Assistance for Persons with Disabilities: Contact Kim King, administrative assistant, by June 1, 2010, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new rule is being created to address applicants that are seeking licensure in Washington that are currently licensed in non-United States jurisdictions.

Reasons Supporting Proposal: The board has looked at the equivalency between the licensure process common to Canadian associations and those common in the United States. License mobility for eligible Canadian professional engineers will be promoted with the adoption of the new rule.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is no economic impact to licensees.

February 9, 2010
George A. Twiss
Executive Director

Chapter 196-13 WAC**PE LICENSURE BY COMITY FROM NON-U.S.
JURISDICTIONS**NEW SECTION

WAC 196-13-010 Purpose of rules. The rules within this chapter identify the requirements and conditions for the board to consider, for engineering licensure, only applicants from the identified foreign jurisdictions.

NEW SECTION

WAC 196-13-020 Board review of applications. The board may use any one or combinations of the following procedures in determining if an applicant is eligible for licensure under these rules:

- (1) Detailed review and evaluation of application;
- (2) Interviews with applicant's references;
- (3) Review of examples of applicant's work product;
- (4) Oral interview/examination with applicant.

NEW SECTION

WAC 196-13-030 Eligibility. Licensure by comity from Non-U.S. jurisdictions is NOT applicable to an applicant who:

- (1) Is seeking licensure in structural engineering; or
- (2) Has attempted and failed any of the engineering principle and practice examinations developed by the National Council of Examiners for Engineering and Surveying (NCEES) within the six years immediately preceding the date of application; or
- (3) Has a record of disciplinary action against their membership where findings of negligence or incompetence were proven by competent judicial or administrative authority.

CANADANEW SECTION

WAC 196-13-100 Application requirements for applicants licensed as Canadian professional engineer (P.Eng.). The board may grant licensure as a professional engineer to a Canadian professional engineer who satisfies the following:

- (1) Is an active member (professional engineer) in good standing of a constituent member organization of Engineers Canada; and
- (2) Has graduated from a Canadian Engineering Accreditation Board (CEAB) recognized degree program in engineering; and
- (3) Has six years of engineering experience, acceptable to the board, after the date of initial membership as a professional engineer. The six years shall include two years of engineering practice on projects in the United States or in an acceptable environment where codes similar to those used in the United States were applied; and
- (4) Has identified three professional engineers who can serve as character references and are able to attest to the

applicant's credibility and ethical conduct as a professional engineer.

WSR 10-05-032
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed February 9, 2010, 9:57 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-319-990 Initial medicare certification survey fee schedule, adding a new chapter and section to implement RCW 43.70.125 and 2009 passed legislation, ESHB 1244, that authorize the department to assess fees for department-conducted initial medicare surveys whenever the department has not received sufficient funding from the Centers for Medicare and Medicaid Services.

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Rooms 152 and 153, Tumwater, WA 98501, on April 12, 2010, at 10:00 a.m.

Date of Intended Adoption: April 14, 2010.

Submit Written Comments to: John Hilger, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by April 12, 2010.

Assistance for Persons with Disabilities: Contact John Hilger by April 7, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to add a new chapter and section to Title 246 WAC in response to 2009 passed legislation (ESHB 1244), which authorizes the department to establish a fee schedule to apply to applicants for initial certification surveys of health care facilities. These are facilities that want to receive federal reimbursement for services. These proposed fees would only apply when the department has determined that federal funding is not sufficient to compensate the department for the cost of conducting initial certification surveys.

Reasons Supporting Proposal: (1) ESHB 1244 authorizes the department to adopt rules to establish a fee schedule; and (2) the proposed rule reiterates that the department is authorized to charge fees established in law for initial certification surveys in the event that federal funding is not sufficient.

Statutory Authority for Adoption: RCW 43.70.125.

Statute Being Implemented: RCW 43.70.125.

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: Byron Plan, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2916.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(e), a small business economic impact state-

ment is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

A cost-benefit analysis is not required 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.

February 9, 2010

Mary C. Selecky

Secretary

Chapter 246-319 WAC

**INITIAL MEDICARE CERTIFICATION SURVEY
 FEE SCHEDULE**

NEW SECTION

WAC 246-319-990 Fees. Purpose: This chapter implements RCW 43.70.125 allowing the department to assess a fee for the department to conduct an initial medicare survey. An applicant for medicare certification must pay the fee whenever the department has not received sufficient funding from the Centers for Medicare and Medicaid Services.

(1) Definitions:

(a) "Initial medicare certification survey" means an on-site visit conducted by department staff for the purpose of determining compliance with medicare regulations. This survey is required before a health care provider can receive medicare or medicaid reimbursement.

(b) "Insufficient funding" means the department has spent or encumbered eighty percent of the total available Title XVIII medicare grant award to complete required certification activities.

(c) "Sufficient funding" means the department has received, through the Title XVIII medicare grant, funds intended to fully reimburse the department for all required certification activities in the annual grant.

(d) "Title XVIII grant priority" means the four tier system established by the Centers for Medicare and Medicaid Services that guides state agencies to complete certification activities in accordance with statutory mandates and Centers for Medicare and Medicaid Services policy.

(e) "Title XVIII medicare grant" means the grant authorized in Section 1864(a) of the Federal Social Security Act and administered by the Centers for Medicare and Medicaid Services to the department to fund the annual certification activity requirements.

(2) In accordance with Centers for Medicare and Medicaid Services policy, an applicant must obtain an initial medicare certification survey from a national accreditation organization deemed for this purpose rather than the department when such accrediting organizations are available.

(3) The department will conduct an initial certification survey for those applicants for which there is no deemed accrediting organization. The department will not charge a fee to conduct these initial medicare certification surveys as long as sufficient funding exists.

(4) The department will only charge a fee for initial certification activities if there is insufficient funding.

(5) Notice of insufficient funding. When insufficient funding exists to complete the Title XVIII grant priority, the department will:

(a) Issue a notice to all potentially affected health care providers and provider associations known by the department; and

(b) Charge a fee according to the fee schedule in subsection (6) of this section to all applicants who apply for initial medicare certification surveys after the notice is issued.

(6) Fee. The department will charge an applicant for an initial medicare certification survey a fee to conduct the initial medicare survey as follows:

Ambulatory surgery center	\$ 1,815
Critical access hospital	\$ 2,015
End stage renal disease facility	\$ 980
Home health agency	\$ 2,285
Hospice agency	\$ 2,285
Hospital	\$ 2,285
Rehabilitation facility	\$ 520
Rural health clinic	\$ 690
Transplant hospital	\$ 7,000

WSR 10-05-040
PROPOSED RULES
DEPARTMENT OF CORRECTIONS

[Filed February 10, 2010, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-191.

Title of Rule and Other Identifying Information: WAC 137-12A-020 Definitions.

Hearing Location(s): Department of Corrections, Edna Lucille Goodrich (ELG) Building, Room 1034, 7345 Linder-son Way S.W., Tumwater, WA 98501, on March 23, 2010, at 10 a.m.

Date of Intended Adoption: March 23, 2010.

Submit Written Comments to: John Nispel, P.O. Box 41114, Olympia, WA 98504-1114, e-mail john.nispel@doc.wa.gov, fax (360) 664-2009, by March 22, 2010.

Assistance for Persons with Disabilities: Contact John Nispel by March 22, 2010, TTY (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To follow the directive of the legislature and the people to ensure registered domestic partners are extended the same rights as spouses.

Reasons Supporting Proposal: Comply with state law.

Statutory Authority for Adoption: RCW 72.01.090.

Statute Being Implemented: Chapter 26.60 RCW.

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

Name of Proponent: Clela Steelhammer, legislative and policy coordination manager, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Clela Steelhammer, Tumwater, (360) 725-8267.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule change should have no effect on small business.

A cost-benefit analysis is not required under RCW 34.05.328. This rule change has no financial impact to agencies or the public.

February 10, 2010

E. Vail
Secretary

AMENDATORY SECTION (Amending WSR 91-10-018, filed 4/23/91, effective 5/24/91)

WAC 137-12A-020 Definitions. As used in this chapter, the following items shall have the following meanings:

(1) "Secretary" shall mean the secretary of the department of corrections.

(2) "Department" shall mean the department of corrections.

(3) "Inmate" shall mean an individual sentenced to the custody of the department under state law and an individual transferred from another state or the federal government.

(4) "Institution" shall mean a facility described in RCW 72.01.050(2), such other similar facility hereafter established and a community residence operated pursuant to chapter 72.65 RCW.

(5) "Political subdivision" shall mean any city, town, county or other unit of local government.

(6) "Additional correctional facility" shall mean (a) a new building constructed at a new location for use in housing or servicing inmates; (b) a new building constructed on the grounds of an existing institution for use in housing or servicing inmates; and/or (c) a preexisting building heretofore not used by the department as a correctional facility which is reopened for use in housing or servicing inmates.

(7) "One-time cost impact" shall mean an economic impact experienced by a political subdivision associated with locating an additional correctional facility within its boundaries or associated with such other event specifically designated by the legislature.

(8) "Inmate family" shall mean the inmate's dependent children, the inmate's spouse or state registered domestic partner or parent and their dependents, or the legal guardian of the inmate's dependent children who were not residents of the local county where the inmate is incarcerated prior to the incarceration of the inmate.

(9) All references to the singular shall include the plural unless noted otherwise.

WSR 10-05-045
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 10, 2010, 9:22 a.m.]

Supplemental Notice to WSR 10-05-001.

Preproposal statement of inquiry was filed as WSR 09-14-003.

Title of Rule and Other Identifying Information: Revises WAC 181-78A-100. Amends rules for appealing professional educator standards board (PESB) decisions from a board process to the office of administrative hearings. Technical improvements to language.

Hearing Location(s): The Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, on March 24, 2010, at 8:30 a.m.

Date of Intended Adoption: March 24, 2010.

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 5, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by March 5, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current rules call for an appeals process that is conducted by a subcommittee of the board. The rule change would provide for the office of administrative hearing[s] to review appeals of PESB decisions.

Reasons Supporting Proposal: Attorney general recommendation.

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 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.

February 10, 2010

David Brenna

Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-16-005, filed 7/23/08, effective 8/23/08)

WAC 181-78A-100 Existing approved programs.

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

(1) All professional education programs shall be reviewed for approval under the 1997 program approval standards of chapter 181-78A WAC by August 31, 2000. Colleges and universities may permit individuals accepted into teacher preparation programs on or before August 31, 2000,

to obtain certification by meeting requirements of programs approved under approval standards described in chapter 181-78 WAC if the individuals complete the program on or before August 31, 2003, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2003: Provided, That the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

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

(3) All school counselor, school psychologist, or school social worker programs shall be approved under the 2004 program approval standards of chapter 181-78A WAC by August 31, 2005. Colleges and universities may permit individuals accepted into the school counselor, school psychologist, or school social worker programs on or before August 31, 2005, to obtain a residency certificate by meeting requirements of programs approved under the 1997 approval standards described in chapter 181-78A WAC if the individuals complete the program on or before August 31, 2007, and the college or university verifies program completion to the superintendent of public instruction on or before December 31, 2007. Provided that the professional educator standards board or its designee may waive this deadline on a case-by-case basis.

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

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

(6) The professional educator standards board shall determine the schedule for such approval reviews and whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under the 1997 program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and the National Council for the Accreditation of Teacher Education (NCATE) as such agreement relates to the NCATE accredi-

tation cycle and allow NCATE accredited colleges/universities to follow the NCATE schedule for their state site visit. Non-NCATE accredited colleges/universities shall have a state approval site visit every five years. The professional educator standards board may require more frequent site visits at their discretion pursuant to WAC 181-78A-110(2).

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

(a) ~~((Thirty days prior to the visit, institutions will submit a previsit))~~ Institutions shall follow professional educator standards board posted timelines to submit an institutional report that shall:

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

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

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

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

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

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

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

(viii) Describe the criteria used by the program(s) to assess, in multiple ways over time, its candidates' knowledge and skills, including evidence of positive impact on student learning.

(b) The site visit shall be conducted by a team whose membership is composed of:

(i) One member of the professional educator standards board;

(ii) One peer institution representative;

(iii) One individual with assessment expertise;

(iv) Two K-12 practitioners with expertise related to the programs scheduled for review; and

(v) ~~((The professional education and certification division leader, who))~~ A designated professional educator standards board staff member shall serve as team leader. Substitutions, drawn from (b)(i) through (iv) of this subsection, may be assigned when individuals are not available. Additions to the team shall be drawn from (b)(i) through (iv) of this subsection when necessary. ~~The ((office of superintendent of public instruction))~~ professional educator standards board liaison for that institution ((and the professional certificate program specialist, if a professional certificate program will be reviewed,)) may be present, but shall not serve in an evaluative role. All members, including substitutes, shall be trained.

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

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

(e) Institutions may submit a ~~((rejoinder))~~ reply to the report within two weeks following ~~((the public posting))~~ receipt of the report. The reply may address issues for consideration, including a request for appeal per subsection (g) of this section, limited to factual errors, evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review.

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

(g) Institutions may request a hearing in instances where it disagrees with the professional educator standards board's decision. The hearing will be conducted through the office of administrative hearings by an ~~((appeal team whose members shall include three individuals selected from a cadre of trained site visit team members, including at least one higher education representative and one K-12 practitioner))~~ administrative law judge per chapter 34.05 RCW. The institution seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035.

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

WSR 10-05-048
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)
[Filed February 10, 2010, 1:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-094.

Title of Rule and Other Identifying Information: The securities division is proposing to amend the rules set forth in chapter 460-33A WAC, which provide an optional method of registration for "mortgage paper securities" as defined in WAC 460-33A-015(4). The proposed rules would strengthen investor suitability requirements, revise the calculation of the number of investors that may participate in a loan, revise the net worth and bonding requirements to provide better investor protection, address recent concerns with respect to agreements with escrow agents who hold payments for the purchase of mortgage paper securities, establish requirements for servicing and participation agreements, clarify the fiduciary duties of a mortgage broker-dealer, clar-

ify investors' rights to receive and access records and information concerning their investments, codify the requirement for including a disclaimer in advertisements of mortgage paper securities, clarify that mortgage broker-dealer and mortgage broker-dealer representatives may not renew expired licenses, and make other updates and changes.

Hearing Location(s): State of Washington Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA 98501, on March 23, 2010, at 2:00 p.m.

Date of Intended Adoption: March 24, 2010.

Submit Written Comments to: Faith L. Anderson, Associate General Counsel, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail faith.anderson@dfi.wa.gov, fax (360) 704-6480, by March 23, 2010.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507-9033, by March 17, 2010, TTY (360) 664-8126 or (360) 902-8824.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: After several months of study, the division is proposing to amend the rules in chapter 460-33A WAC to address a variety of concerns that have surfaced during the course of routine examinations and the investigation of complaints received from investors who purchased mortgage paper securities. The proposals would:

- Revise the minimum financial thresholds for investors in mortgage paper securities set forth in WAC 460-33A-031;
- Revise the calculation of the number of investors that may participate in a loan;
- Remove the cap on the required amount of net worth and revise the required amount of the alternative surety bond so that it increases with the amount of mortgage paper securities offered;
- Require the escrow account agreement to provide that the escrow agent agrees to maintain its independence, that the account is subject to examination by the division, and that funds belonging to the mortgage broker-dealer may not be commingled in the escrow account;
- Revise the servicing agreement requirements to clarify that a mortgage broker-dealer that provides loan servicing to investors owes them the duties of a fiduciary, to require annual approval of the servicing agreement by investors, to require mortgage broker-dealers to provide investors access to books and records concerning their investments (including a list of investors in a loan), to provide investors reports concerning loans in default or property they have acquired through foreclosure, and to clarify that a mortgage broker-dealer is not entitled to late fees on a loan that has been foreclosed;
- Establish the requirements for participation agreements including basic contents, actions that may not be taken by a mortgage broker-dealer, binding a mortgage broker-dealer to its terms to the extent the mortgage broker-dealer maintains an interest in a loan or property acquired through foreclosure, allowing investors to call meetings, prohibiting the

distribution of any excess proceeds from the sale of foreclosed property to the mortgage broker-dealer, and prohibiting the payment of late fees to a mortgage broker-dealer on a loan that has been foreclosed;

- Express some of the fiduciary duties owed by a mortgage broker-dealer to investors in mortgage paper securities;
- Include some additional "dishonest and unethical practices" in WAC 460-33A-090;
- Express an investor's right to access the books and records of the mortgage broker-dealer that concern the investor's investments;
- Update and clarify the record-keeping requirements set forth in WAC 460-33A-115; and
- Make other clarifications and changes.

Reasons Supporting Proposal: The changes proposed should be adopted to better protect investors purchasing mortgage paper securities in registered public offerings. The securities division believes these changes are necessary in light of recent examinations and investigations.

Statutory Authority for Adoption: RCW 21.20.060, [21.20].070, [21.20].090, [21.20].100, [21.20].180, [21.20].-210, [21.20].250, [21.20].270, and [21.20].450.

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Faith L. Anderson, 150 Israel Road S.W., Olympia, WA 98501, (360) 725-7825; Implementation: Scott Jarvis, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700; and Enforcement: Suzanne E. Sarason, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328.

February 10, 2010

Scott Jarvis

Director

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-015 Definitions. As used in this chapter:

(1) "Mortgage broker-dealer" means a person who is defined as a "broker-dealer" in RCW 21.20.005(3) and who effects transactions in mortgage paper securities registered under the provisions of this chapter.

(2) "General offering circular" means a disclosure document that gives a general description of what is involved in the purchase of mortgage paper securities and the business of

offering the mortgage paper securities including a description of the mortgage broker-dealer.

(3) "Mortgage salesperson" means a person other than a mortgage broker-dealer who is defined as a "salesperson" in RCW 21.20.005(2) and who represents a mortgage broker-dealer in effecting offers or sales of mortgage paper securities registered under the provisions of this chapter.

(4) "Mortgage paper securities" means notes and ~~(bonds, or)~~ other debt securities secured by mortgages or trust deeds on real or personal property or by a vendor's interest in a property sales contract or options granting the right to purchase any of the foregoing, including any guarantee of or interest in the foregoing.

(5) "Specific offering circular" means a disclosure document describing the specific mortgage paper securities offering, which is meant to accompany the general offering circular.

(6) "Financial institution" means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or other similarly regulated financial institution, or holding company for any of the foregoing.

(7) "Construction loan" means a loan in which twenty-five percent or more of the loan proceeds will be used to fund future improvements to real estate securing the loan.

(8) "Income-producing properties" means real property that produces income on a regular basis.

(9) "Participation agreement" means the agreement entered into by investors in mortgage paper securities that sets forth the rights and responsibilities of the investors as to each other and as to others and that may provide for the delegation of authority and responsibility for the management of the loan underlying the mortgage paper securities, the management of property acquired by the investors through foreclosure, and other assigned duties.

AMENDATORY SECTION (Amending WSR 92-18-009, filed 8/21/92, effective 9/21/92)

WAC 460-33A-017 Registration not required. Securities exempt from registration pursuant to RCW 21.20.310 and transactions exempt from registration pursuant to RCW 21.20.320 need not be registered under the rules of this chapter(~~(:)~~).

Note: Persons intending to rely upon RCW 21.20.320(5) should consult WAC 460-44A-075.

AMENDATORY SECTION (Amending WSR 96-11-025, filed 5/6/96, effective 6/6/96)

WAC 460-33A-020 Optional registration procedures for mortgage paper securities. An applicant for registration of a mortgage paper securities offering may elect to register the offering under the rules of this chapter in lieu of following the registration procedure for debt securities under the Securities Act of Washington. Registration under this chapter requires the filing of a registration application as prescribed by the director of the department of financial institutions accompanied by the following:

(1) The general offering circular;

(2) A sample specific offering circular;

(3) The mortgage paper escrow and trust agreement;

(4) The participation agreement;

(5) The mortgage paper service agreement;

~~((5))~~ (6) The mortgage broker-dealer's articles of incorporation and bylaws or articles of organization;

~~((6))~~ (7) Sample documents to include any note, bond, mortgage, deed of trust, master deed of trust, real or personal property contract, indenture, guaranty, or other such instrument;

~~((7))~~ (8) The financial statements of the mortgage broker-dealer, including a balance sheet, profit and loss statement, and statement of cash flow as set forth in RCW 21.20.210(14). Pursuant to RCW 21.20.210 (14)(c), if the estimated proceeds of the mortgage paper securities offering, together with the proceeds from registered offerings during the year preceding the date of filing of the mortgage paper securities offering, exceed one million dollars, said financial statements shall be audited. If such proceeds exceed five million dollars, said financial statements for the previous two fiscal years shall be audited;

~~((8))~~ (9) The subscription and ~~(acknowledgement)~~ acknowledgment agreements;

~~((9))~~ (10) An opinion of counsel, if requested, on the legality and validity of the mortgage paper securities being issued;

~~((10))~~ (11) An opinion of counsel, if requested, regarding the application of the usury laws to the mortgage paper securities being offered;

~~((11))~~ (12) Such other information as the director may prescribe or request.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-031 Minimum investor suitability requirements. (1) In addition to complying with the suitability requirements set forth in RCW 21.20.702, in each sale of mortgage paper securities registered under the rules of this chapter, the mortgage broker-dealer shall ~~((have reasonable grounds to believe and after making reasonable inquiry shall believe that both the conditions of subsections (1) through (3) of this section are satisfied:~~

~~(1) The investment is suitable for the purchaser upon the basis of the facts disclosed by the purchaser as to the purchaser's other security holdings, the purchaser's other mortgage paper security holdings, and the purchaser's financial situation and needs.~~

~~(2) The purchaser qualifies for at least one of the following:~~

~~(a) The purchaser's investment in the mortgage paper securities being offered does not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse. Provided, That the purchaser's total investment in mortgage paper securities involving any one borrower or his affiliates may not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse;~~

~~(b) The purchaser's investment in the mortgage paper securities being offered does not exceed ten percent of the purchaser's (including spouse) taxable income for federal tax~~

purposes for the last year. ~~Provided, That the purchaser's total investment in mortgage paper securities involving any one borrower or his affiliates may not exceed twenty percent of the purchaser's net worth, or joint net worth with that person's spouse;~~

~~(e) The purchaser, either alone or with a purchaser representative as defined in WAC 460-44A-501, has, as stated in WAC 460-44A-505, such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment;~~

~~(d) The purchaser is an accredited investor as defined in WAC 460-44A-501.~~

~~(3)) comply with the following requirements:~~

~~(a) In recommending to a customer the purchase, sale or exchange of mortgage paper securities, the mortgage broker-dealer shall have reasonable grounds for believing that either:~~

~~(i) The investor has a minimum net worth of either:~~

~~(A) Two hundred fifty thousand dollars; or~~

~~(B) Seventy thousand dollars provided the investor has a minimum annual income of seventy thousand dollars; or~~

~~(ii) The investor is an accredited investor as defined in WAC 460-44A-501; and~~

~~(b) The investor's aggregate investment in mortgage paper securities offered by the mortgage broker-dealer does not exceed ten percent of the investor's net worth, or joint net worth with that person's spouse. Provided, That the investor's total investment in mortgage paper securities involving any one borrower or the borrower's affiliates may not exceed five percent of the investor's net worth, or joint net worth with that person's spouse.~~

~~(2) For purposes of subsections (1)(a)(i)(A) and (B) of this section, net worth shall be determined exclusive of home, home furnishings and automobiles.~~

~~(3) The mortgage broker-dealer shall document its determination that an investment in mortgage paper securities is appropriate for each investor in accordance with WAC 460-33A-115 (1)(f).~~

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-035 Limitations on the use of optional registration of this chapter. Unless the director makes a special notation on the permit issued to the mortgage broker-dealer granting permission to offer the following types of securities based upon a showing that the investors will be adequately protected, the following types of securities cannot be offered or sold under the rules of this chapter:

(1) Offerings involving construction loans may not be sold using the rules of this chapter unless the loan to value ratio, as determined utilizing the current value of the property without considering future improvements, is within the limits established by subsection (7) of this section.

(2) Offerings involving the mortgage broker-dealer, its officers, agents, affiliates, and persons controlling the mortgage broker-dealer or affiliates may not be sold as part of the optional registration of the rules of this chapter unless the registration with the director includes a full description of these transactions. An offering "involves" the persons listed

where the person is the owner, the borrower, or has an interest in the proceeds other than fees, commissions, or mark-ups.

(3) Offerings involving documents reserving the right to subordinate the position of any investor to any mortgage, trust deed or lien created at or after the sale.

(4) Offerings involving pooling or participations involving more than ten investors may not be sold under the optional registration of the rules of this chapter. However, where ~~((only first liens are involved and the note amount equals or exceeds one hundred thousand dollars))~~ the amount of the loan is greater than five hundred thousand dollars and the loan is secured by a first lien, the registrant may sell to ~~((up to twenty five investors))~~ the number of investors that results from dividing the loan amount by fifty thousand dollars. A husband and wife and their dependents may be counted as one investor.

(5) Offerings in which the real property or other collateral securing the notes~~((,-bonds,))~~ or other obligations is not within this state unless the general offering circular contains disclosure of all material facts concerning the relevant laws of the state in which the real property is situated and a risk factor discussing the risks of investing in out-of-state real estate.

(6) Offerings involving notes~~((,-bonds,))~~ or other obligations secured by a single mortgage, deed of trust or real estate contract or a single group of mortgages, deeds of trust or real estate contracts that are not identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being ~~((a lender))~~ an investor, and the sale to each ~~((purchaser or))~~ investor is not upon the same terms; provided however, an offering may be subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued.

(7) Offerings in which the aggregate principal amount of the notes~~((,-bonds,))~~ or other obligations sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, exceed the following percentages of the current market value (as determined by WAC 460-33A-105) of the real property:

(a) Single-family residences - eighty percent.

(b) Commercial and income-producing properties - seventy percent.

(c) Unimproved property which has been zoned for commercial or residential development - fifty percent. For purposes of this section, "unimproved property" includes real property with structures that cannot be legally occupied, do not substantially conform with the appraisal of the property prepared pursuant to WAC 460-33A-105, or otherwise lack the functional attributes or basic amenities customarily found in the type of structures in question.

(d) Other real property - forty percent.

(8) Offerings involving real estate paper in which a default in any note~~((,-bond))~~ or other obligation will not be a default in all notes~~((,-bonds,))~~ or other obligations concerning a specific loan.

(9) ~~((Offerings in which the following actions may be taken on behalf of the investors without the consent of inves-~~

tors holding a majority percentage of the unpaid dollar amount of notes, bonds, or obligations:

~~(a) Consenting to the sale or transfer by the borrower of the collateral securing the loan, or the substitution of a new borrower;~~

~~(b) Approving any modification to the loan which decreases the rate of interest payable to the investors;~~

~~(c) Deferring or forgiving the payment of any principal or interest;~~

~~(d) Making any agreements concerning the release, substitution, or exchange of any collateral, or any portion of the collateral, for the loan;~~

~~(e) Entering into any agreement to reduce the principal amount of the loan (except for actual payments of principal);~~

~~(f) Making any concession with respect to compliance with any material obligations imposed by the instruments evidencing or securing the loan; or~~

~~(g) Extending or renewing the loan.~~

~~(10)) Loans in which investors are required to designate the servicing agent as their attorney-in-fact with respect to documents and instruments, other than those described below, which would otherwise require signing or other action by the investors:~~

~~(a) Escrow instructions concerning the closing and collection of the loan;~~

~~(b) Instruments necessary to substitute investors; and~~

~~(c) Partial or full satisfaction or release of the deed of trust or other security instrument pursuant to the provisions of the deed of trust or security agreement upon receipt of the appropriate payment.~~

~~((11)) (10) Offerings in which the investors holding a majority percentage of the unpaid ((dollar)) amount of any loan may not remove the servicing agent.~~

~~((12)) (11) A registrant requesting a modification under this section must request it in writing and must provide satisfactory evidence that the interest of the public will be adequately protected.~~

NEW SECTION

WAC 460-33A-036 Participation agreement. (1) In each sale of mortgage paper securities, the mortgage broker-dealer shall obtain a signed participation agreement from the investor prior to the release of funds from escrow.

(2) The participation agreement shall address the following:

(a) The rights of investors to interest on the loan and other amounts derived from the loan and the property securing the loan;

(b) The rights and responsibilities of investors to contribute additional funds;

(c) Any restrictions on transfer;

(d) Any rights of first refusal;

(e) The intended tax treatment of an investment in mortgage paper securities and income derived therefrom;

(f) The nature and the extent of the authority of the mortgage broker-dealer to negotiate any loan modifications or workouts with borrowers, or to seek or negotiate the sale or lease of real property acquired by investors through foreclosure of their lien; and

(g) The requirements for amending the participation agreement.

(3) The participation agreement shall provide that the following actions may not be taken on behalf of the investors without the consent of investors holding a majority percentage of the unpaid amount of notes or other obligations:

(a) Consenting to the sale or transfer by the borrower of the collateral securing the loan, or the substitution of a new borrower;

(b) Approving any modification to the loan that decreases the rate of interest payable to the investors;

(c) Deferring or forgiving the payment of any principal, interest, or other amounts due in connection with the loan;

(d) Making any agreements concerning the release, substitution, or exchange of any collateral, or any portion of the collateral, for the loan;

(e) Entering into any agreement to reduce the principal amount of the loan (except for actual payments of principal);

(f) Making any concession with respect to compliance with any material obligations imposed by the instruments evidencing or securing the loan; or

(g) Extending or renewing the loan.

(4) The participation agreement shall provide that to the extent the mortgage broker-dealer owns an interest in the loan, the mortgage broker-dealer, or any successor or assignee, shall be bound by the terms of the participation agreement.

(5) The participation agreement shall provide that investors holding interests representing at least ten percent of the unpaid amount of the loan, or that hold interests representing at least ten percent of the property acquired by investors through foreclosure, may call a meeting of the investors in the loan.

(6) The participation agreement shall provide that in the event a loan is foreclosed and the property that secures the loan is sold, the excess of the sale proceeds after payment of expenses and repayment of any funds advanced by the mortgage broker-dealer or others shall be distributed to the investors, including the mortgage broker-dealer to the extent it owned an interest in the loan and owns an interest in the property, in proportion to their respective interests in the loan. The participation agreement shall not provide for any such excess to be distributed to the mortgage broker-dealer except to the extent the mortgage broker-dealer owned an interest in the loan and owns an interest in the property.

(7) The participation agreement shall not provide for the payment of late fees, default interest, or other fees and expenses that are assessed against a borrower who has defaulted on a loan, but that are not paid prior to foreclosure, to the mortgage broker-dealer once a loan has been foreclosed. The mortgage broker-dealer may, however, be compensated at a reasonable rate for services performed in pursuing foreclosure and the management or sale of property acquired by investors through foreclosure.

(8) The participation agreement shall not provide for the indemnification of the mortgage broker-dealer by the investors for acts or omissions that constitute a violation of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-037 Disclosure requirements in the sale of real estate owned property. The following apply to real property acquired by owners of mortgage paper securities through foreclosure or otherwise in settlement of the note or bond which is the subject of the mortgage paper security (real estate owned or REO):

(1) The mortgage broker-dealer shall provide investors a written disclosure document when making a recommendation to investors to sell REO.

(2) The disclosure document required by subsection (1) of this section shall include an appraisal or updated appraisal meeting the requirements of WAC 460-33A-105 and dated within twelve months of the recommendation unless:

(a) A real estate broker's opinion of value dated within twelve months of the recommendation is obtained pursuant to WAC 460-33A-038;

(b) In offering the mortgage paper securities to the current owners, the loan-to-value ratio was established by relying on the tax assessment valuation pursuant to WAC 460-33A-105(6). In this instance, the specific offering circular required by subsection (1) of this section may use the current tax assessment valuation; or

(c) The investors, excluding the mortgage broker-dealer and its affiliates, holding a majority percentage interest in the unpaid ~~((dollar))~~ amount of the notes~~((bonds))~~ or other obligations consent to the waiver of this requirement. The mortgage broker-dealer may not require investors to consent to this waiver prior to issuing its recommendation to sell REO.

(3) Regardless of whether an appraisal is required or furnished pursuant to subsection (2) of this section, investors holding a majority percentage interest in the unpaid ~~((dollar))~~ amount of the notes~~((bonds))~~ or other obligations may direct the mortgage broker-dealer to obtain an appraisal or a new appraisal that is dated within twelve months of the mortgage broker-dealer's recommendation. The costs of such an appraisal shall be the responsibility of the mortgage paper security investors unless the mortgage broker-dealer agrees to pay for the appraisal.

(4) The disclosure document required by subsection (1) of this section shall disclose the following:

(a) A summary of the purchase and sale agreement;

(b) A summary of property marketing completed prior to receipt of the purchase and sale agreement;

(c) Estimated marketing period necessary to obtain fair market value of the property established by the current appraisal, if an appraisal is required under subsection (2) or (3) of this section;

(d) Current appraised value or a real estate broker's opinion of value pursuant to WAC 460-33A-038 of the property, as well as the appraised value of the property at the time the loan was originated, if an appraisal or opinion of value is required under subsection (2) or (3) of this section;

(e) Current tax assessed value of the property, as well as the tax assessed value at the time the loan was originated;

(f) A summary of the reasons for which the mortgage broker-dealer is making the recommendation to investors to accept the purchase and sale agreement;

(g) A summary of the options available to investors should they elect to reject the purchase and sale agreement;

(h) The right of investors to obtain upon written request a list of all investors holding an interest in the property subject to the purchase and sale agreement and their respective addresses; and

(i) The right of investors holding a majority percentage of the interest in the property to remove the mortgage broker-dealer as the servicing agent in accordance with WAC 460-33A-035(11).

(5) If the terms of the purchase and sale agreement include seller financing, the disclosure document required in this section shall disclose the following in addition to the disclosure required under subsection (4) of this section:

(a) A loan application completed by the prospective buyer;

(b) The credit report of the prospective buyer;

(c) The financial statements of the prospective buyer, if available;

(d) A comparison of the loan terms in the original offering with those proposed in the purchase and sale agreement; and

(e) A summary of the options available to an individual investor who does not wish to participate in the loan should investors holding a majority percentage of the interest in the property accept the purchase and sale agreement.

(6) The disclosure document required in this section shall be sent to all the investors holding an interest in the property subject to the purchase and sale agreement at their last known addresses at least ten days prior to the closing date of the sale.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-040 Net worth or bond requirement.

(1) All persons and entities meeting the definition of a mortgage broker-dealer must meet and maintain one of the following at all times:

(a) A minimum tangible net worth, as determined by generally accepted accounting principles, of the greater of one hundred thousand dollars or ten percent of the amount of securities registered pursuant to this chapter ~~((up to a maximum of one million dollars))~~; or

(b) File a surety bond in ~~((the face amount of one hundred thousand dollars satisfactory to the securities administrator))~~ a form acceptable to the securities administrator with a face amount of the greater of one hundred thousand dollars or one percent of the amount of securities registered pursuant to this chapter; or

(c) In the event the mortgage broker-dealer and any affiliate does not handle the funds of ~~((lenders))~~ investors and borrowers, minimum tangible net worth of five thousand dollars, as determined by generally accepted accounting principles.

(2) Every mortgage broker-dealer must maintain a positive net worth at all times.

(3) Every mortgage broker-dealer~~((s-failing))~~ that fails to ~~((maintain the above mentioned minimum))~~ comply with the net worth requirements set forth in this section must inform

the securities division of such failure within seventy-two hours at which time all sales of securities must be suspended.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-055 Escrow account. (1) **Escrow account required.** All funds received from ~~((lenders or))~~ investors to purchase mortgage paper securities shall be deposited within forty-eight hours of receipt in an escrow account acceptable to the director. All checks by which purchases or investments are made shall be made payable to the escrow account.

(2) **Escrow agent.** The escrow account shall be maintained in a financial institution as set forth in WAC 460-33A-015(6), with an escrow agent registered under chapter 18.44 RCW, or with some other independent escrow agent acceptable to the director. The entity acting as the escrow agent must be independently audited or examined, in a manner acceptable to the director, on a regular basis. ~~((All checks by which purchases or investments are made shall be made payable to the escrow account.))~~

(3) **Disbursements from escrow account.** All necessary disbursements shall be made from the escrow account. ~~((No person acting as a mortgage broker-dealer or its agent shall accept any purchase or investment funds for mortgage paper securities in advance of the time necessary to fund the loan transaction. No such fund shall be maintained in such account for longer than sixty days without disbursing the funds and the escrow agreement must provide that funds maintained in such))~~ Funds held in the escrow account shall be returned to ~~((the))~~ investors on the sixty-first day from deposit in the account if the funds have not previously been disbursed following the recordation of the applicable instrument in accordance with WAC 460-33A-060(1).

(4) **Interest on funds held in escrow account.** No interest earned on escrow account funds shall be paid to the mortgage broker-dealer or its affiliates. ~~((The escrow agreement must provide that funds may be disbursed from the escrow account only to a specific loan escrow, where funds will be disbursed only upon closing and recordation, or to return the funds to the lenders or investors.~~

(2) ~~The escrow agreements shall provide that the funds will not be subject to the mortgage broker-dealer's creditors.~~

(3) ~~The account shall be subject to an audit at any reasonable time by the securities division.~~) (5) **Prohibition on commingling funds of mortgage broker-dealer in escrow account.** Funds belonging to the mortgage broker-dealer shall not be commingled in the escrow account except insofar as the mortgage broker-dealer purchases mortgage paper securities for its own account. Payments to which a mortgage broker-dealer is entitled in connection with a particular loan or sale of mortgage paper securities shall be promptly distributed to the mortgage broker-dealer upon the closing of the loan or the recordation of the applicable instrument in accordance with WAC 460-33A-060(1).

(6) **Contents of escrow agreement.** The escrow account required to be maintained pursuant to WAC 460-33A-055 shall be governed by an agreement that provides:

(a) Funds may be disbursed from the escrow account only to a specific loan escrow, where funds will be disbursed only upon closing and recordation, or to return the funds to the investors;

(b) Funds will not be held in the escrow account for more than sixty days without disbursing the funds and that funds maintained in such account shall be returned to the investor on the sixty-first day from deposit in the account;

(c) Funds held in the escrow account will not be subject to the mortgage broker-dealer's creditors;

(d) The escrow agent agrees that the escrow account is subject to examination at any reasonable time by the securities division; and

(e) The escrow agent agrees to follow the law of escrow and maintain its independence from all parties to the agreement, including the mortgage broker-dealer.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-060 Recordation. (1) Instrument. Every person acting as a mortgage broker-dealer or ~~((his))~~ its agent selling mortgage paper securities must record the applicable instrument in the applicable place before any disbursement of funds takes place. Such recorded instrument must bear the name of the lien holder or beneficiary and not the name of the mortgage broker-dealer unless the mortgage broker-dealer is the actual lender. Such recorded instrument must reflect the amount or percentage of the loan purchased by the investor.

(2) **Notice to investors.** Every person acting as a mortgage broker-dealer or its agent selling mortgage paper securities must provide notice of recording to the investor within ten days of receipt by the mortgage broker-dealer of the recorded instrument. The notice must be in writing and must include a copy of the recorded instrument.

AMENDATORY SECTION (Amending Order SDO-124-89, filed 8/17/89, effective 9/17/89)

WAC 460-33A-065 Service agreement. (1) Every person acting as a mortgage broker-dealer, or an agent or affiliate thereof, who undertakes to service a mortgage paper security shall have a written agreement with the ~~((lender or holder of the contract))~~ investors setting forth specifically what services will be provided.

(2) The service agreement shall ~~((require))~~ provide:

(a) That payments received on the note, bond or obligation be immediately deposited to a trust account and in accordance with the provisions of this rule;

(b) That such payments shall not be commingled with the assets of the servicing agent or used for any transaction other than the transaction for which the funds are received;

(c) That payments received on the note, bond or obligation shall be transmitted to the ~~((purchasers or lenders))~~ investors pro rata according to their respective interests within thirty-one days after receipt thereof by the agent. If the source for such payment is not the maker of the note, bond or obligation, the agent will inform the ~~((purchasers or lenders))~~ investors of the source for payment. A broker or servicing agent who transmits to the ~~((purchasers or lenders))~~ investors

such broker's and/or servicing agent's own funds to cover payments due from the borrower but unpaid may recover the amount of such advances from the trust fund when the past due payment is received; ~~((and))~~

(d) That the servicing agent will file a request for notice of default upon any prior encumbrances and promptly notify the ~~((purchasers or lenders))~~ investors of any default on such prior encumbrances or on the note or ~~((notes))~~ other obligations subject to the servicing agreement;

(e) That any fee to be collected by the servicing agent shall be reasonable in relation to the services performed;

(f) That the servicing agent may not accept, provide, or charge any undisclosed compensation or realize any undisclosed remuneration;

(g) That in the event a borrower defaults on a loan or the investors acquire property that secured a loan, the servicing agent shall send, at least quarterly and at such additional times as an investor may request, each investor a statement setting forth all income and expenses incurred in connection with the loan or the property during that period, or since the last statement, within fifteen days after the end of the quarter or receipt of an investor's request for a statement until such time that the default has been cured or the property has been sold, at which time a final statement shall be provided to each investor;

(h) That any provision providing for the indemnification of the servicing agent shall not provide for indemnification by the investors for acts or omissions that constitute a violation of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder;

(i) That whenever the servicing agreement requires the consent or approval of the investors, the investors shall have a minimum of fifteen days from the date the request for consent or approval is sent by the servicing agent to approve or disapprove of the matter in writing unless a shorter period of time is permitted under this chapter; and

(j) That the servicing agent will, upon request by an investor, provide a list of the investors holding an interest in a loan to the investor, along with the respective percentage interests in that loan held by each investor and their most recent mailing addresses on file with the servicing agent.

(3) The servicing agreement shall not provide for the payment of late fees, default interest, or other fees and expenses that are assessed against a borrower who has defaulted on a loan, but that are not paid prior to foreclosure, to the mortgage broker-dealer once a loan has been foreclosed. The mortgage broker-dealer may, however, be compensated at a reasonable rate for services performed in pursuing foreclosure and the management or sale of property acquired by investors through foreclosure.

(4) Every person acting as a mortgage broker-dealer, or an agent or affiliate thereof, that provides servicing on loans sold as mortgage paper securities owes the duties of a fiduciary to each investor.

(5) The servicing agreement shall not exceed one year in duration and must be renewed annually by investors holding interests representing a majority interest in the unpaid amount of the loan.

(6) Any notices to investors concerning the servicing of the loan in which they have invested, or property that has

been acquired by investors through foreclosure, shall be sent to each investor at the investor's last known address.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-070 Origination and assignment.

Every mortgage broker-dealer or his agent or affiliate that originates loan transactions and later intends to offer these as mortgage paper securities to ~~((lenders or))~~ investors must obtain the permission of the director. Every mortgage broker-dealer or its agent or affiliate that purchases or takes mortgage paper in its own name, whether for its own account or the account of others, and intends to offer such as mortgage paper securities to ~~((lenders or))~~ investors must disclose its interest in the property or the transaction and must not disburse funds from the escrow account until the applicable instrument has been properly recorded in the name of the ~~((lenders or))~~ investors.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-075 Advertising. (1) No person effecting a transaction in mortgage paper securities shall advertise in any manner any statement or representation, with regard to any mortgage paper security, which is false, misleading or deceptive.

(2) Every mortgage broker-dealer or its agent shall file with the director ~~((five))~~ seven days prior to use, true copies of all advertising materials. If not disallowed by written notice or otherwise within ~~((five))~~ seven days from the date filed, the material may be disseminated. No person shall use any such material in any way after the director gives written notice that such material contains any statement or omission that is false or misleading.

(3) All advertisements concerning the offer or sale of mortgage paper securities that are not rated by a nationally recognized statistical rating organization or insured against loss shall include the following legend: Mortgage paper securities are not rated or insured against loss and may be subject to substantial risks that are further described in the general and specific offering circulars. Past performance is not a guarantee of future results. Investors are urged to read the general and specific offering circulars prior to investing.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-081 Expiration of mortgage broker-dealer registration, renewal procedure~~((delinquency fees))~~. A license issued to a mortgage broker-dealer shall expire on the expiration date of the securities registration of the mortgage paper securities offered by the mortgage broker-dealer. The license shall be renewed, or if not renewed, shall ~~((be deemed delinquent))~~ terminate at the expiration of the issuer's securities registration. ~~((For any renewal application postmarked after the expiration date but received by the director within two months of the expiration date, the licensee shall pay a delinquency fee of one hundred dollars in~~

addition to the renewal fee. No renewal applications will be accepted after that time.)

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-086 Expiration of mortgage securities salesperson registration, renewal procedure, ~~(and delinquency fees)~~. A license issued to a mortgage securities salesperson shall expire on the expiration date of the securities registration of the mortgage paper securities offered by the mortgage broker-dealer. The license shall be renewed, or if not renewed, shall ~~((be deemed delinquent))~~ terminate at the expiration of the issuer's securities registration. ~~((For any renewal application postmarked after the expiration date but received by the director within two months of the expiration date, the licensee shall pay a delinquency fee of fifty dollars in addition to the renewal fee. No renewal applications will be accepted after that time.))~~

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-090 Dishonest and unethical practices—Mortgage broker-dealers. The phrase "dishonest and unethical practices" as used in RCW 21.20.110~~((7))~~ (1)(g) includes the following acts by mortgage broker-dealers or mortgage salespersons:

(1) To cause investors to sign reconveyances of title, quit claim deeds, or any other like instruments before such instruments are required in connection with some transaction such as payoff or foreclosure.

(2) To fail to deliver, within a reasonable time, to the investor proceeds, received by the mortgage broker-dealer, of sale, refinancing, or foreclosure of an obligation owned by the investor.

(3) To engage in any dishonest or unethical practice as set forth in WAC 460-21B-060 or 460-22B-090.

(4) To fail to comply with the material terms of agreements between the mortgage broker-dealer and the investors in mortgage paper securities.

(5) To obtain an agreement from investors in mortgage paper securities that provides for the indemnification of the mortgage broker-dealer or its affiliates by investors for violations of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-095 Fiduciary duty—Mortgage broker-dealers. A mortgage broker-dealer owes the duties of a fiduciary to investors in mortgage paper securities. For the purposes of this section, examples of these duties include, but are not limited to, the following:

(1) A mortgage broker-dealer must act in the best interests of and in the utmost good faith toward the investors in mortgage paper securities;

(2) In the event a conflict arises in connection with a mortgage broker-dealer acting as an agent for both mortgage borrowers and ~~((purchasers of))~~ investors in mortgage paper

securities, every mortgage broker-dealer shall resolve the conflict in favor of the ~~((purchasers of))~~ investors in mortgage paper securities;

(3) A mortgage broker-dealer shall disclose any potential and actual conflicts of interest it may have in mortgage paper securities transactions to the prospective investors in mortgage paper securities;

(4) A mortgage broker-dealer must comply with the material terms of agreements with investors in mortgage paper securities, including servicing and participation agreements;

(5) A mortgage broker-dealer must use reasonable care in performing its duties; and

(6) A mortgage broker-dealer has a duty to allow reasonable access to each investor to pertinent records concerning loans in which the investor has invested and property in which the investor has acquired an interest through foreclosure.

AMENDATORY SECTION (Amending Order SDO-140-86, filed 10/20/86)

WAC 460-33A-100 Written statement. Every person selling a mortgage paper security that is required to be registered under the regulations of this chapter shall ~~((require the purchaser or his agent to sign a))~~ obtain a signed receipt for the general and the specific offering circulars containing all the applicable information required by WAC 460-33A-025 and 460-33A-030 from the investor or his agent before the ~~((purchaser))~~ investor shall be obligated to fund the transaction. No person shall permit the ~~((purchaser))~~ investor to sign such receipt if any of the required information is omitted. The mortgage broker-dealer shall retain an executed copy of receipt for four years.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-105 Appraisals. (1) An appraisal of each parcel of real property or other property which secures or relates to a transaction subject to the provisions of this chapter shall be made by an independent appraiser. The appraisal shall be kept on file by the mortgage broker-dealer for four years.

(2) The appraisal shall reflect the value of the property on an "as is" not an "as built" basis.

(3) The appraisal shall conform to the following requirements:

(a) The appraisal shall be prepared by a competent, independent appraiser acceptable to the administrator; and

(b) The appraiser shall be appropriately licensed or certified in conformance with the Certified Real Estate Appraiser Act, chapter 18.140 RCW.

(4) ~~((A))~~ The valuation date of the appraisal ~~((made))~~ must be within the twelve-month period prior to the sale of the mortgage paper security ~~((is sufficient)).~~

(5) The written consent of any appraiser who is named as having prepared an appraisal in connection with the mortgage paper securities offering shall be kept on file by the mortgage broker-dealer.

(6) In lieu of the appraisal required by this section, the mortgage broker-dealer may elect to rely on the most recent tax assessment valuation of each parcel of real property.

(7) The specific offering circular shall disclose the ratio of the aggregate principal amount of the notes (~~(-bonds)~~) or other obligations sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, compared to the most recent tax assessment valuation of the real property or the appraised amount, if an appraisal was obtained pursuant to this section. If the loan to value ratio is disclosed based on the appraised value of the real property, the specific offering circular shall also disclose the most recent tax assessment valuation of the real property.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-115 Books and records. Each mortgage broker-dealer (~~(shall)~~) has a duty to make and keep current in this state (~~(the following)~~) books and records relating to its business. This duty includes the duty to make, keep and preserve the records referenced in WAC 460-21B-050, as well as the following records concerning sales of mortgage paper securities and other asset-backed securities:

(1) A file for each loan which the mortgage broker-dealer has funded through sales of mortgage paper securities and other asset-backed securities, including securities not registered pursuant to chapter 460-33A WAC, which file shall contain the following:

(a) A copy of each appraisal or tax assessment valuation (~~(required by WAC 460-33A-105)~~);

(b) Copies of all documents of title representing current interests in the real property securing the loan;

(c) Copies of title insurance policies and any other insurance policies on the real property securing the loan;

(d) Evidence of payments for the purchase of securities in the loan to include copies of checks submitted by investors, ACH payments, and records of other electronic payments;

(e) A copy of the signed participation agreement for each investor;

(f) The (~~(acknowledgement)~~) acknowledgment of receipt by each investor of the specific and general offering circulars or other disclosure materials;

(~~((g))~~) (g) The subscription agreement for each investor;

(~~((h))~~) (h) A copy of the investor suitability questionnaire for each investor and documentation of the mortgage broker-dealer's determination that an investment in mortgage paper securities or other asset-backed securities is suitable for each investor in accordance with RCW 21.20.702 and WAC 460-33A-031. If the mortgage broker-dealer has not verified the suitability of an investment in mortgage paper securities for (~~(a purchaser)~~) an investor within the prior twelve months, the mortgage broker-dealer shall conduct a reasonable inquiry to verify that further investment in mortgage paper securities is suitable based on the criteria set forth in WAC 460-33A-031 and document such a determination. As an alternative to maintaining this documentation in the loan files, the mortgage broker-dealer may maintain this documentation in separate files provided a list of all investors par-

ticipating in the loan is included in the loan file with an indication of the location of this documentation for each investor;

(~~((i))~~) (i) The specific offering circular for the offering or other offering materials provided in sales of asset-backed securities;

(~~((j))~~) (j) All correspondence with investors relating to the loan;

(~~((k))~~) (k) The loan application of the borrower and all supporting documents such as the credit report on the borrower;

(~~((l))~~) (l) Copies of all service agreements with investors relating to the loan;

(~~((m))~~) (m) Copies of the escrow instructions and settlement statements relating to the loan;

(~~((n))~~) (n) Copies of all real estate broker's opinions of value obtained in accordance with WAC 460-33A-038 and their written consent to use their opinions of value in connection with an offering of mortgage paper securities.

(2) A file for each loan for which the mortgage broker-dealer is soliciting funds through the sale of mortgage paper or other asset-backed securities, which file shall contain the same items required under subsection (1) of this section except for those items which are not yet available because the mortgage paper or asset-backed security has not yet been sold.

(3) A file containing copies of all service agreements required under WAC 460-33A-065.

(4) Ledgers (or other records) reflecting all assets, liabilities, income, expense, and capital accounts.

(5) Ledgers, accounts (or other records) itemizing separately each cash account of every customer including, but not limited to, all funds in the mortgage broker's escrow and trust account, all proceeds of sale, refinancing, foreclosure, or similar transaction involving the real or personal property securing a loan funded by sales of mortgage paper, and all moneys collected from the borrower on behalf of the investors.

(6) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of net liquid assets as of the trial balance date pursuant to WAC 460-33A-040. Such trial balances and computations shall be prepared currently at least once a month.

(7) A questionnaire or application for employment executed by each agent of such broker-dealer, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to each such person:

(a) His or her name, address, Social Security number, and the starting date of his or her employment or other association with the broker-dealer.

(b) His or her date of birth.

(c) The educational institutions attended by him or her and whether or not he or she graduated therefrom.

(d) A complete, consecutive statement of all his or her business connections for at least the preceding ten years, including his or her reason for leaving each prior employment, and whether the employment was part time or full time.

(e) A record of any denial of a certificate, membership or registration, and of any disciplinary action taken, or sanction imposed, upon him or her by any federal or state agency, or

by any national securities exchange or national securities association, including a record of any finding that he or she was a cause of any disciplinary action or had violated any law.

(f) A record of any denial, suspension, expulsion or revocation of a certificate, membership or registration of any broker-dealer with which he or she was associated in any capacity when such action was taken.

(g) A record of any permanent or temporary injunction entered against him or her or any broker-dealer with which he or she was associated in any capacity at the time such injunction was entered.

(h) A record of any arrests, indictments or convictions for any felony or any misdemeanor, except minor traffic offenses, of which he or she has been the subject.

(i) A record of any other name or names by which he or she has been known or which he or she has used.

(8) A file containing all complaints received from investors in mortgage paper securities or other securities sold by the mortgage broker-dealer.

NEW SECTION

WAC 460-33A-116 Access to loan records by investors. (1) An investor in mortgage paper securities has a right to access the books and records maintained by a mortgage broker-dealer concerning the loan underlying the mortgage paper securities purchased by that investor, as well as records concerning property in which an investor has acquired an interest through foreclosure of loans sold as mortgage paper securities, to the extent it is reasonably necessary in the interest of the investor.

(2) Every mortgage broker-dealer shall provide investors in mortgage paper securities and their agents and attorneys access to the books and records required to be maintained by WAC 460-33A-115 (1) and (2), except for the records set forth in WAC 460-33A-115 (1)(d) through (h) to the extent those records concern investments in mortgage paper securities by persons other than the requestor, concerning loans in which the investors have invested. Every mortgage broker-dealer shall provide investors in mortgage paper securities and their agents and attorneys the opportunity to inspect and copy books and records during ordinary business hours. A mortgage broker-dealer may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(3) Every mortgage broker-dealer shall furnish to an investor in mortgage paper securities, and to the legal representative of a deceased investor or investor under legal disability:

(a) Without demand, any information concerning the mortgage paper securities purchased that is reasonably required for the proper exercise of the investor's rights under the participation agreement or this chapter; and

(b) On demand, any other information concerning the mortgage paper securities purchased, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

AMENDATORY SECTION (Amending WSR 01-23-002, filed 11/7/01, effective 12/8/01)

WAC 460-33A-125 Notice of changes by mortgage broker-dealers. (1) Each mortgage broker-dealer shall, upon any material change in the information contained in its application for registration promptly file an amendment to such application setting forth the changed information (and in any event within thirty days after the change occurs).

(2) Each mortgage broker-dealer shall notify the director of the employment of any new agent in Washington and of the termination of employment of any agent in Washington, giving the full name and Social Security number of the individual involved, the date of employment or termination, and the location of the office in which he or she was or will be employed by submitting a completed (~~(NASD)~~) FINRA Form U-4 to the director or the director's designee within twenty-one days after the event occurs.

(3) Each mortgage broker-dealer shall notify the director of the termination of employment of any agent in Washington by submitting a completed (~~(NASD)~~) FINRA Form U-5 to the director or the director's designee, within thirty days after the event occurs.

WSR 10-05-078

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed February 15, 2010, 12:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-091.

Title of Rule and Other Identifying Information: WAC 388-551-2000 Home health services—General, 388-551-2010 Home health services—Definitions, 388-551-2020 Home health services—Eligible clients, 388-551-2030 Home health skilled services—Requirements, 388-551-2100 Home health services—Covered skill nursing services, 388-551-2110 Home health services—Covered specialized therapy, 388-551-2120 Home health services—Covered aide services, 388-551-2125 Home health services—Delivered through telemedicine (new), 388-551-2130 Home health services—Noncovered services, 388-551-2200 Home health services—Eligible providers, 388-551-2210 Home health services—Provider requirements, and 388-551-2220 Home health services—Provider payments.

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 April 6, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 7, 2010.

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 April 6, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by March 23, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of social and health services' health and recovery services administration (HRSA) is proposing amendments to WAC 388-551-2000 through 388-551-2220 Home health services to allow for reimbursement for the delivery of home health services via telemedicine. The department is also using this opportunity to incorporate minor housekeeping changes such as changing "medical assistance administration" to "the department" and any changes in terms required to be consistent with the implementation of the new ProviderOne system.

Reasons Supporting Proposal: These amendments are required to implement SHB 1529 which authorizes delivery of home health services through telemedicine.

Statutory Authority for Adoption: RCW 74.08.090, chapter 74.09 RCW, and chapter 326, Laws of 2009 (SHB 1529).

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Ellen Silverman, P.O. Box 45560, Olympia, WA 98504-5560, (360) 725-1570.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ellen Silverman, P.O. Box 45560, Olympia, WA 98504-5560, phone (360) 725-1570, fax (360) 586-9727, e-mail silvees@dshs.wa.gov.

February 11, 2010

Don Goldsby, Manager

Rules and Policies Assistance Unit

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 10-06 issue of the Register.

WSR 10-05-083

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed February 15, 2010, 12:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-24-030.

Title of Rule and Other Identifying Information: The department is amending WAC 388-550-7050 OPPS—Definitions, 388-550-7200 OPPS—Payment method, and 388-550-7300 OPPS—Payment limitations.

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 March 23, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 24, 2010.

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 March 23, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by March 9, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments add language to inform hospital providers of the requirements to bill for outpatient hospital services according to the national correct coding initiative (NCCI) standards.

Reasons Supporting Proposal: The rules are necessary to incorporate into rule the NCCI standards.

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, 74.09.500, and 74.09.530.

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 98504-45510 [98504-5510], phone (360) 725-1854, fax (360) 753-9152, e-mail adamsr@dshs.wa.gov.

February 8, 2010

Don Goldsby, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 09-12-062, filed 5/28/09, effective 7/1/09)

WAC 388-550-7050 OPPS—Definitions. The following definitions and abbreviations and those found in WAC 388-550-1050 apply to the department's outpatient prospective payment system (OPPS):

"Ambulatory payment classification (APC)" means a grouping that categorizes outpatient visits according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed.

"Budget target" means the amount of money appropriated by the legislature or through the department's budget process to pay for a specific group of services, including anticipated caseload changes or vendor rate increases.

"Budget target adjustor" means a department-established component of the APC payment calculation applied to all payable ambulatory payment classifications (APCs) to allow the department to reach and not exceed the established budget target.

"Discount factor" means the percentage applied to additional significant procedures when a claim has multiple significant procedures or when the same procedure is performed multiple times on the same day. Not all significant procedures are subject to a discount factor.

"Medical visit" means diagnostic, therapeutic, or consultative services provided to a client by a healthcare professional in an outpatient setting.

"Modifier" means a two-digit alphabetic and/or numeric identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting hospital can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"National correct coding initiative (NCCI)" is a [national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the American Medical Association's Current Procedural Terminology \(CPT®\) manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The centers for medicare and medicaid services \(CMS\) maintain NCCI policy. Information can be found at <http://www.cms.hhs.gov/NationalCorrectCodInitEd/>.](#)

"National payment rate (NPR)" means a rate for a given procedure code, published by the centers for medicare and medicaid (CMS), that does not include a state or location specific adjustment.

"Nationwide rate" see "national payment rate."

"NCCI edit" is a software step used to determine if a claim is billing for a service that is not in accordance with [federal and state statutes, federal and state regulations, department fee schedules, billing instructions, and other publications. The department has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law. NCCI standards or department policy.](#)

"Observation services" means services furnished by a hospital on the hospital's premises, including use of a bed and periodic monitoring by hospital staff, which are reasonable and necessary to evaluate an outpatient's condition or determine the need for possible admission to the hospital as an inpatient.

"Outpatient code editor (OCE)" means a software program that the department uses for classifying and editing claims in ambulatory payment classification (APC) based OPSS.

"Outpatient prospective payment system (OPPS)" means the payment system used by the department to calculate reimbursement to hospitals for the facility component of outpatient services. This system uses ambulatory payment classifications (APCs) as the primary basis of payment.

"Outpatient prospective payment system (OPPS) conversion factor" see "outpatient prospective payment system (OPPS) rate."

"Outpatient prospective payment system (OPPS) rate" means a hospital-specific multiplier assigned by the department that is one of the components of the APC payment calculation.

"Pass-throughs" means certain drugs, devices, and biologicals, as identified by centers for medicare and medicaid services (CMS), for which providers are entitled to additional separate payment until the drugs, devices, or biologicals are assigned their own ambulatory payment classification (APC).

"Significant procedure" means a procedure, therapy, or service provided to a client that constitutes the primary reason for the visit to the healthcare professional.

"Status indicator (SI)" means a code assigned to each medical procedure or service by the department that contributes to the selection of a payment method.

"SI" see "status indicator."

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-13-100, filed 6/20/07, effective 8/1/07)

WAC 388-550-7200 OPSS—Billing requirements and payment method. (1) This section describes [hospital provider billing requirements and the payment methods the department uses to pay for covered outpatient hospital services provided by hospitals not exempted from the outpatient prospective payment system \(OPPS\).](#)

[\(2\) Providers must bill according to national correct coding initiative \(NCCI\) standards. NCCI standards are based on:](#)

[\(a\) Coding conventions defined in the American Medical Association's Current Procedural Terminology \(CPT®\) manual;](#)

[\(b\) Current standards of medical and surgical coding practice;](#)

[\(c\) Input from specialty societies; and](#)

[\(d\) Analysis of current coding practices.](#)

[The centers for medicare and medicaid services \(CMS\) maintains NCCI policy.](#)

AMBULATORY PAYMENT CLASSIFICATION (APC) METHOD

~~((2))~~ (3) The department uses the APC method when ~~(the centers for medicare and medicaid services (CMS))~~ (CMS) has established a national payment rate to pay for covered services. The APC method is the primary payment methodology for OPPS. Examples of services paid by the APC methodology include, but are not limited to:

- (a) Ancillary services;
- (b) Medical visits;
- (c) Nonpass-through drugs or devices;
- (d) Observation services;
- (e) Packaged services subject to separate payment when criteria are met;
- (f) Pass-through drugs;
- (g) Significant procedures that are not subject to multiple procedure discounting (except for dental-related services);
- (h) Significant procedures that are subject to multiple procedure discounting; and
- (i) Other services as identified by the department.

OPPS MAXIMUM ALLOWABLE FEE SCHEDULE

~~((3))~~ (4) The department uses the outpatient fee schedule published in the department's billing instructions to pay for covered:

- (a) Services that are exempted from the APC payment methodology or services for which there are no established weight(s);
- (b) Procedures that are on the CMS inpatient only list;
- (c) Items, codes, and services that are not covered by medicare;
- (d) Corneal tissue acquisition;
- (e) Devices that are pass-throughs (see WAC 388-550-7050 for definition of pass-throughs); and
- (f) Dental clinic services.

HOSPITAL OUTPATIENT RATE

~~((4))~~ (5) The department uses the hospital outpatient rate described in WAC 388-550-3900 and 388-550-4500 to pay for the services listed in subsection ~~((3))~~ (4) of this section for which the department has not established a maximum allowable fee.

AMENDATORY SECTION (Amending WSR 07-13-100, filed 6/20/07, effective 8/1/07)

WAC 388-550-7300 OPPS—Payment limitations. (1)

The department limits payment for covered outpatient hospital services to the current published maximum allowable units of services listed in the outpatient fee schedule and published in the department's hospital billing instructions, subject to the following:

(a) To receive payment for services, providers must bill claims according to national correct coding initiative (NCCI) standards. See WAC 388-550-7200(2) for more information on NCCI standards. When a unit limit for services is not stated in the outpatient fee schedule, department pays for services according to the program's unit limits stated in applicable WAC and published issuances.

(b) Because multiple units for services may be factored into the ambulatory payment classification (APC) weight,

department pays for services according to the unit limit stated in the outpatient fee schedule when the limit is not the same as the program's unit limit stated in applicable WAC and published issuances.

(2) The department does not pay separately for covered services that are packaged into the APC rates. These services are paid through the APC rates.

(3) The department:

(a) Limits surgical dental services payment to the ambulatory surgical services fee schedule and pays:

(i) The first surgical procedure at the applicable ambulatory surgery center group rate; and

(ii) The second surgical procedure at fifty percent of the ambulatory surgery center group rate.

(b) Considers all surgical procedures not identified in subsection (a) to be bundled.

(4) The department limits outpatient services billing to one claim per episode of care. If there are late charges, or if any line of the claim is denied, the department requires the entire claim to be adjusted.

WSR 10-05-086**WITHDRAWAL OF PROPOSED RULES
LIQUOR CONTROL BOARD**

(By the Code Reviser's Office)

[Filed February 16, 2010, 7:57 a.m.]

WAC 314-52-120, proposed by the liquor control board in WSR 09-16-058 appearing in issue 09-16 of the State Register, which was distributed on August 19, 2009, 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 10-05-092**PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed February 16, 2010, 9:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-019.

Title of Rule and Other Identifying Information: Revises WAC 181-79A-213 and 181-79A-250. In WAC 181-79A-250, removes professional growth plan as renewal vehicle for teachers continuing or professional certification. Amends section to permit administrators completing a professional growth plan to use the plan as a substitute for continuing credit hour requirements. Technical improvements to language in WAC 181-79A-213.

Hearing Location(s): The Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, on March 24, 2010, at 8:30 a.m.

Date of Intended Adoption: March 24, 2010.

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 5, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by March 5, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current rule provides for profession growth plan as renewal requirement for teachers. Current rule requires credit hours for administrators. Changes reflect implementation of new certification approaches and reflects best practice.

Reasons Supporting Proposal: Attorney general recommendation.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educators 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.

February 16, 2010

David Brenna

Legislative and
Policy Coordinator

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

WAC 181-79A-213 Issues of abuse course work requirement for continuing certification—Administrators. Candidates who apply for a continuing or professional administrator certificate after August 31, 1994, must have successfully completed the abuse course work requirement as defined in WAC 181-79A-030(6).

AMENDATORY SECTION (Amending WSR 10-03-019, filed 1/8/10, effective 2/8/10)

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

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that

the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

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

(c) Educational staff associates.

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

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

(a) Teachers.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate administrator that the candidate is enrolled in a state approved professional certificate program. Individuals who hold a residency certificate that expires in 2010 or 2011 may have the certificate renewed for two years by registering for the external assessment pursuant to WAC 181-79A-206. Provided, that individuals who are unable to complete the professional certificate program by the expiration date on the two-year renewal who have not taught for any portion of the nine years between employment and expiration date of the renewal can obtain an additional two-year renewal upon verification they had been unemployed during those years, been on a leave of absence or were unemployed due to a reduction in force.

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

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

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

(b) Principals/program administrators.

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

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

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

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

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

(3) Continuing certificate.

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

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall lapse if the holder does not complete the continuing education requirement, to

include the filing requirement specified in chapter 181-85 WAC. To reinstate such a lapsed continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

(4) Professional certificate.

(a) Teachers.

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

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

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

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

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

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

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

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

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

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

(b) Principals/program administrators.

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

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

"career level" benchmarks defined in WAC 181-78A-270 (2)(b).

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

(ii) Individuals who complete the requirements of the annual professional growth plan to renew their administrator professional certificate may use that completed plan to waive thirty hours of continuing education requirements for their continuing or professional teaching or education staff associate certificate.

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

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

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor, school psychologist, or school social worker in a public school, state board of education-approved private school, or in a state agency which provides educational services to students by:

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

(I) Emphasize continuous learning;

(II) Positively impact student learning; and

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

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

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

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

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

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

WSR 10-05-097
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 16, 2010, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-169.

Title of Rule and Other Identifying Information: WAC 296-20-1103 Travel expense.

Hearing Location(s): Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on March 24, 2010, at 1:00 p.m.

Date of Intended Adoption: May 25, 2010.

Submit Written Comments to: Bob Mayer, Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, e-mail mayr235@Lni.wa.gov, fax (360) 902-5021, by March 24, 2010.

Assistance for Persons with Disabilities: Contact office of information and assistance by March 17, 2010, TTY (360) 902-5797 or (360) 902-4941.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule change is to update department policy regarding injured workers traveling out of his/her immediate residential area to the nearest point of adequate treatment or other services. The anticipated effects would be to ensure a payment methodology that is reasonable, fair and cost efficient. Also the language allowing reimbursement for worker travel to treatment at department rehabilitation center will be deleted. This will have no effect because the department rehabilitation center no longer exists. Finally, the term *attending doctor* was updated to *attending provider* to be consistent with the definition of an attending provider as stated in WAC 296-20-1002.

Reasons Supporting Proposal: The proposed rule is intended to provide reasonable and fair reimbursement for injured workers traveling out of his/her immediate residential area to the nearest point of adequate treatment or other services. Reimbursement changes are also needed to achieve budget goals for the state fund worker's compensation program.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule changes supports department goals of ensuring payment methodologies that are reasonable, fair and cost efficient.

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

Name of Agency Personnel Responsible for Drafting: Bob Mayer, 7273 Linderson Way S.W., Tumwater, WA, (360) 902-5021; Implementation: Janet Peterson, Health Services Analysis Program Manager, (360) 902-6699; 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. There is no disproportionate cost to small business.

A cost-benefit analysis is not required under RCW 34.05.328. There is no more than minimal cost to business.

February 16, 2010

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 93-16-072, filed 8/1/93, effective 9/1/93)

WAC 296-20-1103 Travel expense. The department or self-insurer will reimburse travel expense incurred by workers for the following reasons:

(1) Examinations at department's or self-insurer's request;

(2) Vocational services at department's or self-insurer's request;

(3) ~~((treatment at department rehabilitation center;~~

(4)) Fitting of prosthetic device; and

~~((5))~~ (4) Upon prior authorization for treatment when worker must travel more than ~~((ten))~~ fifteen miles one-way from the worker's home to the nearest point of adequate treatment. Travel expense is not payable when adequate treatment is available within ~~((ten))~~ fifteen miles of injured worker's home, yet the injured worker prefers to report to an attending ~~((doctor))~~ provider outside the worker's home area.

Under subsections (2), (3), and (4) of this section, when travel expense is authorized the first fifteen miles one-way are not payable. The first and last fifteen miles are not payable on an authorized round trip.

Travel expenses will be reimbursed at the current department rate.

Receipts are required for all expenses except parking expenses under ten dollars.

Claims for reimbursement of travel expenses must be received by the department or self-insurer within one year after the date expenses are incurred. Refer to WAC 296-20-125 and to department policy for additional rules.

WSR 10-05-100

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed February 16, 2010, 1:28 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 5.03 (Applicability of Registration Program), 5.07 (Annual Registration Fees), and Regulation III, Section 2.01 (Applicability to Toxic Air Contaminant Sources); and repeal Regulation III, Section 3.03 (Perchloroethylene Dry Cleaners).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on March 25, 2010, at 9:15 a.m.

Date of Intended Adoption: March 25, 2010.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA 98101, e-mail lynns@psccleanair.org, fax (206) 343-7522, by March 24, 2010.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by March 18, 2010, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is proposing to repeal our perchloroethylene dry cleaner regulation because it is no longer equivalent to EPA's recently updated rule. This repeal will eliminate conflicts between the two rules. The remainder of the amendments are for cross-reference purposes.

Reasons Supporting Proposal: The repeal of this rule will simplify requirements for the dry cleaner business community.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Jim Nolan, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

February 16, 2010

Dennis J. McLerran

Executive Director

AMENDATORY SECTION**REGULATION I SECTION 5.03 APPLICABILITY OF REGISTRATION PROGRAM**

(a) The requirements of this article shall apply only to:

(1) Sources subject to a federal emission standard under:

(A) 40 CFR Part 60 (except Subparts B, S, BB, and AAA, and the provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines);

(B) 40 CFR Part 61 (except Subparts B, H, I, K, Q, R, T, W, and the provisions of Subpart M pertaining to asbestos on roadways, asbestos demolition and renovation activities, and asbestos spraying);

(C) 40 CFR Part 62; or

(D) 40 CFR Part 63 (except Subpart LL, the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines, and Subparts WWWW, CCCCC, HHH-HHH, WWWW, XXXXXX, YYYYYY, and ZZZZZ);

(2) Sources with a federally enforceable emission limitation established in order to avoid operating permit program applicability under Article 7 of this regulation;

(3) Sources with annual emissions:

(A) Greater than or equal to 2.50 tons of any single hazardous air pollutant (HAP);

(B) Greater than or equal to 6.25 tons of total hazardous air pollutants (HAP); or

(C) Greater than or equal to 25.0 tons of carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{2.5} or PM₁₀), sulfur oxides (SO_x), or volatile organic compounds (VOC);

(4) Sources subject to the following sections of Regulation I, II, or III:

(A) Refuse burning equipment subject to Section 9.05 of Regulation I (including crematories);

(B) Fuel burning equipment or refuse burning equipment burning oil that exceeds any limit in Section 9.08 of Regulation I and sources marketing oil to such sources;

(C) Fuel burning equipment subject to Section 9.09 of Regulation I with a rated heat input greater than or equal to 1 MMBtu/hr of any fuel other than natural gas, propane, butane, or distillate oil, or greater than or equal to 10 MMBtu/hr of any fuel;

(D) Sources with spray-coating operations subject to Section 9.16 of Regulation I;

(E) Petroleum refineries subject to Section 2.03 of Regulation II;

(F) Gasoline loading terminals subject to Section 2.05 of Regulation II;

(G) Gasoline dispensing facilities subject to Section 2.07 of Regulation II;

(H) Volatile organic compound storage tanks subject to Section 3.02 of Regulation II;

(I) Can and paper coating facilities subject to Section 3.03 of Regulation II;

(J) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(K) Flexographic and rotogravure printing facilities subject to Section 3.05 of Regulation II;

(L) Polyester, vinylester, gelcoat, and resin operations subject to Section 3.08 of Regulation II;

(M) Aerospace component coating operations subject to Section 3.09 of Regulation II;

(N) ~~(Reserved) ((Dry cleaners subject to Section 3.03 of Regulation III))~~; or

(O) Ethylene oxide sterilizers subject to Section 3.07 of Regulation III;

(5) Sources with any of the following gas or odor control equipment having a rated capacity of greater than or equal to 200 cfm (≥ 4 " diameter inlet):

(A) Activated carbon adsorption;

(B) Afterburner;

(C) Barometric condenser;

(D) Biofilter;

(E) Catalytic afterburner;

(F) Catalytic oxidizer;

(G) Chemical oxidation;

(H) Condenser;

(I) Dry sorbent injection;

(J) Flaring;

(K) Non-selective catalytic reduction;

(L) Refrigerated condenser;

(M) Selective catalytic reduction; or

(N) Wet scrubber;

(6) Sources with any of the following particulate control equipment having a rated capacity of greater than or equal to 2,000 cfm (≥ 10 " diameter inlet):

(A) Baghouse;

(B) Demister;

(C) Electrostatic precipitator;

(D) HEPA (high efficiency particulate air) filter;

(E) HVAF (high velocity air filter);

(F) Mat or panel filter;

(G) Mist eliminator;

(H) Multiple cyclones;

(I) Rotoclone;

(J) Screen;

(K) Venturi scrubber;

(L) Water curtain; or

(M) Wet electrostatic precipitator;

(7) Sources with a single cyclone having a rated capacity of greater than or equal to 20,000 cfm (≥ 27 " diameter inlet);

(8) Sources with any of the following equipment:

(A) Asphalt batch plants;

(B) Burn-off ovens;

(C) Coffee roasters;

(D) Commercial composting with raw materials from off-site;

(E) Commercial smokehouses with odor control equipment;

(F) Concrete batch plants (ready-mix concrete);

(G) Galvanizing;

(H) Iron or steel foundries;

(I) Microchip or printed circuit board manufacturing;

(J) Rendering plants;

(K) Rock crushers or concrete crushers;

(L) Sewage treatment plants with odor control equipment;

(M) Shipyards;

(N) Steel mills; ~~((or))~~

(O) Wood preserving lines or retorts; ~~or ((and))~~

(P) Dry cleaners using perchloroethylene; and

(9) Sources with equipment (or control equipment) that has been determined by the Control Officer to warrant registration through review of a Notice of Construction application under Section 6.03(a) or a Notification under Section 6.03(b) of this regulation, due to the amount and nature of air contaminants produced, or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The requirements of this article shall not apply to:

(1) Motor vehicles;

(2) Nonroad engines or nonroad vehicles as defined in Section 216 of the federal Clean Air Act;

(3) Sources that require an operating permit under Article 7 of this regulation;

(4) Solid fuel burning devices subject to Article 13 of this regulation; or

(5) Any source, including any listed in Sections 5.03 (a)(4) through 5.03 (a)(9) of this regulation, that has been determined through review by the Control Officer not to warrant registration, due to the amount and nature of air contaminants produced or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(c) It shall be unlawful for any person to cause or allow the operation of any source subject to registration under this section, unless it meets all the requirements of Article 5 of this regulation.

(d) An exemption from new source review under Article 6 of this regulation shall not be construed as an exemption from registration under this article. In addition, an exemption from registration under this article shall not be construed as an exemption from any other provision of Regulation I, II, or III.

AMENDATORY SECTION

REGULATION I SECTION 5.07 ANNUAL REGISTRATION FEES

(a) The Agency shall assess annual fees as set forth in Section 5.07(c) of this regulation for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the program, which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support pro-

vided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program. Payment of these fees by the owner or operator of a source shall maintain its active registration status (even if it is not actively operating).

(b) Upon assessment by the Agency, registration fees are due and payable within 45 days of the date of the invoice. They shall be deemed delinquent if not fully paid within 45 days of the date of the invoice and shall be subject to an additional delinquent fee equal to 25% of the original fee, not to exceed \$1,000. Persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than 90 days late with such payments may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(c) Except as specified in Section 5.07 (d) and (e) of this regulation, registered sources shall be assessed a fee of \$1,000, plus the following fees:

(1) Sources subject to a federal emission standard as specified in Section 5.03 (a)(1) of this regulation shall be assessed \$1,750 per subpart of 40 CFR Parts 60-63;

(2) Sources subject to a federally enforceable emission limitation as specified in Section 5.03 (a)(2) or meeting the emission thresholds specified in Section 5.03 (a)(3) of this regulation shall be assessed \$2,000;

(3) Sources subject to the emission reporting requirements under Section 5.05(b) of this regulation shall be assessed \$25 for each ton of CO and \$50 for each ton of NO_x, PM₁₀, SO_x, HAP, and VOC, based on the emissions reported during the previous calendar year;

(4) Sources with more than one coffee roaster installed on-site that are approved under a Notice of Construction Order of Approval shall be assessed \$2,000;

(5) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of <100,000 tons per year shall be assessed \$5,000; and

(6) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of ≥100,000 tons per year shall be assessed \$10,000.

(d) Gasoline dispensing facilities shall be assessed the following fees based on their gasoline throughput during the previous calendar year (as certified at the time of payment):

(1) More than 6,000,000 gallons. \$3,550;

(2) 3,600,001 to 6,000,000 gallons. \$1,765;

(3) 1,200,001 to 3,600,000 gallons. \$1,175;

(4) 840,001 to 1,200,000 gallons \$590;

(5) 200,001 to 840,000 gallons \$295.

(e) The following registered sources shall be assessed an annual registration fee of \$120, provided that they meet no other criteria listed in Section 5.03(a) of this regulation:

(1) Sources with spray-coating operations subject to Section 9.16 of this regulation that use no more than 4,000 gallons per year of total coatings and solvents;

(2) Gasoline dispensing facilities subject to Section 2.07 of Regulation II with gasoline annual throughput during the previous calendar year (as certified at the time of payment) of no more than 200,000 gallons;

- (3) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;
- (4) Unvented dry cleaners (~~subject to Section 3.03 of Regulation III~~) using perchloroethylene; and
- (5) Batch coffee roasters subject to notification under Section 6.03 (b)(11) of this regulation.

AMENDATORY SECTION

REGULATION III SECTION 2.01 APPLICABILITY TO TOXIC AIR CONTAMINANT SOURCES

(a) Article 2 of this Regulation III shall apply to all sources of toxic air contaminants except that Section 2.05 shall not apply to the following:

- (1) Asbestos Removal Operations subject to Article 4 of Regulation III
- (2) Hard and Decorative Chromium Electroplating and Chromium Anodizing subject to 40 CFR Part 63, Subpart N
- (3) Perchloroethylene Dry Cleaners (~~subject to Section 3.03 of Regulation III~~)
- (4) Gasoline Storage and Dispensing Operations subject to Article 2 of Regulation II
- (5) Graphic Arts Systems subject to Section 3.05 of Regulation II
- (6) Can and Paper Coating Operations subject to Section 3.03 of Regulation II
- (7) Motor Vehicle and Mobile Equipment Coating Operations subject to Section 3.04 of Regulation II
- (8) Polyester/Vinylester/Gelcoat/Resin Operations subject to Section 3.08 of Regulation II
- (9) Ethylene Oxide Sterilizers and Aerators subject to Section 3.07 of Regulation III
- (10) Shipyard Coating Operations where all the coatings employed comply with the requirements in Table 2 in Subpart II 40 CFR Part 63 of NESHAP Shipbuilding and Ship Repair (Surface Coating) Operations

(b) Any demonstration required by this Article shall be conducted in accordance with Section 2.07 of this Regulation.

REPEALER

REGULATION III SECTION 3.03 PERCHLOROETHYLENE DRY CLEANERS

WSR 10-05-102 PROPOSED RULES

GAMBLING COMMISSION

[Filed February 17, 2010, 7:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-17-118.

Title of Rule and Other Identifying Information: Amending WAC 230-07-145 Reporting annual progress.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000, on April 9, 2010, at 9:00 a.m.

Date of Intended Adoption: April 9, 2010.

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 April 1, 2010.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant by April 1, 2010, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment will restore:

- (1) The one hundred twenty-day reporting requirement for our largest charitable and nonprofit licensees to report the required annual progress after the end of each fiscal year; and
- (2) The licensee's ability to request an extension to submit the forms; and
- (3) Housekeeping to add "and" consistently between subsections and renumber subsection.

Reasons Supporting Proposal: Staff currently provides the forms used for reporting annual progress to the licensee. These forms notify the licensees that the form should be returned no later than one hundred twenty days after their fiscal year end. Prior to the rules simplification project (RSP), this rule required charitable and nonprofit licensees to provide several pieces of information demonstrating that they have met required progress toward meeting their stated purpose. The former version of this rule required this information to be submitted to the commission no later than one hundred twenty days after the end of the licensee's fiscal year. The licensee could also request an extension to submit the forms. This requirement was originally part of one long rule. During RSP, the long rule was broken into two rules and the one hundred twenty-day requirement and the extension were omitted from one of the rules.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

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

February 17, 2010

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 609, filed 4/24/07, effective 1/1/08)

WAC 230-07-145 Reporting annual progress. Charitable or nonprofit licensees in Groups III, IV, and V must report annually their progress toward meeting their stated purpose in the format we prescribe.

~~((This))~~ (1) The report must explain the type and scope of activities which licensees conducted during their last annual fiscal accounting period~~(--In addition,); and~~

(2) The report must include, at least:

~~((1))~~ (a) A brief history of the licensed organization, including its stated charitable or nonprofit purpose(s); and

~~((2))~~ (b) A written statement setting out their goals for meeting their stated charitable or nonprofit purpose(s) in the future; and

~~((3))~~ (c) The number of full and regular members; and

~~((4))~~ (d) A list of contributions, scholarships, grants, or sponsorships made during the period. This list must include:

~~((a))~~ (i) The name of each organization or individual receiving a contribution from the licensee. The licensee may use the phrase "individual contribution" in place of the recipient. If the recipient is not named in the report, the licensee must maintain records to verify and identify the recipient of each individual contribution; and

~~((b))~~ (ii) Whether funds awarded were from gambling income or other funds; and

~~((5))~~ (e) Gross income from all nongambling activities and the source of the income; and

~~((6))~~ (f) The revenue and expenses for any nongambling sales activities, presented separately, when conducted primarily in conjunction with gambling activities; and

~~((7))~~ (g) Total expenses for both charitable or nonprofit services; and

~~((8))~~ (h) The percentage or extent to which the licensee used net gambling income for charitable as distinguished from nonprofit purposes; and

~~((9))~~ (i) The details of any loans, contracts, or other business transactions with related parties that accumulatively exceed one thousand dollars during the period. "Related parties" means officers, board members, key employees, or members of the licensed organization, including direct relatives of each(-); and

(3) The report must be submitted no later than one hundred twenty days following the end of the organization's fiscal year.

(4) We may grant an organization additional time to submit the report if a written request is received before the due date. The president of the organization must sign any request for additional time and include a statement explaining the hardship causing the delay, and the expected date the required report(s) will be submitted.

WSR 10-05-103

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed February 17, 2010, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-024.

Title of Rule and Other Identifying Information: The university's rules regarding the State Environmental Policy Act in chapter 504-48 WAC are being updated.

Hearing Location(s): Lighty 401, WSU Pullman, Pullman, Washington, on March 24, 2010, at 4:00 p.m.

Date of Intended Adoption: May 7, 2010.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by March 24, 2010.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by March 22, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university's rules regarding the State Environmental Policy Act are being updated and clarified to reflect current administrative practices, offices, and titles.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Barbara Ryder, Sr. Campus Planner, Capital Planning and Development, Commons 209A, Pullman, Washington 99164-3611, (509) 335-2192; Implementation and Enforcement: Gerald Schlatter, Associate Vice-President, Capital Planning and Development, Commons 103A, Pullman, Washington 99164-3611, (509) 335-5571 and Lawrence Davis, Associate Vice-President, Facilities Operations, McCluskey Office, Pullman, Washington 99164-1150, (509) 335-9002.

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

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

February 17, 2010

Ralph T. Jenks, Director

Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending Order 90-3, filed 10/19/90, effective 11/19/90)

WAC 504-48-015 Adoption by reference. The university hereby adopts by reference the 1984 SEPA rules, chapter 197-11 of the Washington Administrative Code, and any amendments thereto, except as follows:

WAC

- 197-11-010 Authority.
- 197-11-020 Purpose.
- 197-11-030 Policy.
- 197-11-810 Exemptions and nonexemptions applicable to specific state agencies.
- 197-11-820 Department of licensing.
- 197-11-825 Department of labor and industries.

197-11-830	Department of natural resources.
197-11-835	Department of fisheries.
197-11-840	Department of game.
197-11-845	Department of social and health services.
197-11-850	Department of agriculture.
197-11-855	Department of ecology.
197-11-860	Department of transportation.
197-11-865	Utilities and transportation commission.
197-11-870	Department of commerce and economic development.
197-11-875	Other agencies.
197-11-906	Content and consistency of agency procedures.
(197-11-908	Environmentally sensitive areas.)
197-11-910	Designation of responsible official.
197-11-912	Procedures on consulted agencies.
197-11-917	Relationship to chapter 197-10 WAC.
197-11-950	Severability.
197-11-955	Effective date.

AMENDATORY SECTION (Amending Order 90-3, filed 10/19/90, effective 11/19/90)

WAC 504-48-020 Required methods of public notice.

When these rules require notice to be given under WAC 197-11-510, the university shall:

(1) Provide notice in such form as a press release or advertisement in ~~((WSU Week, Washington State University Daily Evergreen, and))~~ a newspaper of general circulation in the county, city or general area that the proposal is located; and

(2) In the case of site-specific project proposals, post a notice on the proposed site.

AMENDATORY SECTION (Amending Order 90-3, filed 10/19/90, effective 11/19/90)

WAC 504-48-040 Emergencies. Actions that must be undertaken immediately or within a time too short to allow full compliance with these rules, to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of this chapter. Such actions include, but are not limited to, the following:

(1) Emergency pollution control actions responding to accidental discharges, leaks or spills into the air, state waters, or on land.

(2) Implementation of a change in waste disposal procedures caused by unanticipated changes in waste sources which are in compliance with federal and state regulations and standards.

(3) Cleanup or decontamination of academic and research facilities or equipment accidentally exposed or contaminated, to permit maintenance, repair or relocation, when the procedures followed are in accordance with federal or state guidelines, recommendations, or standards.

(4) Emergency actions implemented to reduce an imminent hazard to the health and safety of an element of the university resulting from structural failure, equipment malfunction, human error, or natural event.

AMENDATORY SECTION (Amending Order 90-3, filed 10/19/90, effective 11/19/90)

WAC 504-48-050 Designation of responsible official.
~~((For the purposes of SEPA, the responsible agency official is:~~

~~Director of Facilities Planning~~

~~122 French Administration Building~~

~~Washington State University~~

~~Pullman, WA 99164-1010))~~ The responsible agency official is, for those projects under the respective supervision of each, the associate vice-president for capital planning and development or the associate vice-president for facility operations, or their designees.

AMENDATORY SECTION (Amending Order 90-3, filed 10/19/90, effective 11/19/90)

WAC 504-48-060 Procedures ~~((of))~~ of consulted agencies. The responsible officer designated in WAC 504-48-050 shall be responsible for coordinating, receiving, and reviewing comments and requests for information from agencies regarding threshold determinations, scoping, EIS's, and supplemental EIS's.

NEW SECTION

WAC 504-48-065 Administrative appeal. There is no administrative appeal of any university determination relating to SEPA. Any appeal must be a judicial appeal under WAC 197-11-680(4).

WSR 10-05-104

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed February 17, 2010, 8:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-22-085.

Title of Rule and Other Identifying Information: Chapter 504-15 WAC, Campus traffic and parking regulations.

Hearing Location(s): Lighty 405, WSU Pullman, Pullman, Washington, on March 26, 2010, at 4:00 p.m.

Date of Intended Adoption: May 7, 2010.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by March 26, 2010.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by March 22, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Campus traffic and parking regulations are being updated.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Christopher Boyan, Assistant Director, Parking and Transportation Services, Parking Services 101A, Pullman, Washington 99164-5500, (509) 335-2950 and Bridgette Johnson, Director, Parking and Transportation, Parking Services 120A, Pullman, Washington 99164-5500, (509) 335-5105; Implementation and Enforcement: Bridgette Johnson, Director, Parking and Transportation Services, Parking Services 120A, Pullman, Washington 99164-5500, (509) 335-5105.

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

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

February 17, 2010

Ralph T. Jenks, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-100 Definitions. The definitions in this section are applicable within the context of this chapter.

(1) Campus. Describes all property owned, leased, and/or controlled by the university Pullman campus which is or may hereafter be dedicated mainly to the educational, research, housing, recreational, parking, or other activities of the university.

(2) Commuter student. Any student who does not live in a university residence hall (dormitory). All students living in fraternities, sororities, university-owned housing (other than residence halls), and private housing are considered to be commuter students.

(3) Day. Unless otherwise specified, the term "day" refers to a calendar day.

(4) Disability parking. See persons with disability.

(5) Disability zone. A parking zone designated for exclusive use by persons with disability and identified with a sign bearing the associated international symbol.

(6) Electric-assisted bicycle. As defined under RCW 46.04.169.

(7) Fire zone. An area needed for emergency access to buildings, fire hydrants, or fire equipment. Such areas include, but are not limited to, areas with adjacent curbs or rails painted red.

~~((7))~~ (8) Gate card. A plastic card that activates the gates controlling access to certain parking areas.

~~((8))~~ (9) Holiday. See university holiday.

~~((9))~~ (10) Illegal use of permit. A parking violation in which a parking ticket is issued under the following circumstances:

(a) Use of a parking permit or indicator on a vehicle other than the specified vehicle identified by a license plate number on the permit.

(b) Use of a parking permit or indicator obtained under false pretenses.

(c) Use of a modified parking permit or indicator.

(d) Use and/or retention of a parking permit or indicator by person(s) ineligible, or no longer eligible, for such a permit as described and authorized in this chapter.

~~((10))~~ (11) Impound. To take and hold a vehicle in legal custody by use of a wheel lock and/or towing.

~~((11))~~ (12) Indicator. A decal or hanger displayed adjacent to a parking permit which defines additional parking areas available to a permit holder.

~~((12))~~ (13) Loading zone. A loading dock, or an area signed "loading zone" adjacent to a facility, in a parking area, or near a residence hall. Such an area is intended for loading and unloading bulky or voluminous material. Loading zones are restricted at all times unless signed otherwise.

~~((13))~~ (14) Moped. ~~((Any two-wheeled or three-wheeled motor vehicle with an engine displacement of 50cc or less.))~~ As defined under RCW 46.04.304.

~~((14))~~ (15) Motorcycle. ~~((Any two-wheeled or three-wheeled motor vehicle with an engine displacement greater than 50cc.))~~ As defined under RCW 46.04.330.

~~((15))~~ (16) Motorized foot scooter. As defined under RCW 46.04.336.

(17) Motor vehicle. ~~((All motor-driven conveyances except wheelchairs. Also referred to as "vehicle" in this chapter.))~~ As defined under RCW 46.04.320.

~~((16))~~ (18) No parking zone. Any area not specifically marked and/or signed for parking. Such areas include, but are not limited to, areas with adjacent curbs or rails painted yellow.

~~((17))~~ (19) Officer. Any parking or police official employed by the university who is designated by the parking administrator or chief of police to issue parking tickets, to place and remove wheel locks, or to cause vehicles to be towed under this chapter.

~~((18))~~ (20) Owner. The person registered with any state as the present owner of a vehicle in the most current registration records available to the university, the owner's expressed representative, or any transferee not designated in such records, provided that the parking administrator or chief of police has received actual written notice of the transfer.

~~((19))~~ (21) Park/parking. This refers to the placement or standing of a vehicle, with or without a driver in attendance, and with or without the engine running.

~~((20))~~ (22) Parking administrator. The manager in charge of the parking department or designee.

~~((21))~~ (23) Parking appeals committee. Any person or persons appointed to consider parking violations and the application of fees, fines, and sanctions. Said person or persons are appointed by the vice-president whose responsibilities include supervision of the parking department or designee.

~~((22))~~ (24) Parking department. The university department which is charged with the responsibility of managing, operating, planning, and maintaining parking facilities; enforcing the parking regulations; and coordinating commute trip reduction efforts for the Pullman campus.

~~((23))~~ (25) Parking meter. A single fixed device that typically requires payment and limits the amount of time a vehicle can park in a single space. Also referred to as "meter" in this chapter. A parking meter is not a parking payment device.

~~((24))~~ (26) Parking payment device. A machine that requires payment and vends a parking permit and/or a paid receipt. Parking payment devices may be located in various places on the campus. A parking payment device is not a parking meter.

~~((25))~~ (27) Parking permit. A vinyl, plastic, paper, or other instrument sanctioned by the parking department that is displayed from a vehicle, and authorizes parking in specified areas. Also referred to as "permit" in this chapter.

~~((26))~~ (28) Parking ticket. The first notice of a parking violation which is usually placed in a visible location on a motor vehicle.

~~((27))~~ (29) Pay parking facility. A location where parking is provided and payment is made on-site via a parking payment device, cashier, or other means other than a parking meter.

~~((28))~~ (30) Pedestrian mall. A space that is designed primarily for pedestrian use, but with limited authorized use of motor vehicle and other motorized and nonmotorized conveyances. These restricted areas are depicted on the Pullman campus map and/or with signing at the entrances to the pedestrian mall areas.

~~((29))~~ (31) Persons with disability. For the purpose of this chapter, persons with disability shall refer to a person or persons with disability or disabilities who qualify for a state-issued persons with disability parking identification and permit.

~~((30))~~ (32) Resident priority zone. A parking area close to a residence hall (i.e., crimson zone or gray zone) that is typically limited to use by resident students.

~~((31))~~ (33) Resident student. A student with a current, valid residence hall contract, who lives in a residence hall.

~~((32))~~ (34) Residence hall. Residence ~~((halls include, but are not limited to, the following: Coman Hall, Community Hall, Davis Hall, Duncan-Dunn Hall, Gannon Hall, Goldsworthy Hall, Honors Hall, McCroskey Hall, McEachern Hall, Orton Hall, Perham Hall, Regents Hall, Rogers Hall, Scott Hall, Stephenson Complex, Stevens Hall, Stimson Hall, Streit Hall, Waller Hall, and Wilmer Hall))~~ hall units (dormitories) that are owned by the university but are not included as university-owned housing apartments. Occupants of residence halls are considered resident students and are eligible for parking permits in resident priority zones.

~~((33))~~ (35) Service vehicle. A vehicle used to provide a service for the university or a tenant or contractor of the university (e.g., a university owned vehicle or a privately owned vehicle with a valid service vehicle authorization displayed).

~~((34))~~ (36) Service zone. Parking spaces or area designated for the use of service vehicles, other government-owned vehicles, and vehicles displaying a service indicator or commercial permit. Authorized vehicles may park in these zones on an occasional basis for a maximum of fifteen minutes, except for vehicles that display a commercial permit, or a service indicator issued for an extended time. Service zones are restricted at all times unless signed otherwise.

~~((35))~~ (37) Staff. For the purposes of these regulations, "staff" includes all nonstudent employees of the university and the nonstudent employees of other entities located on, or regularly doing business on campus. Teaching assistants, research assistants, and other students employed by the uni-

versity, or other entities located on, or regularly doing business on campus, are not "staff." They are considered to be students for the purpose of these regulations.

~~((36))~~ (38) Standing. "Standing" is the stopping of a vehicle with the driver remaining in it.

~~((37))~~ (39) Storage of a vehicle. Impounded vehicles are held in storage until released. During such time they are subject to storage fees.

~~((38))~~ (40) Student. The term "student" includes all persons who are not staff who are taking courses at the university, enrolled full-time or part-time, pursuing undergraduate, graduate, professional studies, or auditing one or more classes.

~~((39))~~ (41) Summer session. The summer session includes all summer sessions beginning on the first day of the earliest session, and ending on the last day of the latest session.

~~((40))~~ (42) University. Refers to Washington State University.

~~((41))~~ (43) University holiday. A day regarded by the university as an official university holiday.

~~((42))~~ (44) University-owned housing. Housing units or apartments, and their respective parking areas, that are owned by the university, but are not included as residence halls. Occupants of university-owned housing are eligible for housing parking permits issued by the university.

~~((43))~~ (45) Unpaid. A full or partial outstanding balance due. This definition includes parking tickets which are pending appeal.

~~((44))~~ (46) Vacation. A period of time when classes or final exams are not in session. Except for holidays that fall within this period, the business offices of the university are open during this time.

~~((45))~~ (47) Visitors. Persons who are not staff or students and who only visit the campus on an occasional basis.

~~((46))~~ (48) Wheel lock. A device used to temporarily immobilize a motor vehicle. Wheel locked vehicles are considered to be impounded in place and subject to storage fees.

~~((47))~~ (49) Wheel lock-eligible list. The current list of wheel lock-eligible vehicles as maintained by the parking department. A vehicle remains on the wheel lock-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

~~((48))~~ (50) Wheel lock-eligible vehicle. Any vehicle on which three or more parking tickets more than thirty days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains wheel lock-eligible until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-210 Times of enforcement. Parking regulations are subject to enforcement at all times.

(1) Parking permit areas. All parking permit zones are limited to authorized permit holders during specific hours.

These hours are posted in each parking area at the entrance to parking areas, or along roadways where parking is marked.

(2) Restricted spaces. These spaces are restricted for their designated purpose at all times unless signed otherwise:

- (a) Disability zones.
- (b) Load/unload.
- (c) Service.
- (d) Reserved.
- (e) Reserved (bagged) parking meters.
- (f) Pedestrian mall.

(g) Areas which are specially signed or physically set apart by barricades, traffic cones, tape, or other traffic devices.

(3) Parking metered spaces. Parking meters are in effect during the times posted on each meter. During these times the meter must be paid the posted amount. Additional time cannot be purchased beyond the meter's posted maximum time limit (e.g., a two-hour meter allows a maximum of two hours to be purchased at one time). A motor vehicle which is parked at an expired meter is considered in violation initially, and after each period equal to the maximum time posted for the meter. In such case a parking ticket may be issued for each violation. For example, a vehicle parked at a meter with a two-hour maximum time limit for six hours and five minutes of CONTINUOUS unpaid parking at the same meter would be eligible for up to three parking tickets.

(4) Special conditions. The parking regulations are enforced every day, twenty-four hours a day. During certain times the following special conditions exist, and the regulations are modified.

(a) Crimson permit zones.

(i) Permits are not required in crimson zones at the start of each semester from the Monday of the week prior to the first day of class through the ~~((fifth))~~ third day of class.

(ii) Crimson, orange, and green permits are valid in crimson zones during summer session, vacation periods, and between semesters.

~~((iii) Temporary one-hour parking zones may be established in portions of the crimson zones during finals week and at the start of each semester to accommodate moving into and moving out of residence halls.))~~

(b) Gray permit zones.

(i) Permits are not required in gray zones at the start of each semester from the Monday of the week prior to the first day of class through the ~~((fifth))~~ third day of class, during vacation periods, and between semesters.

(ii) During summer session, gray zones are open to all valid university parking permits, except blue permits and housing parking permits.

~~((iii) Temporary one-hour parking zones may be established in portions of the gray zones during finals week and at the start of each semester to accommodate moving into and moving out of residence halls.))~~

(c) Blue permit zones. Permits are not required in blue zones at the start of each semester from the Monday of the week prior to the first day of class through the ~~((fifth))~~ third day of class, during finals week, vacation periods, and between semesters.

(d) University-owned housing areas. Permits are not required in university-owned housing areas at the start of

each semester from the Monday of the week prior to the first day of class through the ~~((fifth))~~ third day of class, and during finals week.

(e) Summer business hours. During the period when the university is on official summer business hours, all metered spaces and permit areas which are not restricted are open parking after 4:00 p.m. Official summer business hours are posted on the human resource services department web site throughout the summer.

(f) The parking department may select and designate portions of permit zones as temporary one-hour parking zones at the start of each semester to accommodate moving into and out of residence halls and during finals week.

(5) Pay parking facilities. Some parking areas provide parking on an hourly basis. Hours of operation and a schedule of fees are posted at the facility entrance and at the point of payment. Parking tickets are issued to vehicles that are parked over the duration of time that was paid and for non-payment. Parking areas with parking meters are not considered pay parking facilities.

NEW SECTION

WAC 504-15-370 Storage of vehicles. Storage of vehicles, including motorcycles and mopeds, is prohibited on campus unless otherwise authorized by the parking department.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-510 Parking permits—General. (1) The university issues parking permits for designated areas of the campus. Any vehicle parked on the campus must clearly display a valid university parking permit in accordance with this chapter during the posted hours and in locations when and where permits are required. University staff and students may not use any other permit in lieu of a valid university parking permit or valid university housing parking permit.

(2) Inoperable vehicles. It is the owner's responsibility to immediately contact the parking department or police department in the event that the owner's vehicle becomes inoperable when the vehicle is parked on campus.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-520 Parking permits—Form and display. All parking permits must be entirely visible and displayed in the approved position on the vehicle with permit numbers and relevant dates visible. Vehicles with permits which are not displayed in accordance with the provisions of this section are subject to parking tickets for the violation of improperly displaying a permit.

(1) Autos and trucks:

(a) Hanging permits, both annual and daily, must be displayed hanging from the rear-view mirror post.

(b) Permits mounted solely by suction cup and permit decals directly affixed to the windshield must be displayed on the front windshield at the lower left corner (driver's side).

Decals must be mounted completely by means of their own adhesive (not by tape).

(2) Motorcycles and mopeds. Motorcycle and moped permits must be mounted completely by means of their own adhesive and prominently displayed on the left rear side of the vehicle or on top of the rear tail light.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-540 Zone parking permits—Availability and use. The management and assignment of parking zones is designed to provide a parking space to each permit holder. However, uncontrolled access to parking areas and unexpected parking demand make it impossible to guarantee a parking space in a permit holder's assigned zone. Every effort is made via surveys and limits on permit sales, to ensure that permit holders are not displaced from their assigned zones. The only exception to this is that the sale of blue permits is not limited.

Staff and students are generally assigned to specific parking areas, referred to as zones. Parking zones are color-coded with respect to their price and numbered with respect to the specific parking zone assignment of each permit holder. Permit holders may park in their assigned zone as reflected by the combination of color and number on their permit and corresponding sign, or they may park in other zones as described below.

(1) Orange permits. Orange permit holders may park in their numerically assigned orange zone, or in any green, yellow, red, or blue zone. These permits may be made available on a daily basis.

(2) Green permits. Green permit holders may park in their numerically assigned green zone, or in any yellow, red, or blue zone. These permits may be made available on a daily basis.

(3) Yellow permits. Yellow permit holders may park in their numerically assigned yellow zone, or in any red or blue zone. These permits may be made available on a daily basis.

(4) Red permits. Red permit holders may park in their numerically assigned red zone or in any blue zone. These permits may be made available on a daily basis.

(5) Crimson permits. Crimson permit holders may park in their numerically assigned crimson zone, or in the numerically corresponding gray zone (e.g., a crimson 1 permit is valid in the gray 1 zone, but not in the gray 2 zone), or in any blue zone. Crimson permit holders must turn in their crimson permit for a refund or credit toward another permit, if applicable, immediately upon moving out of the residence hall. Only resident students are eligible for crimson permits.

(6) Gray permits. Gray permit holders may park in their numerically assigned gray zone, or in any blue zone. These permits may be made available on a daily basis. Gray permit holders must turn in their gray permit for refund or credit toward another permit, if applicable, immediately upon moving out of a residence hall. Only resident students are eligible for gray permits.

(7) Blue permits (~~((peripheral parking))~~). Blue permit holders may park in any blue zone. These permits may be made available on a daily basis.

AMENDATORY SECTION (Amending WSR 09-11-069, filed 5/14/09, effective 7/1/09)

WAC 504-15-560 Other parking permits—Availability and use. (1) Visitor permits. Visitor permits are available on an annual or daily basis to visitors of the university. Visitor permits may be used only by bona fide visitors as defined by this chapter. Use by any other person constitutes illegal use of a parking permit. Annual visitor permits are valid in green, yellow, red and blue zones, and parking spaces signed for visitor permits only. Daily visitor permits may be assigned to specific zones on a space-available basis. If a parking zone is not specified on the permit, it is valid in the same parking areas as an annual visitor permit. Visitor permits are not valid in pay parking facilities, parking meters, or restricted spaces.

(2) Golden cougar permits. Golden cougar permits are special visitor permits that are issued to retired staff in recognition of their service without additional cost. They are issued on an annual basis and are valid in green, yellow, red, blue zones, and visitor-permit-only parking spaces. Staff who are employed by the university or by other entities located on campus after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid zone permit.

~~(3) ((President's associates decals. President's associates decals are issued to eligible members of the Washington State University foundation. Use of these decals for parking shall be in accordance with a separate agreement between WSU and the WSU foundation. However, university faculty, staff, and students may not use a president's associates decal or any other parking benefit instrument in lieu of a paid zone permit.~~

~~(4))~~ Conference permits. Conference permits are available to visitors who participate in conferences held on the university campus. They are available on a daily basis only. Conference permits may be assigned to specific zones on a space-available basis. ~~((If a parking zone is not specified on the permit, it is valid in green, yellow, red, blue zones, and visitor permit-only parking spaces.))~~ Conference permits are not valid in orange zones, pay parking facilities, parking meters, or restricted spaces.

~~((5))~~ (4) Motorcycle permits. Motorcycle permits are valid within boundaries of areas specifically posted and/or marked for motorcycle permits. Motorcycle permits are available on an annual and daily basis.

~~((6))~~ (5) Moped permits. Moped permits are valid within boundaries of areas specifically posted and/or marked for moped permits. Moped permits are available on an annual and daily basis.

~~((7))~~ (6) Commercial permits. Commercial permits are issued to vendors, suppliers, and service representatives of outside companies performing a service for the university. Commercial permits are available on an annual or daily basis. Annual commercial permits are valid in service zones, parking meters, and green, yellow, red and blue zones, and visitor-permit-only parking spaces. Daily commercial permits may be assigned to specific zones on a space-available basis. Commercial permits are not valid in orange zones or pay parking facilities.

~~((8))~~ (7) Construction permits. A construction permit is issued to personnel who are working on a construction site on

campus. Construction permits are available on an annual or daily basis and are assigned to a specific parking area.

~~((9))~~ (8) Housing permits. A housing permit is issued to eligible residents of university-owned housing. Housing permits are valid only in specific housing parking areas.

~~((10))~~ (9) Carpool. Upon application, a bona fide carpool as defined by the campus policies and procedures is given preference in the assignment of parking zones, and issued a permit that facilitates the carpool. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

~~((11))~~ (10) Departmental permits. Departmental parking permits are available for use by department employees who need to use their personal vehicles for university business. Departmental permits are available in different forms and are valid at parking meters; service zones; orange, green, yellow, red, blue, crimson, and gray permit zones; and pay parking facilities. Departmental permits are not valid in reserved spaces. The use of departmental permits for anything other than official departmental business is prohibited by the State Ethics Act.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-810 Violations, fines, and sanctions. (1) Violations and fines. Parking violations are processed by the university. Fines must be paid at the parking department or at other authorized locations, by mail, or from the parking department's web site. Schedules for parking violations, fines, and sanctions are posted in the public area of the parking department office and on the parking department's web site.

(2) Reduction of fines.

(a) The fine for "meter violation" and the fine for "overtime in a timed zone" violation are reduced by one-half if paid within twenty-four hours of time of issuance. Eligible violations received on Friday or Saturday can be paid on the following Monday to satisfy the twenty-four hour requirement. Mailed payment of fines must be postmarked within twenty-four hours to receive the one-half reduction.

~~(b) ((Visitors. The first violation of the notices for "no parking permit" and "no parking permit for this area" issued to a visitor is considered a warning notice upon presentation of the parking ticket to the parking department.~~

~~(c) If a permit holder of record neglects to display his or her permit and receives a notice of violation for "no parking permit," a reduced fine is assessed when possession of a valid parking permit for the location is verified by the parking department within twenty-four hours.~~

~~(d))~~ Internal policies regarding disposition of parking tickets may be established on approval of the vice-president or designee whose responsibilities include supervision of the parking department, under the advisement of the university's internal auditor.

~~(3) ((Inoperable vehicles. It is the owner's responsibility to immediately contact the parking department in the event that the owner's vehicle becomes inoperable when the vehicle is present on campus.~~

~~(4))~~ Payment of parking fines. All parking fines are due upon issuance of a parking ticket. Thirty days after date of issuance of a parking ticket, a late fee shall be added to all unpaid parking fines. For example, a parking ticket issued on May 1 would be assessed a late fee on May 31. Failure to pay the fine and fee assessed for any violation results in referral to the university controller's office for collection. The controller or designee may, if other collection efforts fail, withhold the amount of the outstanding fines and fees from damage deposits or other funds held for any student in order to secure payment. Where collection efforts are unsuccessful, the controller or designee may notify the registrar to refrain from issuing student transcripts or to withhold permission to reenroll for a subsequent term until outstanding fines and fees are paid. The procedures discussed above are not exclusive, however, and failure by anyone to pay fines and fees may also lead to towing or use of the wheel lock device described in these regulations. Nor are the procedures discussed above a precondition to towing or use of the wheel lock.

~~((5))~~ (4) Failure to pay fines. Failure to pay a fine or comply with other penalties assessed pursuant to these regulations, and exhausting or failing to exercise appeals provided for in these regulations, may result in the inability to renew a vehicle license through the state pursuant to RCW 46.16.216.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-880 Fees, fines, and release of an impounded vehicle. The owner of an impounded vehicle may not secure the release of the stored vehicle until payment in full by cash, approved payment card, or money order of fines and fees has been made on all unpaid parking tickets to include the payment of fines and fees related to parking tickets not yet eligible for late fees relating to the vehicle which were issued while the vehicle was owned by the person who owned the vehicle at the time it is wheel locked or towed hereunder, and the owner has paid in full the wheel lock fee, unpaid parking tickets, late fees, storage fees, and towing fees for any and all other vehicles owned by the registered owner.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-930 Bicycles, skateboards, scooters, and ~~((rollerskates)) roller skates.~~ (1) The riding and use of ~~((bicycles,))~~ skateboards, scooters, and ~~((rollerskates))~~ roller skates is prohibited from the Terrell Pedestrian Mall~~((:))~~ and Library Pedestrian Mall.

(2) The riding and use of bicycles, skateboards, scooters, and roller skates is prohibited on all building plazas, all pedestrian overpasses, interior building spaces, parking structures, ~~((and))~~ parking structure ramps, all stairways, steps, ledges, benches, planting areas, and any other fixtures.

~~((2))~~ (3) Bicycles, skateboards, scooters, and ~~((roller skates))~~ roller skates may be ridden and used on sidewalks outside the prohibited areas when a bike path is not provided. ~~((Operators must move at a safe speed and yield to pedestrians at all times.~~

~~(3) Bicycles, skateboards, and rollerskates may not be ridden on or over stairways, steps, ledges, benches, planting areas, or any other fixtures.)~~

~~(4) Electric-assisted bicycles must be used in a human propulsion only mode on pedestrian malls and sidewalks.~~

~~(5) Motorized foot scooters must be used in a human propulsion only mode on sidewalks.~~

~~(6) Operators must move at a safe speed and yield to pedestrians at all times. Reckless or negligent operation of bicycles, skateboards, scooters, and roller skates on any part of campus is prohibited.~~

~~(7) Bicyclists must obey all traffic ((regulations of the road)) laws applying to persons riding bicycles when operating ((a) bicycles ((m)) on roadways.~~

~~((5)) (8) Bicycles may be secured only at bicycle racks and facilities designed for such purpose.~~

WSR 10-05-114
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed February 17, 2010, 10:19 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Fees: Chapter 36-12 WAC, Professional boxing; chapter 36-13

WAC, Professional wrestling; and chapter 36-14 WAC, Professional martial arts; amending WAC 36-12-165 Event fees to be paid by promoter, 36-12-195 License fees, renewals and requirements, 36-13-005 Event fees to be paid by promoter, 36-13-010 License fees, renewals and requirements, 36-14-108 Event fees to be paid by promoter, and 36-14-110 License fees, renewals and requirements.

Hearing Location(s): Department of Licensing, Building 2, Conference Room 209, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on March 23, 2010, at 11 a.m.

Date of Intended Adoption: March 24, 2010.

Submit Written Comments to: Cameron Dalmas, Department of Licensing, Professional Athletics Program, P.O. Box 9026, Olympia, WA 98502, e-mail ndalmas@dol.wa.gov, fax (360) 664-2550, by March 16, 2010.

Assistance for Persons with Disabilities: Contact Cameron Dalmas by March 16, 2010, TTY (360) 664-8885 or (360) 664-6643.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase the fees in the boxing, martial arts and wrestling program as follows:

WAC 36-12-165, 36-13-005, 36-14-108, Event fees to be paid by promoter: Increases the event fee from five percent to six percent plus one dollar per ticket sold.

WAC 36-12-195, 36-13-010, 36-14-110, License fees, renewals and requirements:

Licensing Type	WAC 36-12-195		WAC 36-13-010		WAC 36-14-110	
	Old fee	New fee	Old fee	New fee	Old fee	New fee
Martial arts participant					\$15	\$25
Kickboxer					\$15	\$25
Wrestling participant			\$15	\$25		
Boxer	\$15	\$25				
Manager	\$40	\$65			\$40	\$65
Referee	\$15	\$65			\$15	\$65
Matchmaker	\$40	\$65			\$40	\$65
Second	\$15	\$25			\$15	\$25
Inspector	\$40	\$65	\$40	\$65	\$40	\$65
Judge	\$40	\$65			\$40	\$65
Timekeeper	\$40	\$65			\$40	\$65
Announcer	\$40	\$65	\$40	\$65	\$40	\$65
Event physician	\$40	No charge	\$40	No charge	\$40	No charge
Event Chiropractor	\$40	\$65	\$40	\$65	\$40	\$65
Promoter	\$50	\$200	\$50	\$200	\$50	\$200

Reasons Supporting Proposal: Currently the program does not collect enough revenue to cover program expenditures as required by RCW 43.24.086. Increasing fees will allow us to help offset the costs of the department in administering chapter 67.08 RCW, Boxing, martial arts, and wrestling.

Statutory Authority for Adoption: RCW 67.08.017, 43.24.086, 67.08.105.

Statute Being Implemented: RCW 67.08.105.

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: Trudie Touchette, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6650.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt under RCW 34.05.32 [34.05.328].

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule revision. Washington state department of licensing is not a named agency, therefore, exempt from the provision.

February 17, 2010

Walt Fahrer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-14-028, filed 6/23/09, effective 7/24/09)

WAC 36-12-165 Event fees to be paid by promoter.

(1) A promoter shall pay an event fee equal to ~~((five))~~ six percent of the gross receipts paid for admission to events plus one dollar per ticket sold as required and defined in RCW 67.08.002, 67.08.050, and 67.08.055.

(2) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. The number of complimentary tickets not subject to an event fee shall be limited to ten percent of the total tickets sold per event location, not to exceed one thousand tickets. All complimentary tickets exceeding this exemption shall be subject to an event fee.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-12-195 License fees, renewals and requirements.

(1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Manager	-	\$(40.00) <u>65.00</u>
Referee	-	\$(15.00) <u>65.00</u>
Boxer	-	\$(15.00) <u>25.00</u>
Matchmaker	-	\$(40.00) <u>65.00</u>
Second	-	\$(15.00) <u>25.00</u>
Inspector	-	\$(40.00) 65.00
Judge	-	\$(40.00) 65.00
Timekeeper	-	\$(40.00) 65.00
Announcer	-	\$(40.00) 65.00
Event physician	-	\$(40.00) <u>No charge</u>
Event chiropractor	-	\$(40.00) <u>65.00</u>

Promoter	-	\$(50.00) 200.00
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(2) All renewal fees shall be the same fee as each original license fee.

(3) Licensing requirements:

(a) Completed application on form approved by the department.

(b) Completed physical within one year (boxer and referee only).

(c) Federal identification card (boxer only).

(d) One small current photograph, not more than two years old (boxer only).

(e) Payment of license fee.

(f) Certification from an organization approved by the department under RCW 67.08.100(3) and WAC 36-12-196.

(4) Applicants may not participate until all licensing requirements are received and approved by the department of licensing.

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.

AMENDATORY SECTION (Amending WSR 09-14-028, filed 6/23/09, effective 7/24/09)

WAC 36-13-005 Event fees to be paid by promoter.

(1) A promoter shall pay an event fee equal to ~~((five))~~ six percent of the gross receipts paid for admission to events plus one dollar per ticket sold as required and defined in RCW 67.08.002, 67.08.050, and 67.08.055.

(2) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. The number of complimentary tickets not subject to an event fee shall be limited to ten percent of the total tickets sold per event location, not to exceed one thousand tickets. All complimentary tickets exceeding this exemption shall be subject to an event fee.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-13-010 License fees, renewals and requirements.

(1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Wrestling participant	-	\$(15.00) <u>25.00</u>
Inspector	-	\$(40.00) <u>65.00</u>
Announcer (nonparticipant)	-	\$(40.00) <u>65.00</u>
Event physician	-	\$(40.00) <u>No charge</u>
Promoter	-	\$(50.00) <u>200.00</u>

(2) No license fee is required for persons licensed under chapter 36-12 or 36-14 WAC as an inspector, announcer, event physician or promoter.

(3) In addition to license requirements found in chapter 67.08 RCW, licensees and applicants shall submit a small photograph of themselves that is not more than two years old.

AMENDATORY SECTION (Amending WSR 09-14-028, filed 6/23/09, effective 7/24/09)

WAC 36-14-108 Event fees to be paid by promoter.

(1) A promoter shall pay an event fee equal to ~~((five))~~ six percent of the gross receipts paid for admission to events plus one dollar per ticket sold as required and defined in RCW 67.08.002, 67.08.050, and 67.08.055.

(2) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. The number of complimentary tickets not subject to an event fee shall be limited to ten percent of the total tickets sold per event location, not to exceed one thousand tickets. All complimentary tickets exceeding this exemption shall be subject to an event fee.

AMENDATORY SECTION (Amending WSR 02-20-094, filed 10/1/02, effective 1/1/03)

WAC 36-14-110 License fees, renewals and requirements. (1) The license year is one year from date of issue. License fees are paid annually. Fees shall be as follows:

Manager	-	\$ ((40.00)) <u>65.00</u>
Referee	-	\$ ((15.00)) <u>65.00</u>
Kickboxer	-	\$ ((15.00)) <u>25.00</u>
Martial arts participant	-	\$ ((15.00)) <u>25.00</u>
Matchmaker	-	\$ ((40.00)) <u>65.00</u>
Second	-	\$ ((15.00)) <u>25.00</u>
Inspector	-	\$ ((40.00)) <u>65.00</u>
Judge	-	\$ ((40.00)) <u>65.00</u>
Timekeeper	-	\$ ((40.00)) <u>65.00</u>
Announcer	-	\$ ((40.00)) <u>65.00</u>
Event physician	-	((40.00)) <u>No charge</u>
Event chiropractor	-	\$ ((40.00)) <u>65.00</u>
Promoter	-	\$ ((50.00)) <u>200.00</u>

(2) All renewal fees shall be the same fee as each original license fee.

(3) Licensing requirements:

(a) Completed application on form approved by the department.

(b) Completed physical within one year (kickboxer, martial arts participant and referee only).

(c) One small current photograph, not more than two years old (kickboxer and martial arts participant only).

(d) Payment of license fee.

(e) Certification from an organization approved by the department under RCW 67.08.100(3).

(4) Applicants may not participate until all licensing requirements are received and approved by the department of licensing.

WSR 10-05-117

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed February 17, 2010, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-005 and 10-01-004.

Title of Rule and Other Identifying Information: WAC 16-302-080 What will cause a seed field to be ineligible for seed certification?, 16-302-170 Other considerations in applying the standards for certification, 16-302-560 Miscellaneous field and seed inspection standards for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed certification, and 16-302-685 Small grains standards for seed certification.

Hearing Location(s): Red Lion Hotel Conference Room, 2525 North 20th Avenue, Pasco, WA 99301, on March 24, 2010, at 1:00 p.m.

Date of Intended Adoption: March 31, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail tnorman@agr.wa.gov, fax (360) 902-2043, by 5 p.m. on March 26, 2010.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will amend current seed certification standards to allow for trait verification as criteria for seed certification for varieties that contain a GMO or other novel trait. This will allow for seed lot to only be certified if the seed is proven to contain the trait as described in the variety description.

This proposal will amend current seed certification rules to provide clarity in regards to prohibited noxious weeds present in a seed field. This proposal will allow for the rejection of seed certification if prohibited noxious weeds are not controlled to prevent seed formation should they be present in a seed field.

Reasons Supporting Proposal: At the request of the Washington Crop Improvement Association this rule proposal will allow for trait verification as part of seed certification criteria. In specific, all CLEARFILED [CLEARFIELD] small grain varieties will require verification that the field was sprayed with Beyond herbicide and that each seed lot will be

required to be tested to ensure that it contains the CLEARFIELD trait. The current certification rules do not address trait verification. This could result in a seed lot being tested and found to not contain a sufficient level of a trait yet it would still be eligible for certification. This situation would create a false representation of this seed lot in the market place. This proposal will create a level of consumer protection.

At the request of the Washington Crop Improvement Association this rule proposal will standardize language in the seed certification standards to make it clear that prohibited noxious weeds must be controlled to prevent seed formation. Currently, the small grain standards only refer to a sub-list of prohibited noxious weeds and the language is ambiguous as to when a seed field must be rejected for the presence of prohibited noxious weeds. This allows for multiple interpretations of the rule. This proposal will clearly communicate to industry that prohibited noxious weeds must be controlled to prevent seed formation and will allow for uniform application of the rule by seed field inspectors.

Statutory Authority for Adoption: Chapters 15.49 and 34.05 RCW.

Statute Being Implemented: Chapter 15.49 RCW.

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

Name of Proponent: Washington State Crop Improvement Association, private.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule amendment proposal does not impose any additional costs upon the seed industry. In regards to trait verification, each seed lot is already being laboratory tested. This is an existing cost to industry. In regards to the clarification of prohibited noxious weeds, no new inspection or reporting procedures are associated with this rule making. The Washington state department of agriculture concludes that this fee rule making does not impose any new costs upon the seed industry, therefore a small business economic impact statement is not required according to RCW 19.85.030 (1)(a).

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

February 17, 2010

Kennith R. Harden

Assistant Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-080 What will cause a seed field to be ineligible for seed certification? (1) A seed field is not eligible for certification unless a field inspection is made prior to defoliation or harvesting.

(2) ~~((The presence of prohibited noxious weeds or))~~ Prohibited noxious weeds must be controlled to prevent seed formation. Follow-up inspections may be conducted to ensure weed control was sufficiently carried out to prevent prohib-

ited noxious weed seeds from being harvested with the seed crop. Excessive objectionable weeds may be cause for rejection of a seed field. Excessive weeds, poor stands, lack of vigor, or other conditions which make inspection inaccurate may be cause for rejection. A field producing foundation or registered seed that warrants a rejection because of noxious weeds may be reclassified to certified blue tag class if upon reinspection the field meets certified blue tag standards.

(3) If a seed field is rejected for certification, the grower may reapply to the certifying agency and pay a fee for reinspection after the cause for rejection is corrected, unless otherwise specified in chapter 16-302 WAC. No more than two reinspections are permitted for each field per year.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-170 Other considerations in applying the standards for certification. (1) Any crop certification standard, with the exception of germination that is expressed as a percent will be derived from a test based on the minimum weight for purity analysis as specified in the 2000 AOSA rules for that crop unless otherwise specified in rule.

(2) Any crop certification standard that is based on a number per pound will be derived from a test based on the minimum weight for noxious weed seed examination as specified in the 2000 AOSA rules for that crop unless otherwise specified in rule.

(3) For species that have a high rate of inherent dormancy, it will be acceptable to use the percent of total viability instead of germination percentage for certification only. State and federal seed laws require seed be labeled on a germination test.

(4) For species or varieties that contain GMO (genetically modified organism) traits, herbicide resistant traits, or other novel traits, each seed lot may be required to meet minimum trait standards as defined by the breeder or trait owner. The variety description must define the trait. To determine the level of trait present, a test such as PCR (polymerase chain reaction) or specified bioassay test may be required.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-560 Miscellaneous field and seed inspection standards for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed certification. (1) Field inspection standards for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed entered in the certification program are:

(a) For field pea and chickpea (garbanzo bean) - when seed crop is in full bloom and at maturity;

(b) For lentil - when seed crop is in full bloom and at maturity;

(c) For soybean - when seed crop is in full bloom and/or of mature color;

(d) For open pollinated sorghum - when seed crop is in full bloom, and optionally again when seed crop begins to show mature color;

(e) For hybrid sorghum - two inspections during bloom and one inspection after seed begins to show mature color;

(f) For small grains - when seed crop is fully headed and of mature color;

(g) For millet - one inspection during bloom and one inspection after seed begins to show mature color; and

(h) For buckwheat - one inspection when seed crop is in full bloom.

(2) Any condition or practice which permits or causes contamination of the seed crop, such as failure to prevent seed formation (~~in bindweeds, Canada thistle or jointed goatgrass~~) of prohibited noxious weeds, or excess weeds including excessive objectionable or restricted noxious weeds, or mechanical field mixing, is cause for rejection upon inspection (~~(except for formation of bindweed or Canada thistle in fields of chickpea, lentil, and field pea seed)~~). Fields rejected for jointed goatgrass at first inspection are not eligible for reinspection and must remain ineligible for any production of certified classes of small grain seed until a reclamation procedure, as specified in subsection (3) of this section has been completed. Fields rejected for other causes will remain eligible for reinspection.

(3) The jointed goatgrass reclamation procedure includes the following:

(a) Each grower must develop a reclamation plan for his/her affected fields. The plan must be based on the most current recommendations of Pacific Northwest scientists and Washington State University cooperative extension as well as good management practices. The plan may include use of certified seed, spring cropping practices, and late tilling and planting. No particular program is specified or endorsed and compliance with a program does not assure eligibility for the production of certified classes of small grain seed. Eligibility is based solely upon results of field inspections as provided in (b) through (e) of this subsection.

(b) The rehabilitation and inspection program duration is three years for irrigated land and five years for dryland without production of certified small grain seed and the first year of certified seed production thereafter.

(c) Annual inspections of the affected fields are conducted by the certifying agency during the prescribed rehabilitation period at such time that the jointed goatgrass would be most visible.

(d) Following the prescribed period of rehabilitation and during the first certified seed production year, a minimum of three field inspections are conducted by the certifying agency.

(e) If jointed goatgrass is found during any inspection as provided in (c) and (d) of this subsection, the rehabilitation program is determined unsuccessful or the field is declared ineligible and the rehabilitation and inspection program for that field must begin again at year one of the procedure.

(4) Field run lots of seed of the same variety may be commingled to facilitate storage and conditioning.

(5) No prohibited noxious weed seeds are permitted upon inspection for seed standards.

(6) Germination minimum refers to germination when sampled.

(7) If chemically controllable seed-borne diseases are noted upon inspection for field standards and seed standards for small grains, treatment of seed is required.

(8) Wild oat, isolated patches and borders must be removed or clearly marked so as to avoid harvesting with the rest of the field. If rejected, a reinspection is necessary to assure clean-up efforts are satisfactory. Spot checks are conducted on fields where heavy patches or contaminated borders were noted. Harvesting these areas with the rest of the field is cause for rejection of the entire field.

(9) The official laboratory providing seed analysis for the purpose of certification is the department.

(10) For all fields planted with varieties that contain the CLEARFIELD trait as defined in the variety description, documentation will be required to be submitted with the certification application verifying that the production field meets all production guidelines and was sprayed with the appropriate herbicide. CLEARFIELD is a trait that makes a plant resistant to the Beyond herbicide.

AMENDATORY SECTION (Amending WSR 04-06-018, filed 2/23/04, effective 3/25/04)

WAC 16-302-685 Small grains standards for seed certification. (1) Land, isolation, and field standards for small grains (barley, oat, rye, triticale, and wheat) seed certification are:

CLASS	LAND STANDARDS MINIMUM YEARS	ISOLATION STANDARDS MINIMUM FEET	FIELD STANDARDS		
			OFF-TYPE MAXIMUM HEAD RATIO	OTHER CROP MAXIMUM HEAD RATIO	WILD OAT MAXIMUM PLANTS/ACRE
Foundation	2*	90 same genus** 3 different genus	None found	None found***	None found
Registered	1*	10 same genus 3 different genus**	1/148,000	1/148,000***	5
Certified	1*	10 same genus 3 different genus**	1/49,000	1/49,000***	5

* Waived if the previous crop is grown from an equal or higher certified class of seed of the same variety.

** Each rye field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by six hundred sixty feet from other rye fields. Each triticale field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by three hundred feet

from other triticale, rye and wheat fields for foundation and registered class, and ten feet for certified class, unless otherwise stated by the plant breeder.

*** Refers to other small grains, except that no rye or triticale is permitted in barley, oat, or wheat; and no vetch is permitted in barley, oat, rye, triticale, or wheat.

(2) Small grains - seed standards:

For CLEARFIELD varieties: For all classes - each lot must pass the CLEARFIELD Confirm test by bioassay or PCR as defined by the trait owner. The CLEARFIELD Confirm test verifies that the seed is resistant to the Beyond herbicide.

Class	Foundation	Registered	Certified
Pure seed (min.)	98%	98%	98%
Inert (max.)	2%	2%	2%
off-type(*) (max.)	None found	2/lb	4/lb
Other small grain(*) (max.)	None found	1/lb	2/lb
Other crop(**) (max.)	None found	0.03%	0.05%
Weed seed (max.)	0.01%	0.01%	0.03%
Objectionable weed seed(***) (max.)	None found	None found	1/lb None found
Wild oat (max.)	None found	None found	(****)
Viability(*****) (min.)	85%	85%	85%

(*) The combination of other small grain and off-type must not exceed 2/lb for registered class, and 4/lb for certified class. The tolerance for rye or triticale, is none found in barley, oat, or wheat. The tolerance for rye is none found in triticale. The tolerance for triticale is none found in rye.

(**) Excluding off-type and other small grain. No vetch is allowed in small grain seed

(***) Excluding wild oat.

(****) 1/lb for certified class oat.

(*****) A certification certificate is issued upon receipt of either an official AOSA tetrazolium or germination test which meets minimum Washington viability standards. NOTE: State and federal seed laws require seed be labeled based on a germination test.

Note: For all classes the purity analysis is based on 100 grams examined. For registered and certified classes, noxious weed, vetch, off-type, and other small grain determinations are based on 500 grams examined. For foundation class, noxious weed, vetch, off-type, and other small grain determinations are based on 1000 grams examined.

WSR 10-05-118

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed February 17, 2010, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-006.

Title of Rule and Other Identifying Information: WAC 16-302-070 When is a seed field inspected by the certifying agency?

Hearing Location(s): Red Lion Hotel Conference Room, 2525 North 20th Avenue, Pasco, WA 99301, on March 24, 2010, at 1:00 p.m.

Date of Intended Adoption: March 31, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail tnorman@agr.wa.gov, fax (360) 902-2043, by 5 p.m. on March 26, 2010.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is intended to provide clear and concise definition as to what constitutes an area of inspection for a field for the purposes of seed certification. Further, this proposal is to establish areas of surveillance that are adjacent to a field as areas that may be included in a field inspection for seed certification.

Reasons Supporting Proposal: As requested by the Washington State Crop Improvement Association, this rule proposal is to provide clarity as to what constitutes a field for the purpose of seed certification. The language in the current rules is such that different interpretations can be drawn. This rule amendment proposal clarifies that the unit of certification includes the entire field, including all border areas that are standing at the time of inspection.

The proposal also allows for areas of surveillance to be included as part of a field inspection for seed certification. This is necessary for new crops that are being grown in Washington. Some of these new crops require that areas adjacent to a field be surveyed for contaminants detrimental to the seed crop being produced. Detrimental contaminants may be, but are not limited to contaminating sources of pollen.

Statutory Authority for Adoption: Chapters 15.49, 34.05 RCW.

Statute Being Implemented: Chapter 15.49 RCW.

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

Name of Proponent: Washington State Crop Improvement Association, private.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule amendment proposal does not impose any additional costs upon the seed industry. There are no new inspection procedures or laboratory testing associated with this proposed rule making. The Washington state department of agriculture (WSDA) concludes that this fee rule making does not impose any new costs upon the seed industry therefore a small business economic impact statement is not required according to RCW 19.85.030 (1)(a).

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency in RCW 34.05.-328 (5)(a)(i).

February 17, 2010
Kenneth R. Harden
Assistant Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-070 When is a seed field inspected by the certifying agency? The certifying agency conducts field inspections as follows:

(1) A seedling field is inspected at the most appropriate time after receipt of seedling application. If the field produces seed the same year of planting, a seedling producing inspection is made prior to harvest.

(2) Each year a crop of certified seed is produced, field inspections are made at a time when factors affecting certification are most evident.

(3) The unit of certification is defined as the entire field standing at the time of inspection. A portion of a field may be certified if the area to be certified is clearly defined by flagging, stakes or other visual means. The border area of the field is considered the unit of certification if it is planted to the same crop and is inclusive of the acreage applied for.

(4) The unit of inspection may include areas adjacent to a field or areas of surveillance if these areas contain factors that would impact the certification eligibility of the seed crop as defined in the specific crop standards. Such factors may be, but are not limited to, contaminating pollen sources.