

WSR 10-07-008
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed March 4, 2010, 1:04 p.m.]

Continuance of WSR 10-01-128.

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

Title of Rule and Other Identifying Information: Section 6.04 Emission of Air Contaminant Detrimental to Person or Property.

At [the] March 4, 2010, board meeting, Spokane Regional Clean Air Agency's (SRCAA) board of directors deferred making a decision concerning the proposed rule until the April 1, 2010, board meeting.

No additional written comments or testimony concerning the proposed rule will be accepted, unless the board determines otherwise at the meeting.

One nonsubstantive revision was made to the rule. Section F was revised by adding the phrase "and E" after the phrase "subsection D" in the first sentence.

Hearing Location(s): Spokane Regional Clean Air Agency, 3104 East Augusta Avenue, Spokane, WA 99207, on April 1, 2010, at 9:30 a.m.

Date of Intended Adoption: April 1, 2010.

Submit Written Comments to: No further written comments will be accepted.

Assistance for Persons with Disabilities: Contact Charles E. Studer by March 25, 2010, TTY (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

AMENDATORY SECTION (Amending Order Res. 04-01, filed 3/4/04)

SECTION 6.04 EMISSION OF AIR CONTAMINANT: DETRIMENT TO PERSON OR PROPERTY ((ODORS AND NUISANCES))

- A. **Definitions:** All definitions in SRCAA Regulation I, Article 1, Section 1.04 apply to this Section, unless otherwise defined herein.
- B. The Agency implements and enforces WAC 173-400-040 in Spokane County in addition to Section 6.04. The provisions of RCW 70.94.640 are herein incorporated by reference.
- C. It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be:
1. Injurious to the health or safety of human, animal, or plant life;
 2. Injurious or cause damage to property; or
 3. Which unreasonably interferes with enjoyment of life and property.
- D. With respect to odor, the Agency may take enforcement action, pursuant to chapter 70.94 RCW, under this section if the Control Officer or a duly authorized representative has documented all of the following:

1. The detection by the Control Officer or a duly authorized representative of an odor at a level 2 or greater, according to the following odor scale:

Level 0 - no odor detected.

Level 1 - odor barely detected.

Level 2 - odor is distinct and definite, any unpleasant characteristics recognizable.

Level 3 - odor is objectionable enough or strong enough to cause attempts at avoidance, and

Level 4 - odor is so strong that a person does not want to remain present.

2. An affidavit from a person making a complaint that demonstrates that they have experienced air contaminant emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property (the affidavit should describe or identify, to the extent possible, the frequency, intensity, duration, offensiveness, and location of the odor experienced by the complainant); and

3. The source of the odor.

- E. With respect to odor, the Agency will determine whether or not a violation of subsection C has occurred based on its review of the information documented under subsection D, as well as any other relevant information obtained during the investigation
- F. When determining whether to take formal enforcement action authorized in subsection D and E above, the Agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction of the Agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the Agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate operating practices are appropriate, the Agency may decline to pursue formal enforcement action.
- G. The Agency will document all the criteria used in making its determination in subsection F above as to whether or not the person causing the odors is employing controls and operating practices to prevent or minimize odors to the greatest degree practicable. Said documentation, except information that meets the criteria of confidential in accordance with RCW 70.94.205, will be made available to any person making a public records request to the Agency for said documentation, including, but not limited to complaining parties.
- H. Nothing in this Section shall be construed to impair any cause of action or legal remedy of any person, or the public for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.
- ~~((A. Effective control apparatus and measures shall be installed and operated to reduce odor bearing gases and particulate matter emitted into the atmosphere to a reasonable minimum.~~
- B. The Board or Control Officer may establish reasonable requirements that the building or equipment be closed

~~and ventilated in such a way that all the air, gas, and particulate matter are effectively treated for removal or destruction of odorous matter or other air contaminants before emission to the atmosphere.~~

- ~~C. Odors caused by agricultural activities consistent with good agricultural practices exempt from this section:~~
- ~~1. Odors caused by agricultural activities consistent with good agricultural practices on agricultural land are exempt from the requirements of this section unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the Authority shall consult with a recognized third party expert in activity prior to issuing any notice of violation.~~
 - ~~2. Any notice of violation issued under this section pertaining to odors cause by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors have substantial adverse effect on public health.~~
 - ~~3. In any appeal to the Pollution Control Hearings Board or any judicial appeal of final order pertaining to odors caused by agricultural activity, the Authority shall prove the activity is inconsistent with good agricultural practices or that the odors have a substantial adverse impact on public health.~~
 - ~~4. If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.~~
 - ~~5. As used in this section:~~
 - ~~a. "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.~~
 - ~~b. "Good agricultural practices" mean economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.~~
 - ~~c. "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities.~~
 - ~~6. The Authority, implements and enforces WAC 173-400-040(4), in Spokane County in addition to Parts A through C.6 of this Section. The more stringent requirement in WAC 173-400-040(4) or Section 6.03 supercedes the lesser.))~~

Reasons Supporting Proposal: SRCAA expects that these changes to the rule will establish clear enforceable nuisance standards that can be understood by both the public and the regulated community and will strengthen the enforceability of nuisance occurrences.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380.

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et seq.

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: Copies of the proposed rule are available on SRCAA's web site www.spokanecleanair.org or may be obtained from SRCAA on request at the Spokane Regional Clean Air Agency, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

Name of Proponent: Spokane Regional Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Charles E. Studer, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727 ext. 107; Implementation: William O. Dameworth, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727 ext. 1217; and Enforcement: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727 ext. 102.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 19.85 RCW applies to state agencies only as specified in RCW 19.85.01 [19.85.011]. RCW 70.94.141(1) states: "An air pollution control authority shall not be deemed to be a state agency." SRCAA is a local air pollution control authority. Therefore chapter 19.85 WAC [RCW] does not apply to local air pollution control authority rule development/amendments.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.010 states: "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter 42.41 RCW. RCW 70.94.141(1) states: "An air pollution control authority shall not be deemed to be a state agency." Therefore, RCW 34.05.328 does not apply to this rule amendment.

March 4, 2010

Charles E. Studer
Environmental Engineer

WSR 10-07-009
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed March 5, 2010, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-002.

Title of Rule and Other Identifying Information: WAC 314-11-025 What are the forms of acceptable identification?

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on April 28, 2010, at 10:00 a.m.

Date of Intended Adoption: May 5, 2010.

Submit Written Comments to: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by April 28, 2010.

Assistance for Persons with Disabilities: Contact Karen McCall by April 28, 2010, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A requirement that all driver's licenses and ID cards used to purchase, possess, or consume alcohol must be horizontal would ensure that all persons using these forms of ID would be twenty-one years of age or older. This requirement would enhance public safety by limiting minor access to alcohol. Any purchase of liquor would require a horizontal driver's license or ID card or the sale would instantly be refused.

Reasons Supporting Proposal: The proposed rules will enhance public safety by limiting minor access to alcohol.

Statutory Authority for Adoption: RCW 66.08.030, 66.16.040.

Statute Being Implemented: RCW 66.08.030, 66.16.-040.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, 3000 Pacific Avenue S.E., Lacey, WA 98504, (360) 664-1631; Implementation: John Redal, 3000 Pacific Avenue S.E., Lacey, WA 98504, (360) 664-1712; and Enforcement: Pat Parmer, 3000 Pacific Avenue S.E., Lacey, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not change the impact on liquor licensees or stakeholders.

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

March 5, 2010
Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 08-03-081, filed 1/16/08, effective 2/16/08)

WAC 314-11-025 What are the forms of acceptable identification? (1) Per RCW 66.16.040, following are the forms of identification that are acceptable to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol:

(a) Driver's license, instruction permit, or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing per RCW 46.20.117;

For the purpose of purchasing liquor, a horizontal driver's license or identocard is required.

(b) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an embedded, digital signature in lieu of a visible signature;

(c) Passport;

(d) Merchant Marine identification card issued by the United States Coast Guard; and

(e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features compara-

ble to those implemented by the department of licensing for Washington driver's licenses.

(2) If the identification document has an expiration date, a person may not use the document after the expiration date to verify his or her age.

WSR 10-07-066
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed March 16, 2010, 10:03 a.m.]

WAC 388-454-0015, proposed by the department of social and health services in WSR 09-18-094 appearing in issue 09-18 of the State Register, which was distributed on September 16, 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 10-07-067
WITHDRAWAL OF PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION

(By the Code Reviser's Office)

[Filed March 16, 2010, 10:03 a.m.]

WAC 390-37-040, proposed by the public disclosure commission in WSR 09-18-103 appearing in issue 09-18 of the State Register, which was distributed on September 16, 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 10-07-068
PROPOSED RULES
GAMBLING COMMISSION

[Filed March 16, 2010, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-24-064.

Title of Rule and Other Identifying Information: WAC 230-15-720 Deposit and reconciliation requirements for progressive jackpot prizes and 230-15-400 Accounting for player-supported jackpot funds.

Hearing Location(s): Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 99301, (509) 547-0701, on May 14, 2010, at 9:00 a.m.

Date of Intended Adoption: May 14, 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 May 1, 2010.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by May 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 rule change would allow card room licensees the option of having commission agents verify player-supported jackpot and progressive jackpot prize funds deposits on-line.

Reasons Supporting Proposal: A majority of card room licensees use on-line banking. This rule change will allow licensees and staff to use on-line access to bank accounts to verify player-supported jackpot funds and progressive jackpot prize funds. This rule change will bring our rules up to date with current technology, while not compromising the integrity of our regulatory program. The change will codify current agency practice.

Statutory Authority for Adoption: RCW 9.46.070.

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 was not prepared because the proposed rule change does not impose more than minor costs, as defined in chapter 19.85 RCW, to licensees. There are no costs imposed on licensees because the proposed change reduces or eliminates the need for licensees to retain paperwork.

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

March 16, 2010
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 660, filed 9/11/09, effective 1/1/10)

WAC 230-15-400 Accounting for player-supported jackpot funds. Class F or house-banked licensees must:

- (1) Maintain a separate bank account in a bank, mutual savings bank, or credit union in Washington state for holding player-supported jackpot (PSJ) funds; and
- (2) Deposit only funds from PSJs into the account; and
- (3) Not make payouts from the PSJ funds until licensees have first deposited the funds in the PSJ account. However, licensees may pay out prizes won during the gambling day and deduct administrative expenses before licensees deposit the funds; and

(4) Transfer or deposit the PSJ funds into the PSJ account or with an armored car service no later than the second banking day after the close of business; and

(5) Identify all deposits or transfers of PSJ funds by the type of PSJ fund and date of collection. Licensees must keep the validated deposit receipts or transfer information as a part of their required daily records or have on-line access to their player-supported jackpot bank accounts; and

(6) Transfer the amount from the PSJ account to the cage or general account before the end of the month if PSJ prizes are paid from the cage or general account. The licensee must keep the transfer information as part of the written records; and

(7) Reconcile the account balance in their bank statement to the PSJ prize balance on their PSJ fund accrual record each month. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records.

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

WAC 230-15-720 Deposit and reconciliation requirements for progressive jackpot prizes. (1) House-banked card game licensees must deposit all progressive jackpot funds in a separate bank account at least weekly.

(2) Licensees must:

- (a) Keep a record of all deposits; and
- (b) For each progressive prize, identify the deposits by game name and number and dates of collection; and
- (c) Maintain validated deposit slips as part of their records or have on-line access to their progressive jackpot prize bank accounts.

(3) At the end of the month, licensees must:

- (a) Reconcile the account balance with the bank statement to the progressive jackpot fund balances. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing; and
- (b) Keep the reconciliation as part of their records.

WSR 10-07-069
PROPOSED RULES
GAMBLING COMMISSION
[Filed March 16, 2010, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-24-036.

Title of Rule and Other Identifying Information: Amended WAC 230-11-065 (~~Own prizes for raffles before drawing date~~) Raffle prizes and new WAC 230-11-067 Procedures for requesting approval to offer raffle prizes over forty thousand dollars or eighty thousand annually.

Hearing Location(s): Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 99301, (509) 547-0701, on May 14, 2010, at 9:00 a.m.

Date of Intended Adoption: May 14, 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 May 1, 2010.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by May 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 title of WAC 230-11-065 was amended to reflect more than just ownership of raffle prizes, and subsection (3)(c) was amended to refer licensees to the new rule, WAC 230-11-067. The proposed new section, WAC 230-11-067 outlines the requirements for raffle licensees to follow if their organization requests approval to offer raffle prizes over forty thousand dollars or eighty thousand dollars annually. Raffle licensees who request approval to exceed the prize limits would be required to submit documentation listed in this rule.

Reasons Supporting Proposal: WAC 230-11-065 allows raffle licensees to request approval from the commission to exceed the raffle prize limits. During the 2009 legislative session, the maximum cost allowed per raffle ticket was increased from \$25 to \$100 effective July 2009. Since that time, there has been an increase in the number of organizations requesting approval to exceed the prize limits. The commission recently received requests from two organizations to conduct large scale raffles with a tiered prize system. At the November 2009 meeting, the commission requested staff develop guidelines to help determine whether an organization has shown good cause to exceed the raffle prize limits. This new rule will provide guidelines on what information licensees should submit when requesting approval to offer prizes over forty thousand or eighty thousand dollars annually. The information submitted by licensees will assist the commission when they are evaluating whether to approve a request to exceed raffle prize limits or not.

Statutory Authority for Adoption: RCW 9.46.070.

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 was not prepared because the proposed rule change does not impose more than minor costs, as defined in chapter 19.85 RCW, to licensees. We don't anticipate additional costs for licensees because they are already required to show good cause in a proposal to increase raffle prize limits.

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

March 16, 2010
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 602, filed 9/26/06, effective 1/1/08)

WAC 230-11-065 ((Own prizes for raffles before drawing date.)) Raffle prizes. (1) Organizations must own the prizes offered to winners before the date of the drawing. However, if the winner has an option to receive a cash prize instead of the merchandise, the organization may enter into a contract to purchase the merchandise prize after the winner chooses his or her option. The organization must have the funds to make the purchase on account before the date of the drawing.

(2) At the time and date of any raffle drawing, the organization must have on deposit an unencumbered amount of money that is equal to or greater than all cash prizes being offered in the raffle. The organization must have these funds deposited in the gambling receipts account, if required, or in a recognized Washington state depository authorized to receive funds. The organization must not reduce the balance of funds available from this account below the required amount before awarding the prize(s).

(3) Raffle prizes must:

(a) Be available at the time and place of the drawing; and
(b) If cash, be United States currency or an equivalent amount of negotiable instruments; and

(c) For licensees, not exceed forty thousand dollars per prize or eighty thousand dollars in total raffle prizes in a license year(~~The commissioners may vote to permit licensees to exceed these limits on specific occasions if the licensees show good cause in writing~~), except as authorized in WAC 230-11-067.

NEW SECTION

WAC 230-11-067 Requesting approval to offer raffle prizes exceeding forty thousand dollars per prize or eighty thousand dollars annually. The commissioners may vote to approve a licensee to exceed raffle prize limits on specific occasions if a licensee shows good cause in writing.

The licensee must submit a raffle plan to us that includes at least the following information:

(1) The organization's goals for conducting the raffle; and

(2) A brief overview of the licensee's mission and vision including the type of programs supported by the licensee and clients served; and

(3) Specific details of the raffle rules including:

(a) Date of the drawing; and

(b) Cost of raffle tickets; and

(c) Prizes available; and

(d) Security of prizes; and

(e) Plans for selling raffle tickets; and

(f) Description of how the licensee protects the integrity of the raffle; and

(4) An explanation of how the proceeds from the raffle will be used; and

(5) A plan to protect the licensee in the event of low ticket sales and other risks; and

(6) An explanation of how the licensee will purchase the prize(s) for the raffle; and

(7) A projected budget including:

- (a) Estimated gross gambling receipts, expenses, and net income for the raffle; and
- (b) Minimum number of projected ticket sales to break even; and
- (c) Corresponding sales and prize levels with projected revenues and expenses for each level; and
- (d) Minimum and maximum prizes available; and
- (8) Any other information that we request or any information the licensee wishes to submit.

WSR 10-07-078
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed March 17, 2010, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-032.

Title of Rule and Other Identifying Information: Two new sections in chapter 314-02 WAC, WAC 314-02-027 What are the requirements/restrictions for a spirits, beer, and wine restaurant license at a cinema with a dinner theater venue? and 314-02-051 What are the requirements/restrictions for a beer and wine restaurant license at a cinema with a dinner theater venue?

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on April 28, 2010, at 10:00 a.m.

Date of Intended Adoption: May 5, 2010.

Submit Written Comments to: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by April 28, 2010.

Assistance for Persons with Disabilities: Contact Karen McCall by April 28, 2010, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement Liquor Control Board Interim Policy #10-2009.

Reasons Supporting Proposal: The proposed rules address public safety, preventing minor access to alcohol, and overservice.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.320, 66.24.-420.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Director of Licensing, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Pat Parmer, Chief, Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business impact statement was prepared. This proposal does not change the impact on liquor licensees or stakeholders.

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

March 17, 2010

Sharon Foster

Chairman

NEW SECTION

WAC 314-02-027 What are the requirements/restrictions for a spirits, beer, and wine restaurant license at a cinema with a dinner theater venue? (1) A spirits, beer, and wine restaurant licensee at a cinema with a dinner theater venue must meet the following requirements:

(a) Food service requirements under WAC 314-02-035; and

(b) Lighting requirements under WAC 314-11-055.

(2) Alcohol sales and service may not be provided from the concession area in the cinema lobby.

(3) Alcohol may be consumed only in the theater rooms approved by the board.

(4) Minor patrons and employees are prohibited in the individual theater rooms that allow alcohol service and consumption.

(5) A spirits, beer, and wine restaurant licensee at a cinema with a dinner theater venue must provide a floor plan of the cinema and indicate which theater rooms within the cinema will be operated as dinner theaters. Those theater rooms not operated as dinner theaters with alcohol sales and service may be open to minors and minor employees.

Example: A cinema has eight theater rooms. The licensee wants to operate theater rooms five and six as dinner theaters with meals and alcohol sales and service. Minor patrons and employees are prohibited in theater rooms five and six, but would be allowed in the lobby area and in theater rooms one, two, three, four, seven, and eight.

Example: A cinema has eight theater rooms. The licensee wants to operate all eight theater rooms as dinner theaters with meals and alcohol sales and service. Minor patrons and employees are prohibited in the lobby area and all eight theater rooms in the cinema. No minors would be allowed on the entire premises at all times.

NEW SECTION

WAC 314-02-051 What are the requirements/restrictions for a beer and wine restaurant license at a cinema with a dinner theater venue? (1) A beer and wine restaurant licensee at a cinema with a dinner theater venue must meet the following requirements:

(a) Food service requirements under WAC 314-02-045; and

(b) Lighting requirements under WAC 314-11-055;

(2) Alcohol sales and service may not be provided from the concession area in the cinema lobby.

(3) Alcohol may be consumed only in the theater rooms approved by the board.

(4) Minor patrons and employees are prohibited in the individual theater rooms that allow alcohol service and consumption.

(5) A beer and wine restaurant licensee at a cinema with a dinner theater venue must provide a floor plan of the cinema and indicate which theater rooms within the cinema will be operated as dinner theaters. Those theater rooms not operated as dinner theaters with alcohol sales and service may be open to minors and minor employees.

Example: A cinema has eight theater rooms. The licensee wants to operate theater rooms five and six as dinner theaters with meals and alcohol sales and service. Minor patrons and employees are prohibited in theater rooms five and six, but would be allowed in the lobby area and in theater rooms one, two, three, four, seven, and eight.

Example: A cinema has eight theater rooms. The licensee wants to operate all eight theater rooms as dinner theaters with meals and alcohol sales and service. Minor patrons and employees are prohibited in the lobby area and all eight theater rooms in the cinema. No minors would be allowed on the entire premises at all times.

WSR 10-07-082
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed March 17, 2010, 12:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-030.

Title of Rule and Other Identifying Information: Chapter 314-07 WAC, How to apply for a liquor license.

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on April 28, 2010, at 10:00 a.m.

Date of Intended Adoption: May 5, 2010.

Submit Written Comments to: Karen McCall, 3000 Pacific Avenue S.E., Lacey, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by April 28, 2010.

Assistance for Persons with Disabilities: Contact Karen McCall by April 28, 2010, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As part of the liquor control board's ongoing rules review process, chapter 314-07 WAC was reviewed for relevance, clarity, and accuracy.

Reasons Supporting Proposal: The existing rules included language that is no longer relevant and needed to be revised.

Statutory Authority for Adoption: RCW 66.08.030 and 66.24.010.

Statute Being Implemented: RCW 66.24.010.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Director, Licensing, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1615; and Enforcement: Pat

Parmer, Chief, Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 334-1726 [664-1726].

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not change the impact on liquor licensees or stakeholders.

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

March 17, 2010

Sharon Foster

Chairman

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-010 Definitions. Following are definitions for the purpose of this title. Other definitions are in WAC 314-01-005 and RCW 66.08.010.

(1) "Applicant" or "liquor license applicant" means any person or business entity who is considered by the board as a true party of interest in a liquor license or permit application, as outlined in WAC 314-07-035.

(2) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs, advertising, etc.

(3) "Financier" (~~—A "financier"~~) means any person or entity who has made or will make an investment in the licensed business of more than ten thousand dollars (~~or of more than ten percent of the initial cash outlay needed to open the business~~) A "financier" can be someone who provides money as a gift, someone who loans money to the business and expects to be paid back the amount of the loan without interest, or someone who invests money into the business expecting a percentage of the profits, but accepts the risk that there may not be a full return on the investment. These persons or entities shall submit appropriate investigation level "financier" financial documents.

(4) "Licensee" or "liquor licensee" means any person or entity that holds a liquor license or permit, or any person or entity who is a true party of interest in a liquor license or permit, as outlined in WAC 314-07-035.

(5) "Public institution" means a public college or university. (See WAC 314-07-020 regarding the liquor control board notifying public institutions of liquor license applications.)

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-015 General information about liquor licenses. (1) (~~When the board issues a liquor license, it should not be construed as granting a vested right in any of the privileges of the license. Rather,~~) A person or entity must meet certain qualifications to receive a liquor license, which are continuing qualifications in order to maintain the license.

(2) A liquor license applicant may not exercise any of the privileges of a liquor license until the board approves the license application (see WAC 314-07-055 regarding temporary licenses).

(3) In approving a liquor license, the board reserves the right to impose special conditions as to the involvement in the

operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a liquor license.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-020 Liquor license qualifications and application process. Each liquor license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the liquor license application. Following is a general outline of the liquor license application process.

(1) Per RCW 66.24.010, the board shall send a notice to the local authority regarding the liquor license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(a) The local authority may submit a written request to the board for an extension for good cause shown.

(b) If the application is within a board-recognized alcohol impact area, the board will give the local authority sixty days to comment on the liquor license application or assumption (see WAC 314-12-215(7) for more information).

(2) For an application for a new liquor license privilege, the board may require a public posting notice to be posted at the site for fourteen days.

(3) For an application for a new liquor license privilege, the board shall notify any schools, churches, or public colleges or universities within five hundred feet of the business (see RCW 66.24.010(9) for more information).

(4) The board will verify that the proposed business meets the minimum requirements for the type of license or privilege requested.

(5) The board may conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-07-040 and 314-07-045.

(6) The board may conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

(7) The board may provide a briefing on liquor laws and rules.

(8) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license or privilege requested.

(9) Per RCW 66.24.010 (2)(a), all applicants must have resided in the state of Washington for at least one month prior to issuance of a liquor license. For ~~((true parties of interest in))~~ a corporation or a limited liability company, the entity meets this residency requirement if the entity was formed in Washington or has a certificate of authority to do business in Washington.

(10) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application will be administratively closed.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-035 What persons or entities have to qualify for a liquor license? Per RCW 66.24.010(1), a liquor license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest** - For purposes of this title, "true party of interest" means:

((Type of Entity)) <u>True party of interest</u>	Persons ((considered "true party of interest")) <u>Persons ((considered "true party of interest")) to be qualified</u>
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership ((or)) limited liability partnership, <u>or limited liability limited partnership</u>	<ul style="list-style-type: none"> All general partners and spouses; All limited partners that have more than 10% interest in the partnership and their spouses.
Limited liability company	<ul style="list-style-type: none"> All members with more than 10% interest in the LLC and spouses. (Note: In order for the liquor control board to identify the ((true parties of interest)) <u>persons to be qualified</u>, we will need to know all parties that have an interest in the limited liability company or have a pending interest.) All managers and their spouses.
Privately held corporation	<ul style="list-style-type: none"> All corporate officers (or persons with equivalent title). All stockholders who hold more than 10% of the issued or outstanding stock. (Note: In order for the liquor control board to identify the ((true parties of interest)) <u>persons to be qualified</u>, we will need to know all parties who have been issued or will be issued corporate stock.)
Publicly held corporation	All corporate officers (or persons with equivalent title).
Multi-level ownership structures	The liquor control board will review each entity to determine which individuals are ((true parties of interest)) <u>to qualify</u> according to the guidelines in this rule.

<u>((Type of Entity)) True party of interest</u>	<u>Persons ((considered "true party of interest") to be qualified</u>
Any entity	Any person who is in receipt of, or has the right to receive, more than ten percent of the gross or net sales from the licensed business during any full or partial calendar or fiscal year. For the purposes of this chapter: <ul style="list-style-type: none"> ■ "Gross sales" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business. ■ "Net sales" means gross sales minus cost of goods sold.

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed or percentage basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's pre-bonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(d) A person or entity receiving payment of franchise fees on a fixed or percentage basis under a bona fide franchise agreement, unless the person or entity receiving payment of franchise fees exercises control over or participates in the management of the licensed business.

(3) **Financiers**—The board may conduct a financial investigation of financiers.

(4) **Persons who exercise control of business**—The board may conduct an investigation of any person or entity who exercises any control over the applicant's business operations.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-055 Temporary retail license. Applicants may apply for a temporary retail liquor license in addition to an annual license for the same business. If granted, the temporary license allows the applicant to operate for a period of up to sixty days while the annual license application is being processed.

<u>Type of Application</u>	<u>Qualification and process to receive a temporary retail license</u>
<p>((1)) Existing licensed business. Applicant is applying for a license for a business that has an existing license at the location, and all of the following apply:</p> <ul style="list-style-type: none"> • The applicant is applying for the same license privilege(s). • The current license privilege is valid and has not expired. • There are no liquor violations pending on the current license. 	<p>In order to receive a temporary license, the applicant(s) must:</p> <ul style="list-style-type: none"> • Fill out a form provided by the board signed by both the current licensee and the current landlord. • Pay a \$50 fee. • Turn in all documents necessary to complete the initial licensing investigation. • Clear a criminal history check, per WAC 314-07-040. • Complete a briefing on liquor laws and regulations, per WAC 314-07-020(7).)
<p>((2)) <u>(1) New business, existing licensed business, or new license type:</u></p> <ul style="list-style-type: none"> • Applicant is applying for a license at a business location that does not hold a current, valid liquor license. • <u>Applicant is applying for the same license privilege at a location that has a valid license that has not expired.</u> • Applicant is applying for a license or a business that has an existing license at the location, but the applicant is applying for a different license privilege(s). <p>((3)) <u>(b) Existing licensed business as described in subsection (1)</u></p>	<p>In order to receive a temporary license, the applicant(s) must:</p> <ul style="list-style-type: none"> • ((Fill out a form provided by the board.)) <u>Sign the acknowledgment form.</u> • Clear a criminal history check, per WAC 314-07-040. • Complete a briefing on liquor laws and regulations, per WAC 314-07-020(7). • The local authority and any churches, schools, or public colleges or universities within 500 feet of the proposed licensed business must have responded to the liquor control board's notice of liquor license application, or the time period must have passed. See WAC 314-07-020, subsections (1), (2), and (3) for more information. • When the annual liquor license is issued, the fee will be pro-rated back to the date of issuance of the temporary license.

~~((3))~~ **(2)** For the purposes of this section, "retail liquor license" shall include all classes of liquor licenses that allow the holder to sell liquor directly to the public.

~~((4))~~ (3) The privilege of having a temporary license issued upon an application for license does not apply to breweries or wineries (~~even though these licensees have limited distributor and retail privileges under their manufacturers' licenses~~).

~~((5))~~ (4) A temporary license under subsection (1) above may be issued for a (~~nonretail~~) distributor license applicant.

NEW SECTION

WAC 314-07-060 Reasons for denial or cancellation of a temporary license. Following is a list of reasons a temporary permit may not be issued or can be revoked. Per RCW 66.24.010, the board has broad discretionary authority to approve or deny a liquor license or permit application. Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing.

- (1) An applicant who has received a temporary license and their application is later administratively closed, and they reapply for a liquor license at the same location.
- (2) The local authority objects for any reason.
- (3) The applicant affirmatively refuses to submit documents requested by the board to conduct the application investigation.
- (4) The applicant accrues or is involved in a violation committed while operating under a temporary license.
- (5) The investigator is unable to determine the true party of interest.
- (6) The applicant fails to meet the basic requirements of the license.
- (7) Denial of the permanent license is recommended to the board.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-065 Reasons the board may deny a liquor license application. Following is a list of reasons the board may deny a liquor license application. Per RCW 66.24.010, the board has broad discretionary authority to approve or deny a liquor license or permit application.

- (1) Failure to meet qualifications or requirements for the specific liquor license or privilege, as outlined in this Title 314 WAC and Title 66 RCW.
- (2) Failure to submit information or documentation requested by the board.
- (3) Misrepresentation of fact by any applicant or financier.
- (4) Failure to meet the criminal history standards outlined in WAC 314-07-040.
- (5) Failure to meet the liquor law or rule violation history standards outlined in WAC 314-07-045.
- (6) Source of funds used for the acquisition, startup and operation of the business is questionable or unverified.
- (7) Objection from the local authority or from the public (see WAC 314-09-010 and RCW 66.24.010(8)). ~~((The objection must state specific reasons and facts that show issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health, or welfare of the community.))~~

(8) Objection from the following entities if they are within five hundred feet of the proposed business: A public school, a private school that meets the requirements of chapter 28A.195 RCW, a church, or a public college or university. See WAC 314-09-010 and RCW 66.24.010(9) for more information. Note: Per RCW 66.24.010(9), the board may not issue a new liquor license if the board receives objection from a public school within five hundred feet of the proposed licensed business.

(9) The board determines that the issuance of the liquor license will not be in the best interest of the welfare, health, or safety of the people of the state.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-080 Ownership changes. ~~((a))~~ (1) Licensees must receive prior board approval before making any of the following ownership changes (see WAC 314-07-035 for the definition of "true party of interest"):

Type of change	Type of application	Fee
Change in (any of the true party(ies) of interest) <u>the qualifying persons</u> in a: Sole proprietorship, general partnership, limited partnership, or limited liability partnership.	New application	Annual fee for current license privilege.
Change in (any of the true party(ies) of interest) <u>the qualifying persons</u> for a publicly or privately held corporation. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer.	Application for change in corporate officer and/or stockholder	\$75
Change in (any of the true party(ies) of interest) <u>the qualifying persons</u> in a limited liability company.	Application for change of limited liability company member and/or manager	\$75

~~((b))~~ (2) The board may inquire into all matters in connection with any such sale of stock/units or proposed change in officers/members.

~~((c))~~ (3) The "proposed sale of more than ten percent of the stock/units" will be calculated as a cumulative total and must be reported to the board when the accumulation of stock/units transfers or newly issued stock/units totals more than ten percent of the outstanding and/or issued stock/units of the licensed corporation or limited liability company.

AMENDATORY SECTION (Amending WSR 05-07-012, filed 3/4/05, effective 4/4/05)

WAC 314-07-085 Change of location. (1) Changing your liquor license to a new location requires an application, per the process outlined in WAC 314-07-015(2).
 (2) Type of change of location application:

Submit a change of location application and pay a \$75 fee if:	Submit a <u>new</u> liquor license application and pay the appropriate fee for the type of liquor license you are applying for if:
<ul style="list-style-type: none"> ■ You are not changing the type of liquor license that you have at the current location; ■ There is no change in any of the true parties of interest; and ■ Your liquor license is current. 	<ul style="list-style-type: none"> ■ You are changing the type of liquor license from what you have at the current location; ■ There is a change in any of the true parties of interest; or ■ Your liquor license is not current.

WSR 10-07-095
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Securities Division)
 [Filed March 19, 2010, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-003.

Title of Rule and Other Identifying Information: The securities division is proposing to amend the franchise broker registration rules set forth in chapter 460-82 WAC to codify current Franchise Policy Statement 06, which concerns franchise broker license effective periods, and to update the books and records requirements set forth in WAC 460-82-200.

Hearing Location(s): State of Washington, Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA 98501, on April 27, 2010, at 2:00 p.m.

Date of Intended Adoption: April 28, 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 April 27, 2010.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507-9033, by April 21, 2010, TTY (360) 664-8126 or (360) 902-8824.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division proposes to codify current Franchise Policy Statement 06, which concerns the effective date for franchise broker licenses, as new WAC 460-82-050. In addition, the division proposes to

streamline and update the books and records requirements in WAC 460-82-200.

Reasons Supporting Proposal: The amendments to chapter 460-82 WAC proposed by the division should be adopted to streamline and update the rules contained therein and to codify the content of Franchise Policy Statement 06.

Statutory Authority for Adoption: RCW 19.100.250.

Statute Being Implemented: Chapter 19.100 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.

March 18, 2010
 Scott Jarvis
 Director

NEW SECTION

WAC 460-82-050 Franchise broker license effective period. Each franchise broker license issued pursuant to RCW 19.100.140 is effective for the calendar year and shall expire on the last day of the year.

AMENDATORY SECTION (Amending WSR 92-02-054, filed 12/30/91, effective 1/30/92)

WAC 460-82-200 Franchise broker (~~record~~) record-keeping requirements. Every franchise broker shall make and keep current the following books and records (~~relating to his business~~):

(1) Records of (~~original entry containing the~~) each sale of a franchise(, to whom sold,) including:

(a) The name and address of the franchisee;

(b) The aggregate purchase price(~~the amount paid down, the installment payments, if any.~~);

(c) Records of any payments collected by the franchise broker in connection with the offer or sale of a franchise;

(d) The terms of payment;

(e) A receipt signed by the purchaser confirming delivery of the Franchise Disclosure Document in accordance with WAC 460-80-300;

(f) The commission paid to the broker(,);

(g) The amount (~~dispersed~~) disbursed for advertising and other amounts to be funded (~~to~~) by the franchisor.

~~(2) ((An individual registration card for each franchisee, his name and address, aggregate amount to be paid, terms of the payment, a copy of the receipt signed by the purchaser that he had received a copy of the offering circular and that it had been received ten business days before the sale.~~

~~(3))~~ Every franchise broker shall keep a copy of all advertising used by the broker in the sale of ~~((said))~~ franchises, including but not limited to the internet, radio, newspaper, T.V. media, letters, brochures, etc.

~~((4))~~ (3) Every franchise broker shall preserve for a period of not less than six years from the closing of any franchise account, all records, books and memorandums that relate to the ~~((franchisee))~~ offer or sale of franchises.

WSR 10-07-106

PROPOSED RULES

CRIMINAL JUSTICE TRAINING COMMISSION

[Filed March 22, 2010, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-120.

Title of Rule and Other Identifying Information: WAC 139-05-205 Administrative exemption.

Hearing Location(s): Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Room E-154, Burien, WA 98148, on Wednesday, June 9, 2010, at 10 a.m.

Date of Intended Adoption: June 9, 2010.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7928, by June 2, 2010.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by June 7, 2010, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On January 1, 2002, peace officer certification went into effect. One of the requirements for a person to be certified as a Washington state peace officer or tribal law enforcement officer is to complete the basic law enforcement academy or the basic law enforcement equivalency academy. WAC 139-05-205 allows persons who are the heads of law enforcement agencies with ten or more commissioned law enforcement officers to be exempt from this training. This action waives the training requirement, but does not allow the person exempted to enforce the laws of the state of Washington and does not authorize the exempt person to be a certified peace or tribal law enforcement officer.

WAC 139-05-205 is in conflict with the certification requirements and is no longer necessary. WAC 139-03-030 allows an agency to request an exemption, waiver, extension, or variance from the rules set by the Washington state criminal justice training commission (WSCJTC) and is still available to be used for such purpose.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Proponent: WSCJTC staff, governmental.

Name of Agency Personnel Responsible for Drafting: Doug Blair, Burien, Washington, (206) 835-7332; Implementation and Enforcement: Michael D. Parsons, Burien, Washington, (206) 835-7347.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

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

March 22, 2010

Sonja Hirsch

Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 139-05-205

Administrative exemption.

WSR 10-07-115

PROPOSED RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed March 22, 2010, 11:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-072.

Title of Rule and Other Identifying Information: The department is amending WAC 388-550-4670 CPE payment program—"Hold harmless" provision, 388-550-4900 Disproportionate share hospital (DSH) payments—General provisions, and 388-550-5150 Payment method—General assistance-unemployable disproportionate share hospital (GAUDSH).

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 27, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 28, 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 27, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 6, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of social and health services (the department) is proposing amendments that pertain to the disproportionate share hospital (DSH) program and the certified public expenditure (CPE) payment program hold harmless payments in order to meet the legislature's targeted budget expenditure levels. The rules will replace the emergency rule that is currently in effect under WSR 10-06-032 filed on February 23, 2010.

Reasons Supporting Proposal: The amendments are required to fully meet the legislatively mandated appropriation reduction under sections 201 and 209 of the final legislative operating budget for fiscal years 2010 and 2011 with respect to the determination of payment rates for inpatient and outpatient hospital services.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500.

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500; sections 201 and 209 of 2009-2011 budget bill.

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: Sandy Stith, P.O. Box 45500, Olympia, WA 98504-5500, (360) 725-1949.

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 Sandy Stith, Health and Recovery Services Administration, P.O. Box 45500, Olympia, WA 98504-45500, phone (360) 725-1949, fax (360) 753-9152, e-mail sandy.stith@dshs.wa.gov.

March 17, 2010

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-032, filed 9/22/08, effective 10/23/08)

WAC 388-550-4670 CPE payment program—"Hold harmless" provision. To meet legislative requirements, the department includes a "hold harmless" provision for hospital providers eligible for the certified public expenditure (CPE) payment program. Under the provision and subject to legislative directives and appropriations, hospitals eligible for payments under the CPE payment program will receive no less in combined state and federal payments than they would have received under the methodologies otherwise in effect as described in this section. All hospital submissions pertaining to the CPE payment program, including but not limited to cost report schedules, are subject to audit at any time by the department or its designee.

(1) The department:

(a) Uses historical cost and payment data trended forward to calculate prospective hold harmless grant payment amounts for the current state fiscal year (SFY); and

(b) Reconciles these hold harmless grant payment amounts when the actual claims data ~~((is))~~ are available for the current fiscal year.

(2) For ~~((each state fiscal year))~~ SFYs 2006 through 2009, the department calculates what the hospital would have been paid under the methodologies otherwise in effect for the ~~((state fiscal year-))~~ SFY as the sum of:

(a) The total payments for inpatient claims for patients admitted during the fiscal year, calculated by repricing the claims using:

(i) For SFYs 2006 and 2007, the inpatient payment method in effect during SFY 2005; or

(ii) For SFYs 2008 and ~~((beyond))~~ 2009, the payment method that would otherwise be in effect during the CPE payment program year if the CPE payment program had not been enacted.

(b) The total net disproportionate share hospital and state grant payments paid for SFY 2005.

(3) For SFY 2010 and beyond, the department calculates what the hospital would have been paid under the methodologies otherwise in effect for the SFY as the sum of:

(a) The total of the inpatient claim payment amounts that would have been paid during the SFY had the hospital not been in the CPE payment program;

(b) One-half of the indigent assistance disproportionate share hospital payment amounts paid to and retained by each hospital during SFY 2005; and

(c) All of the other disproportionate share hospital payment amounts paid to and retained by each hospital during SFY 2005 to the extent the same disproportionate share hospital programs exist in the 2009-2011 biennium.

(4) For each SFY, the department determines total state and federal payments made under the program, including:

(a) Inpatient claim payments;

(b) Disproportionate share hospital (DSH) payments; and

(c) Supplemental upper payment limit payments ~~((made for SFY 2006 and 2007))~~, as applicable.

~~((4)) The amount determined in subsection (3) of this section is subtracted from the amount calculated in subsection (2) of this section to determine the gross state grant amount necessary to hold the hospital harmless. If the resulting number is positive, the hospital is entitled to a grant in that amount, subject to legislative directives and appropriations.~~

(5) A hospital may receive a hold harmless grant, subject to legislative directives and appropriations, when the following calculation results in a positive number:

(a) For SFY 2006 through SFY 2009, the amount derived in subsection (4) of this section is subtracted from the amount derived in subsection (2) of this section; or

(b) For SFY 2010 and beyond, the amount derived in subsection (4) of this section is subtracted from the amount derived in subsection (3) of this section.

(6) The department calculates interim hold harmless and final hold harmless grant amounts as follows:

(a) An interim hold harmless grant amount is calculated approximately ten months after the end of the SFY to include the paid claims for the same SFY admissions. Claims are subject to utilization review prior to the interim hold harmless calculation. Prospective grant payments made under subsection (1) of this section are deducted from the calculated interim hold harmless grant amount to determine the net grant payment amount due to or due from the hospital.

(b) The ~~((department calculates the))~~ final hold harmless grant amount is calculated at such time as the final allowable federal portions of program payments are determined. The procedure is the same as the interim grant calculation but it includes all additional claims that have been paid or adjusted since the interim hold harmless calculation. Claims are subject to utilization review and audit prior to the final calculation of the hold harmless amount. Interim grant payments determined under (a) of this subsection are deducted from this final calculation to determine the net final hold harmless amount due to or due from the hospital.

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

WAC 388-550-4900 Disproportionate share hospital (DSH) payments—General provisions. (1) As required by section 1902 (a)(13)(A) of the Social Security Act (42 USC 1396 (a)(13)(A)) and RCW 74.09.730, the department makes payment adjustments to eligible hospitals that serve a disproportionate number of low-income clients with special needs. These adjustments are also known as disproportionate share hospital (DSH) payments.

(2) No hospital has a legal entitlement to any DSH payment. A hospital may receive DSH payments only if:

(a) It satisfies the requirements of 42 USC 1396r-4;

(b) It satisfies all the requirements of department rules and policies; and

(c) The legislature appropriates sufficient funds.

(3) For purposes of eligibility for DSH payments, the following definitions apply:

(a) "Base year" means ~~((the hospital fiscal year or))~~ the twelve-month medicare cost report year that ended during the calendar year immediately preceding the year in which the state fiscal year (SFY) for which the DSH application is being made begins.

(b) "Case mix index (CMI)" means the average of diagnosis related group (DRG) weights for all of an individual hospital's DRG-paid medicare claims during the ~~((state fiscal year (SFY)))~~ SFY two years prior to the SFY for which the DSH application is being made.

(c) "Charity care" means necessary hospital care rendered to persons unable to pay for the hospital services or unable to pay the deductibles or coinsurance amounts required by a third-party payer. The charity care amount is determined in accordance with the hospital's published charity care policy.

(d) ~~((("Disproportionate share hospital (DSH) cap" means the maximum amount per state fiscal year that the state can distribute in DSH payments to hospitals (statewide DSH cap), or the maximum amount of DSH payments a hospital~~

~~may receive during a state fiscal year (hospital-specific DSH cap)-~~

~~((e))~~ "DSH reporting data file (DRDF)" means the information submitted by hospitals to the department which the department uses to verify medicare ~~((patient))~~ client eligibility and ~~((patient))~~ applicable inpatient days.

~~((f))~~ ~~((e))~~ "Hospital-specific DSH cap" means the maximum amount of DSH payments a hospital may receive from the department during a ~~((state fiscal year))~~ SFY. ~~((For a critical access hospital (CAH), the DSH cap is based strictly on the net cost to the hospital of providing services to uninsured patients))~~ If a hospital does not qualify for DSH, the department will not calculate the hospital-specific DSH cap and the hospital will not receive DSH payments.

~~((g))~~ ~~((f))~~ "Inpatient medicare days" means inpatient days attributed to clients eligible for Title XIX medicare programs. Excluded from this count are inpatient days attributed to clients eligible for state administered programs, medicare Part A, Title XXI, the refugee program and the take charge program.

(g) "Low income utilization rate (LIUR)" ~~((means))~~ the sum of ~~((these))~~ two percentages: ~~((+))~~

(i) The ratio of payments received by the hospital for patient services provided to clients under medicare (including managed care) ~~((and state administered programs)),~~ plus cash subsidies received by the hospital from state and local governments for patient services, divided by total payments received by the hospital from all patient categories; plus ~~((=))~~

(ii) The ratio of inpatient charity care charges ~~((excluding contractual allowances))~~ less inpatient cash subsidies received by the hospital from state and local governments, less contractual allowances and discounts, divided by total ~~((billed))~~ charges for inpatient services. ~~((The department uses LIUR as one criterion to determine a hospital's eligibility for the low income disproportionate share hospital (LIDSH) program. To qualify for LIDSH, a hospital's LIUR must be greater than twenty-five percent.))~~

(h) "Medicare inpatient utilization rate (MIPUR)" ~~((means the number of inpatient days of service provided by a hospital to medicare clients during its hospital fiscal year or medicare cost report year, divided by the number of inpatient days of service provided by that hospital to all patients during the same period))~~ is calculated as a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to clients who (for such days) were eligible for medical assistance during the base year (regardless of whether such clients received medical assistance on a fee-for-service basis or through a managed care entity), and the denominator of which is the total number of the hospital's inpatient days in that period. "Inpatient days" include each day in which a person (including a newborn) is an inpatient in the hospital, whether or not the person is in a specialized ward and whether or not the person remains in the hospital for lack of suitable placement elsewhere.

(i) "Medicare cost report year" means the twelve-month period included in the annual cost report a medicare-certified hospital or institutional provider is required by law to submit to its fiscal intermediary.

(j) "Nonrural hospital" means a hospital that ~~((is not a peer group E hospital or a small rural hospital and))~~;

(i) Is not participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC 388-550-4650;

(ii) Is not designated as an "institution for mental diseases (IMD)" as defined in WAC 388-550-2600 (2)(d);

(iii) Is not a small rural hospital as defined in (n) of this subsection; and

(iv) Is located ~~((inside))~~ in the state of Washington or in a designated bordering city. For DSH purposes, the department considers as nonrural any hospital located in a designated bordering city.

(k) "Obstetric services" means routine, nonemergency obstetric services and the delivery of babies.

(l) "Service year" means the one year period used to measure the costs and associated charges for hospital services. The service year may refer to a hospital's fiscal year or medicare cost report year, or to a state fiscal year.

(m) "Statewide disproportionate share hospital (DSH) cap" is the maximum amount per SFY that the state can distribute in DSH payments to all qualifying hospitals during a SFY.

~~((m))~~ (n) "Small rural hospital" means a hospital that:

(i) Is not ~~((a peer group E hospital,))~~ participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC 388-550-4650;

(ii) Is not designated as an "institution for mental diseases (IMD)" as defined in WAC 388-550-2600 (2)(d);

(iii) Has fewer than seventy-five acute ~~((licensed))~~ beds~~((s));~~

(iv) Is located ~~((inside))~~ in the state of Washington~~((s));~~ and

(v) Is located in a city or town with a nonstudent population of no more than seventeen thousand ~~((one))~~ eight hundred ~~((fifteen))~~ six in calendar year ~~((2006))~~ 2008, as determined by ~~((the Washington State office of financial management estimate. The nonstudent population ceiling increases cumulatively by two percent each succeeding state fiscal year))~~ population data reported by the Washington state office of financial management population of cities, towns and counties used for the allocation of state revenues. This nonstudent population is used for SFY 2010, which begins July 1, 2009. For each subsequent SFY, the nonstudent population is increased by two percent.

~~((n))~~ (o) "Uninsured patient" ~~((means an individual who does not have health insurance that would apply to the hospital service the individual sought and received. An individual who did have health insurance that applied to the hospital service the individual sought and received, is considered an insured individual for DSH program purposes, even if the insurer did not pay the full charges for the services. When determining the cost of a hospital service provided to an uninsured patient, the department uses as a guide whether the service would have been covered under medicaid))~~ is a person without creditable coverage as defined in 45 C.F.R. 146.113. (An "insured patient," for DSH program purposes, is a person with creditable coverage, even if the insurer did not pay the full charges for the service.) To determine whether a service provided to an uninsured patient may be included for DSH

application and calculation purposes, the department considers only services that would have been covered and paid through the department's fee-for-service process.

(4) To be considered for a DSH payment for each SFY, a hospital ~~((located in the state of Washington or in a designated bordering city))~~ must ~~((submit to the department a completed and final DSH application by the due date. The due date will be posted on the department's web site))~~ meet the criteria in this section:

(a) DSH application requirement.

(i) Only a hospital located in the state of Washington or in a designated bordering city is eligible to apply for and receive DSH payments. An institution for mental disease (IMD) owned and operated by the state of Washington is exempt from the DSH application requirement.

(ii) A hospital that meets DSH program criteria is eligible for DSH payments in any SFY only if the department receives the hospital's DSH application by the deadline posted on the department's website.

(b) DSH application review and correction period.

(i) This subsection applies only to DSH applications that meet the requirements under (a) of this subsection.

(ii) The department reviews and may verify any information provided by the hospital on a DSH application. However, each hospital has the responsibility for ensuring its DSH application is complete and accurate.

(iii) If the department finds that a hospital's application is incomplete or contains incorrect information, the department will notify the hospital. The hospital must resubmit a new, corrected application. The department must receive the new DSH application from the hospital by the deadline for corrected DSH applications posted on the department's website.

(iv) If a hospital finds that its application is incomplete or contains incorrect information, it may choose to submit changes and/or corrections to the DSH application. The department must receive the corrected, complete, and signed DSH application from the hospital by the deadline for corrected DSH applications posted on the department's website.

(c) Official DSH application.

(i) The department considers as official the last signed DSH application submitted by the hospital as of the deadline for corrected DSH applications. A hospital cannot change its official DSH application. Only those hospitals with an official DSH application are eligible for DSH payments.

(ii) If the department finds that a hospital's official DSH application is incomplete or contains inaccurate information that affects the hospital's LIDSH payment(s), the hospital does not qualify for, will not receive, and cannot retain, LIDSH payment(s). Refer to WAC 388-550-5000.

(5) A hospital is a disproportionate share hospital for a specific SFY if the hospital ~~((submits a completed DSH application for that specific year, if it))~~ satisfies the ~~((utilization rate))~~ medicaid inpatient utilization rate (MIPUR) requirement (discussed in (a) of this subsection), and the obstetric services requirement (discussed in (b) of this subsection).

(a) The hospital must have a ~~((medicaid inpatient utilization rate))~~ MIPUR~~((s))~~ greater than one percent; and

(b) Unless one of the exceptions described in (i)(A) or (B) of this subsection applies, the hospital must have at least

two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to eligible individuals.

(i) The obstetric services requirement does not apply to a hospital that:

(A) Provides inpatient services predominantly to individuals younger than age eighteen; or

(B) Did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted.

(ii) For hospitals located in rural areas, "obstetrician" means any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

~~(6) ((To determine a hospital's eligibility for any DSH program, the department uses the criteria in this section and the information obtained from the DSH application submitted by the hospital, subject to the following:~~

~~(a) Charity care. If the hospital's DSH application and audited financial statements for the relevant fiscal year do not agree on the amount for charity care, the department uses the lower amount listed. For purposes of calculating a hospital's LIUR, the department allows a hospital to claim charity care amounts related to inpatient services only. A hospital must submit a copy of its charity care policy for the relevant fiscal year as part of the hospital's DSH application.~~

~~(b) Total inpatient hospital days. If the hospital's DSH application and its medicare cost report do not agree on the number of total inpatient hospital days, the department uses the higher number listed to determine the hospital's MIPUR. Labor and delivery days count towards total inpatient hospital days. Nursing facility and swing bed days do not count towards total inpatient hospital days)) To determine a hospital's MIPUR, the department uses inpatient days as follows:~~

~~(a) The total inpatient days on the official DSH application if this number is greater than the total inpatient hospital days on the medicare cost report; and~~

~~(b) The MMIS medicaid days as determined by the DSH reporting data file (DRDF) process if the Washington state medicaid days on the official DSH application do not match the eligible days on the final DRDF. If the hospital did not submit a DRDF, the department uses paid medicaid days from MMIS.~~

(7) The department administers the following DSH programs (depending on legislative budget appropriations):

(a) Low income disproportionate share hospital (LIDSH);

(b) Institution for mental diseases disproportionate share hospital (IMDDSH);

(c) General assistance-unemployable disproportionate share hospital (GAUDSH);

(d) Small rural disproportionate share hospital (SRDSH);

(e) Small rural indigent assistance disproportionate share hospital (SRIADSH);

(f) Nonrural indigent assistance disproportionate share hospital (NRIADSH);

(g) Public hospital disproportionate share hospital (PHDSH); and

(h) Psychiatric indigent inpatient disproportionate share hospital (PIIDSH).

(8) Except for IMDDSH, the department allows a hospital to receive any one or all of the DSH payment (~~adjustments~~) it qualifies for, up to the individual hospital's DSH cap (see subsection (10) of this section) and provided that total DSH payments do not exceed the statewide DSH cap. See WAC 388-550-5130 regarding IMDDSH. To be eligible for payment under multiple DSH programs, a hospital must meet:

(a) The basic requirements in subsection (5) of this section; and

(b) The eligibility requirements for the particular DSH payment, as discussed in the applicable DSH program WAC.

(9) For each SFY, the department calculates DSH payments (~~due an~~) for each DSH program for eligible hospitals using data from (~~the~~) each hospital's base year. The department does not use base year data for GAUDSH and PIIDSH payments, which are calculated based on specific claims data.

(10) The department's total DSH payments to a hospital for any given SFY cannot exceed the (~~individual hospital's annual DSH limit (also known as the~~) hospital-specific DSH cap(+) for that SFY. Except for critical access hospitals (CAHs), the department determines a hospital's DSH cap as follows. The department:

~~(a) ((The cost to the hospital of providing services to medicaid clients, including clients served under medicaid managed care organization (MCO) plans))~~ Uses the overall ratio of costs-to-charges (RCC) to determine costs for:

(i) Medicaid services, including medicaid services provided under managed care organization (MCO) plans; and

(ii) Uninsured charges; then

~~(b) ((Less the amount paid by the state under the non-DSH payment provision of the medicaid state plan))~~ Subtracts all payments related to the costs derived in (a) of this subsection; then

~~(c) ((Plus the cost to the hospital of providing services to uninsured patients;~~

~~(d) Less any cash payments made by or on behalf of uninsured patients; and~~

~~(e) Plus))~~ Makes any adjustments required and/or authorized by federal statute or regulation.

(11) A CAH's DSH cap is based strictly on the cost to the hospital of providing services to (~~uninsured patients. In calculating a CAH's DSH cap, the department deducts payments received by the hospital from and on behalf of the uninsured patients from the hospital's costs of services for the uninsured patients~~) medicaid clients served under MCO plans, and uninsured patients. To determine a CAH's DSH cap amount, the department:

(a) Uses the overall RCC to determine costs for:

(i) Medicaid services provided under MCO plans; and

(ii) Uninsured charges; then

(b) Subtracts the total payments made by, or on behalf of, the medicaid clients serviced under MCO plans, and uninsured patients.

(12) In any given federal fiscal year, the total of the department's DSH payments cannot exceed the statewide DSH cap as published in the federal register.

(13) If the department's DSH payments for any given federal fiscal year exceed the statewide DSH cap, the department will adjust DSH payments to each hospital to account

for the amount overpaid. The department makes adjustments in the following program order:

- (a) PHDSH;
- (b) SRIADSH;
- (c) SRDSH;
- (d) NRIADSH;
- (e) GAUDSH;
- (f) PIIDSH;
- (g) IMDDSH; and
- (h) LIDSH.

(14) If the statewide DSH cap is exceeded, the department will recoup DSH payments made under the various DSH programs, in the order of precedence described in subsection (13) of this section, starting with PHDSH, until the amount exceeding the statewide DSH cap is reduced to zero. See specific program WACs for description of how amounts to be recouped are determined.

(15) The total amount the department may distribute annually under a particular DSH program is capped by legislative appropriation, except for PHDSH, GAUDSH, and PIIDSH, which are not fixed ~~((pools))~~ amounts. Any changes in payment amount to a hospital in a particular DSH ~~((pool))~~ program means a redistribution of payments within that DSH ~~((pool))~~ program. When necessary, the department will recoup from hospitals to make additional payments to other hospitals within that DSH ~~((pool))~~ program.

(16) If funds in a specific DSH program need to be redistributed because of legislative, administrative, or other state action, only those hospitals eligible for that DSH program will be involved in the redistribution.

(a) If an individual hospital has been overpaid by a specified amount, the department will recoup that overpayment amount from the hospital and redistribute it among the other eligible hospitals in the DSH ~~((pool))~~ program. The additional DSH payment to be given to each of the other hospitals from the recouped amount is proportional to each hospital's share of the particular DSH ~~((pool))~~ program.

(b) If an individual hospital has been underpaid by a specified amount, the department will pay that hospital the additional amount owed by recouping from the other hospitals in the DSH ~~((pool))~~ program. The amount to be recouped from each of the other hospitals is proportional to each hospital's share of the particular DSH ~~((pool))~~ program.

(17) All information ~~((submitted by a hospital))~~ related to ~~((its))~~ a hospital's DSH application is subject to audit by the department or its designee. ~~((The department may audit any, none, or all DSH applications for a given state fiscal year.))~~ The department determines the extent and timing of the audits. For example, the department or its designee may choose to do a desk review ~~((upon receipt))~~ of an individual hospital's DSH application and/or supporting documentation, or audit all hospitals that qualified for a particular DSH program after payments have been distributed under that program.

(18) If a hospital's submission of incorrect information or failure to submit correct information results in DSH overpayment to that hospital, the department will recoup the overpayment amount, in accordance with the provisions of RCW 74.09.220 and 43.20B.695.

(19) DSH calculations use fiscal year data, and DSH payments are distributed based on funding for a specific ~~((state fiscal year))~~ SFY. Therefore, unless otherwise specified, changes and clarifications to DSH program rules apply for the full ~~((state fiscal year))~~ SFY in which the rules are adopted.

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

WAC 388-550-5150 Payment method—General assistance-unemployable disproportionate share hospital (GAUDSH). (1) A hospital is eligible for the general assistance-unemployable disproportionate share hospital (GAUDSH) payment if the hospital:

- (a) Meets the criteria in WAC 388-550-4900;
- (b) Is an in-state or designated bordering city hospital;
- (c) Provides services to clients eligible under the medical care services program; and
- (d) Has a medicaid inpatient utilization rate (MIPUR) of one percent or more.

(2) The department determines the GAUDSH payment for each eligible hospital in accordance with:

(a) WAC 388-550-4800 for inpatient hospital claims submitted for general assistance unemployable (GAU) clients; and

(b) WAC 388-550-7000 through 388-550-7600 and other sections in chapter 388-550 WAC that pertain to outpatient hospital claims submitted for GAU clients.

(3) The department makes GAUDSH payments to a hospital on a claim-specific basis.

WSR 10-07-117

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

(Special Commitment Center)

[Filed March 22, 2010, 12:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-102.

Title of Rule and Other Identifying Information: WAC 388-880-005 Special commitment of sexually violent predators—Legal basis, 388-880-007 Purpose, 388-880-010 Definitions, 388-880-030 Sexual predator program initial evaluation, 388-880-031 Sexual predator program annual evaluation, 388-880-033 Evaluator—Qualifications, 388-880-034 Evaluator—Pretrial evaluation responsibilities, 388-880-035 Refusal to participate in pretrial evaluation, 388-880-036 Pretrial evaluation—Reporting, 388-880-040 Individual treatment, 388-880-042 Resident records—Purposes, 388-880-043 Resident clinical records—Location and custody, 388-880-044 Resident records—Access, 388-880-045 Resident records—Retention, 388-880-050 Rights of a person court-detained or court-committed to the special commitment center, 388-880-055 Recommendation for release to a less

restrictive alternative (LRA), 388-880-056 How SCC considers a resident for release to an LRA, 388-880-057 How SCC considers a resident's revocation of LRA status, 388-880-058 How SCC considers a recommendation for a resident's unconditional discharge, 388-880-059 Communicating and coordinating resident discharge and conditional release related matters, 388-880-060 Sexual predator program reimbursement, 388-880-070 Escorted leave—Purposes, 388-880-080 Reasons allowed, 388-880-090 Conditions, 388-880-100 Application requests and approval for escorted leave, 388-880-110 Escort procedures, 388-880-120 Expenses, 388-880-130 Expenses—Paid by resident, 388-880-140 Expenses—Paid by department, 388-880-150 Requests for public disclosure, and 388-880-151 Requests for resident medical information.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 11, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 12, 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 May 11, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 27, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rule changes is to clarify our business practices pursuant to civil commitment treatment and proceedings under chapter 71.09 RCW.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 71.09 RCW and RCW 72.01.090.

Statute Being Implemented: Chapter 71.09 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Mark Davis, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 617-6283; Implementation and Enforcement: Kelly Cunningham, P.O. Box 88450, Steilacoom, WA 98388-0646, (253) 583-5933.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and concluded that they pertain to the practices within the special commitment center and the courts. They do not impact small businesses. The preparation of a comprehensive small business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis was prepared because these rules are an "interpretive rule" under RCW 34.05.328

for which a violation of which does not subject a person to a penalty or sanction, and serves only to set forth the agency's interpretation of statutory provisions it administers.

March 8, 2010

Katherine I. Vasquez

Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-08 issue of the Register.

WSR 10-07-119

PROPOSED RULES

DEPARTMENT OF PERSONNEL

[Filed March 22, 2010, 3:41 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-04-045 Which part-time or temporary employees of higher education employers are exempt from civil service rules?

Hearing Location(s): Department of Personnel, 521 Capitol Way South, Olympia, WA, on May 6, 2010, at 1:30 p.m.

Date of Intended Adoption: May 6, 2010.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by May 1, 2010. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by May 1, 2010, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On December 7, 2009, a special meeting was held before the Washington personnel resources board. The purpose of the meeting was to allow parties to present testimony regarding a request submitted by public school employees of Washington (PSE) to modify WAC 357-04-045.

By memorandum dated December 17, 2009, the board denied the request and directed department of personnel staff to draft a new rule modification to address how the three hundred fifty hours referenced in WAC 357-04-045 should be counted.

The proposed rule change sets forth how the three hundred fifty hours and the one thousand fifty hours referenced in WAC 357-04-045 should be counted.

Statutory Authority for Adoption: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

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

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

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

March 22, 2010

Eva N. Santos

Director

AMENDATORY SECTION (Amending WSR 04-15-016, filed 7/8/04, effective 7/1/05)

WAC 357-04-045 Which part-time or temporary employees of higher education employers are exempt from civil service rules? Persons employed to work one thousand fifty hours or less (~~((1050 hours or less))~~) in ~~((any))~~ a twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, are exempt from civil service rules.

Employees who are either exempt under this subsection or exceptions authorized under WAC 357-19-440, and who work more than three hundred fifty (~~((350))~~) hours in ~~((any))~~ a twelve consecutive month period from the original date of hire or January 1, 2004, whichever is later, may be included in an appropriate bargaining unit for purposes of collective bargaining, as determined by the public employment relations commission. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the ~~((three hundred))~~ three hundred fifty ((350)) hours. For purposes of counting the three hundred fifty hours, the twelve-month period will begin on the employee's original date of hire or January 1, 2004, whichever is later. The next twelve-month period will repeat accordingly. For example:

The employee's original date of hire is June 1, 2009. The twelve-month period would be June 1, 2009, through May 31, 2010. The next twelve-month period would be June 1, 2010, through May 31, 2011. This pattern will continue.

Once the employee works at least three hundred fifty hours in a job classification in the collective bargaining unit the employee remains in that collective bargaining unit until the end of the first twelve-month period (as described in this section) in which the employee does not work at least three hundred fifty hours in a job classification that is in the collective bargaining unit. An employee who has not worked sufficient hours in a bargaining unit job classification to remain in the bargaining unit, is excluded from the bargaining unit until the employee again works at least three hundred fifty hours in a bargaining unit job classification in a twelve-month period (as described in this section).

Temporary appointment under the provisions of this section may be subject to remedial action in accordance with WAC 357-19-450, if the number of hours worked exceeds one thousand fifty hours (~~((1050 hours))~~) in ~~((any))~~ a twelve (~~((12))~~) consecutive month period from the original date of hire or October 1, 1989, whichever is later. Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the one thousand fifty (~~((1050))~~) hours. For purposes of counting the one thousand fifty hours, the twelve-month period will begin on the employee's original date of hire or October 1, 1989, which-

ever is later. The next twelve-month period will repeat accordingly. For example:

The employee's original date of hire is June 1, 2009. The twelve-month period would be June 1, 2009, through May 31, 2010. The next twelve-month period would be June 1, 2010, through May 31, 2011. This pattern will continue.

WSR 10-07-121

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-07—Filed March 23, 2010, 8:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-001.

Title of Rule and Other Identifying Information: United States Longshore and Harbor Workers' Compensation Act (USL&H) Washington assigned risk plan (WARP).

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, <http://www.insurance.wa.gov/about/directions.shtml>, on April 28, 2010, at 2:00 p.m.

Date of Intended Adoption: May 12, 2010.

Submit Written Comments to: Chris Carlson, P.O. Box 40258, Olympia, WA 98504-0258, e-mail ChrisCA@oic.wa.gov, fax (360) 586-3109, by April 27, 2010.

Assistance for Persons with Disabilities: Contact Lorie Villaflora by April 27, 2010, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends WAC 284-22-040 expanding the territory of the WARP. Answering rule-making petition P.43.

Reasons Supporting Proposal: Some Washington employers have workers that temporarily work out-of-state. Currently, these employers cannot obtain USL&H from the WARP due to a territory restriction. This rule gives the WARP board discretion to provide such coverage to Washington employers.

Statutory Authority for Adoption: RCW 48.02.060 and 48.22.070.

Statute Being Implemented: RCW 48.22.070.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Carlson, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7042; Implementation and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule provides the assigned risk plan the option of providing USL&H coverage for Washington state employers who are unable to purchase such coverage for their temporarily out-of-state employees. Allowing this option imposes no regulatory costs

on small employers and, therefore, does not require a small business economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. The result of this proposed rule is a clarification and expansion of eligibility for businesses to use a government sponsored (and primarily governed) program - the assigned risk program for USL&H coverage. The proposed rule is not subject to violation by a nongovernment party and represents the commissioner's interpretation of the law. Therefore, no cost-benefit analysis is required.

March 23, 2010

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Order R 92-12, filed 9/16/92, effective 10/17/92)

WAC 284-22-040 Territory. (1) The assigned risk plan shall provide coverage only for employers who are unable to purchase United States Longshore and Harbor Workers' Compensation Act (USL&H) coverage and maritime employers' liability coverage incidental to such workers' compensation coverage for their operations within the state of Washington.

(2) The assigned risk plan may, at its discretion, provide USL&H coverage and maritime employers' liability coverage incidental to such workers' compensation coverage for Washington state employers who are unable to purchase USL&H coverage for their Washington employees who temporarily work out-of-state.

WSR 10-07-130

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-01—Filed March 23, 2010, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-02-075.

Title of Rule and Other Identifying Information: Title insurance rate filing and reporting rules and procedures.

Hearing Location(s): Insurance Commissioner's Office, 5000 Capitol Boulevard, TR 120, Tumwater, WA 98504-0255, on April 27, 2010, at 10:00 a.m.

Date of Intended Adoption: April 28, 2010.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail jimt@oic.wa.gov, fax (360) 586-3109, by April 26, 2010.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by April 26, 2010, TTY (360) 586-0241 or (360) 725-7087.

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

1. Establish the information required for the filing of rates for title insurance under RCW 48.29.147;

2. Establish standards for title insurance rate filings to satisfy RCW 48.29.147;

3. Identify statistics that title insurance agents must collect and report to the title insurers that have appointed them, in order that the insurers can file accurate and appropriate expense data to support their rate filings;

4. Identify title insurance statistics that title insurers and title insurance agents must collect and report to the commissioner in order for the commissioner to determine whether the title insurance rates comply with chapters 48.143 and 48.147 RCW;

5. Establish a date by which title insurers must file every manual of rules and rates, rating plan, rate schedule, minimum rate, class rate, and rating rule, and every modification of any of these filings under RCW 48.29.143 and 48.29.147;

6. Require title insurers to file rates and forms through the system for electronic rate and form filing (SERFF).

Reasons Supporting Proposal: RCW 48.29.140 was amended and RCW 48.29.143 and 48.29.147 were enacted by the 2008 legislature. These statutes amend and change the manner in which title insurers file title insurance rates with the commissioner and provide that the commissioner will establish a date for the change from the current rate filing system to the new system under these new statutes.

Statutory Authority for Adoption: RCW 48.02.060 and 48.29.005.

Statute Being Implemented: RCW 48.29.140, 48.29.143, and 48.29.147.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the authorized title insurance companies active in the state of Washington qualify as small business under the law, therefore no small business economic impact statement (SBEIS) is required as to them.

The two primary business entity groups affected by the proposed title rate rules (R-2009-01) are title insurers and title insurance agents. None of the domestic title insurers currently active in Washington qualifies as a small business under the law; therefore no SBEIS is required with regard to them.

There are domestic title insurance agents currently active in Washington state that qualify as small businesses under the law. However, the proposed title rate rules (R-2009-01) impose only one requirement on these small businesses - the requirement that they report by April 1 premium, policy count and expense data annually to each title insurer for which they produced business (proposed WAC 284-29A-100) using instructions called the *Title Insurance Agent Annual Report* to be found on the commissioner's web site.

Subsection (2)(a) in this proposed section requires the reporting of: (a) Title insurance premiums for all of the

agent's business and specifically for the title insurer to which the report is sent; and (b) the number of policies for all of the agent's business and specifically for the title insurer to which the report is sent. Accumulation of much of this information is part of normal business activity; for purposes of reporting to its underwriters title agents will necessarily track the number of policies, who they were insured with and the premiums involved. The primary new step being required will be to pull together annual totals for premiums and policies and report this information to the limited number of title insurers for whom each agent is appointed. This will constitute, at best, a minor cost as defined by the law; for title agents who must report under RCW 48.29.015 the tracking of total title orders is already necessary to meet the reporting of percentages that is required. As a less than minor cost item this does not require an SBEIS. Subsection (2)(b) in this proposed section requires reporting an expense data breakout by title insurance agents to each title insurer for which they produce business. The expenses being reported are essentially the same expense categories being tracked and reported on IRS forms commonly filed annually by these same businesses (for example, form 1120—the U.S. Corporation Income Tax Return and form 1065 U.S. Return of Partnership Income and their related attachments). As such, the accumulation of this information is part of normal business activity; reporting it to the limited number of title insurers for whom that agent is appointed will be, at best, a minor cost as defined by the law and does not require an SBEIS.

Complying with subsection (2)(c) in this proposed section requires: (a) Filing an explanation of how expenses are allocated between title operations and escrow operations of the title insurance agent; and (b) demonstrating that expenses named in WAC 284-29A-070(1) have been excluded. Filing an explanation of how expenses are allocated requires only a logical explanation of the methodology for making that allocation for the appropriate cost items listed in proposed WAC 284-29A-110 (2)(b) and then showing the resultant totals for escrow expenses; the insurer receiving this report might request explanation if escrow expenses exceeded fees charged. This reporting step seems to require only a little extra time and therefore should be only a minor cost item under the law. Demonstrating that expenses named in WAC 284-29A-070(1) have been excluded from rate setting requires a demonstration that fees have been paid covering the full cost of such expenses; assuming a title agent is complying with the law, this accounting should again be well within the "minor cost" threshold found in the law.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

March 23, 2010
Mike Kreidler
Insurance Commissioner

Chapter 284-29A WAC

TITLE INSURANCE RATES

NEW SECTION

WAC 284-29A-010 Finding and purpose. Title insurance protects against financial loss from defects in insured titles. Actual losses from title products is rare and the primary costs incurred by title insurers and agents is maintaining tract indexes and research to find title defects before transactions are completed. Consequently, loss ratios for title insurance are relatively low and expense ratios are fairly high, so title insurance is regulated differently than property and casualty products. To implement and administer chapter 48.29 RCW, the commissioner needs more information about the costs underlying title insurance policies to regulate rates and ensure consumers are offered fair and equitable premiums. The purpose of this chapter is to adopt rules that establish:

- (1) Standards for determining whether a premium rate complies with RCW 48.29.143;
- (2) Standards and procedures that apply to RCW 48.29.147;
- (3) The date after which title insurers must use rates that have been filed and approved under RCW 48.29.147; and
- (4) Requirements for submitting all rate filings through SERFF.

NEW SECTION

WAC 284-29A-020 Definitions. The definitions in this section apply to this chapter:

"Commitment" means the same as in RCW 48.29.010 (3)(c).

"Complete filing" means a package of information containing rates, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

"Date filed" means the date a complete filing has been received and accepted by the commissioner.

"Filer" means a person, organization or other entity that files title insurance rates with the commissioner for a title insurer.

"NAIC" means the National Association of Insurance Commissioners.

"Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

- (a) Requests clarification, documentation or other information;
- (b) Explains errors or omissions in the filing; or
- (c) Disapproves the filing under RCW 48.29.147.

"Policy" means a title policy as defined in RCW 48.29.010 (3)(a), and includes endorsements.

"Producer" means:

- (a) A "producer of title insurance" as defined in WAC 284-29-205(8); and
- (b) An "associate of producers" as defined in RCW 48.29.010 (3)(f).

"Rate" or "rates" means all classification manuals, rate and rule manuals, rating plans, rating schedules, minimum

rates, class rates, and rating rules that title insurers must file under RCW 48.29.147.

"SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

"Title insurance agent" or "agent" has the same meaning as in RCW 48.17.010(15).

"Title insurance" has the same meaning as in RCW 48.11.100.

"Title insurer" means a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW.

NEW SECTION

WAC 284-29A-030 Transition to prior approval system. (1) On and after January 1, 2012, all rates used in Washington state must be filed and approved under RCW 48.29.147.

(2) Title insurers must submit the rate filings required under RCW 48.29.147 and subsection (1) of this section to the commissioner by September 1, 2011, for rates to be effective on January 1, 2012. This rule allows the commissioner time to take final action on rates filed under this chapter before the effective date of January 1, 2012.

(3) Rates filed under RCW 48.29.140(2) must not be used on or after January 1, 2012.

NEW SECTION

WAC 284-29A-040 Supporting information required under RCW 48.29.147. (1) When a title insurer files rates with the commissioner, the title insurer must demonstrate that the proposed rates comply with RCW 48.29.143. To the extent possible:

(a) Each title insurer must provide credible data to support the proposed rates. If credible data are not available, the title insurer must provide supporting documentation that describes its process for developing the proposed rates and demonstrates that they meet the requirements of RCW 48.29.143.

(b) Data used to support the proposed rates should be from the state of Washington. If data from other states are used, the title insurer must explain why those data are similar to what would be expected in Washington.

(2) If a title insurer proposes to use rates that are identical to the rates of another title insurer, the rate filing must include supporting information that demonstrates that the title insurer's proposed rates meet the requirements of RCW 48.29.143. It is not sufficient simply to state that the proposed rates are identical to those of another title insurer or that the rates are being filed for competitive purposes.

(3) Under RCW 48.29.143(2), a title insurer's provision for underwriting profit must be consistent with its cost of capital. The rate filing must demonstrate that expected underwriting profit, plus expected investment income on reserves and surplus, minus expected federal income taxes corresponds to an appropriate target after-tax rate of return on the title insurer's equity or net worth.

(4) The rate filing must provide sufficient information so that the commissioner may determine whether the proposed rates comply with RCW 48.29.147(3).

NEW SECTION

WAC 284-29A-050 Unfairly discriminatory rates. Situations in which the rates are unfairly discriminatory under RCW 48.29.143(1) include, but are not limited to:

(1) Rating rules that provide for a waiver of the cancellation fee or reduction of the cancellation fee, after a commitment has been issued, to an amount that is less than the title insurer's, including its agents', expected average cost to issue a commitment in the geographical area covered by the rating rules;

(2) Negotiation or bidding of price;

(3) Rating rules that do not have a definite charge for every bracket of coverage;

(4) Discounts not provided to all qualifying risks; and

(5) Rating plans in which policies:

(a) Generating higher premiums subsidize smaller policies; or

(b) From one geographical area subsidize those from another geographical area.

(6) A title insurer's application of more than one rate schedule to similarly situated risks in a county or defined geographical area. For example, it is unfairly discriminatory for a title insurer to use different rate schedules for business produced by different title insurance agents in a specific county.

NEW SECTION

WAC 284-29A-060 Judgment rating. If the rates for a title insurance policy (including endorsements) depend in whole or in part upon the judgment of the title insurer or agent, the title insurer must:

(1) File rating rules that describe the specific criteria used for making the rates;

(2) Document the rationale for each judgment rate referencing the filed rating rule;

(3) Retain supporting documentation required under this section for at least three years following the effective date of the policy;

(4) Make the documentation available for examination by the commissioner on request; and

(5) Treat all similarly situated risks equitably. If a title insurer files a judgment rate that reduces the rate for a particular endorsement to a percentage of the base rate, then the title insurer must reduce the rate for all similarly situated risks that meet the same criteria. For example, if the title insurer charges an insured that meets specific criteria premium of ten percent of the base rate for the endorsement, another insured meeting the same criteria must also be charged ten percent of the base rate.

NEW SECTION

WAC 284-29A-070 Referral fees and marketing expenses. (1) Under RCW 48.29.210 and WAC 284-29-200 through 284-29-265, title insurers and title insurance agents:

(a) Are prohibited from giving anything of value to any person for the referral of title insurance business;

(b) Are prohibited from giving most things of value to persons who are in a position to refer or influence the referral of title insurance business;

(c) Must charge and collect for the costs of providing certain listed information, services, and other items of value that title insurers and their agents give to persons who are in a position to refer or influence the referral of title insurance business; and

(d) Are permitted to give specified things of value to producers of title insurance at no charge.

(2) Therefore, in making rates a title insurer must not include income or expenses related to the costs of:

(a) Giving anything of value to any person for the referral of title insurance business;

(b) Providing information, services, and other items of value that a title company is prohibited from giving to a producer of title insurance business under RCW 48.29.210 and WAC 284-29-200 through 284-29-265; and

(c) Providing information, services, and other items of value that the title insurer or a title insurance agent may give to producers if the title insurer or title insurance agent is paid for the information, services, or other items identified in WAC 284-29-200 through 284-29-265.

(3) However, in making rates a title insurer may include its income or expenses related to the costs of giving permitted things of value to producers of title insurance business and the title insurer's and title insurance agents' other marketing expenses.

NEW SECTION

WAC 284-29A-080 Expense component of rates. (1)

In support of the expense component of the rates, the title insurer must:

(a) Include estimates of expected nonescrow expenses;

(b) Exclude the expected expenses described in WAC 284-29A-070(2); and

(c) Show how those estimates were calculated and demonstrate how those estimates are connected to the proposed rates.

(2) The expense categories that must be considered when making rates include:

(a) Employees' salaries and wages;

(b) Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners;

(c) Employee benefits;

(d) Rent;

(e) Insurance;

(f) Legal expense;

(g) Licenses, taxes, and fees;

(h) Title plant expense and maintenance;

(i) Office supplies;

(j) Depreciation;

(k) Automobile expense;

(l) Communication expense;

(m) Education expense;

(n) Bad debts;

(o) Interest expense;

(p) Employee travel and lodging;

(q) Loss and loss adjustment expense;

(r) Accounting and auditing expense;

(s) Public relations expense; and

(t) Other specifically identified expenses.

(3) To support the agent commission component of rates, it is not sufficient to state the commission rate and perform calculations based on that percentage. The title insurer's rate filing must include data that supports the expense component that applies to its title insurance agents.

(4) The supporting information required under this section may aggregate the data from agent reports received by the title insurer in one or more years under the provisions of WAC 284-29A-110.

NEW SECTION

WAC 284-29A-090 Rates must include all costs. All premium rates filed under RCW 48.29.147 and this chapter must include all costs related to the title insurance transaction, including the costs to:

(1) Maintain the tract indexes;

(2) Search and examine the title or title to be insured;

(3) Issue preliminary commitments;

(4) Determine that each insured estate has been created, conveyed or modified as shown in the policy;

(5) Evaluate coverage and amend the policy as needed with appropriate and reasonable exceptions, conditions or modifications; and

(6) Any other direct or indirect cost associated with performing these activities.

NEW SECTION

WAC 284-29A-100 Effect of premium split on filing of premium rates. If the title agency contract between a title insurer and the title insurer's appointed title agents provides for a split of premiums between the title insurer and the title insurance agent, the title insurer must file premium rate schedules using supporting data and information that are based upon that premium split. The title insurer's base rates should be based on its normal split of premiums between the title insurer and its agents. The title insurer's use of other premium splits, if any, should be addressed through the filing of rating rules that specify the situations in which other premium splits are used and the adjustments that result from their use.

NEW SECTION

WAC 284-29A-110 Title insurance agents must report data to title insurers. (1) Each title insurance agent must report premium, policy count, and expense data annually to each title insurer for which it produces business by April 1st of each year. These data must be reported following the instructions published by the commissioner on the commissioner's web site at www.insurance.wa.gov. These instructions, called the *Title Insurance Agent Annual Report*, are incorporated into this chapter by reference.

(2) Each annual report required by this section must include:

(a) The following premium and policy count data:

(i) Title insurance premiums for all of the agent's business; and

(ii) Title insurance premiums produced for the title insurer to which the report is sent.

(iii) Number of policies issued by all of the title insurers with which the agent does business; and

(iv) Number of policies issued by the title insurer to which the report is sent.

(b) The following expense data for all of the agent's business, excluding all escrow expenses:

(i) Employees' salaries and wages;

(ii) Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners;

(iii) Employee benefits;

(iv) Rent;

(v) Insurance;

(vi) Legal expense;

(vii) Licenses, taxes, and fees;

(viii) Title plant expense and maintenance;

(ix) Office supplies;

(x) Depreciation;

(xi) Automobile expense;

(xii) Communication expense;

(xiii) Education expense;

(xiv) Bad debts;

(xv) Interest expense;

(xvi) Employee travel and lodging;

(xvii) Loss and loss adjustment expense;

(xviii) Accounting and auditing expense;

(xix) Public relations expense; and

(xx) Other specifically identified expenses.

(c) An explanation that:

(i) Describes how expenses are allocated between the title operations and escrow operations of the title insurance agent; and

(ii) Demonstrates that the expenses described in WAC 284-29A-070(2) have been excluded.

(3) If a title insurer does not receive a report required under this section by April 1st of each year, the title insurer must notify the commissioner by April 15th. This notice must include the name of the agent that did not send the report on time.

NEW SECTION

WAC 284-29A-120 Filing documents incorporated by reference into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site and on the commissioner's web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and

(2) The *Washington State SERFF Title Insurance Rate Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

NEW SECTION

WAC 284-29A-130 General rate filing rules. Filers must submit complete rate filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and the *Washington State SERFF Title Insurance Rate Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov). All rate filings must comply with these rules:

(1) Filers must submit all rate filings and related documents to the commissioner electronically using SERFF.

(2) Filers must send all written correspondence related to a rate filing in SERFF.

(3) Each rate filing must be accurate and internally consistent.

(4) Filers must not submit combined rate and form filings.

NEW SECTION

WAC 284-29A-140 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-29A-120. If the commissioner rejects a filing, the title insurer has not filed rates with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-29A-150 Responding to objection letters. If the commissioner disapproves a filing under RCW 48.29.-147, the objection letter will state the reason(s) for disapproval, including relevant law and administrative rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response includes:

(a) A separate response to each objection; and

(b) If appropriate, revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner.

NEW SECTION

WAC 284-29A-160 Filing authorization rules. A title insurer may authorize a third-party filer to file rates on its behalf. For the purposes of this section, "third-party filer" means a person or entity in the business of providing insurance regulatory compliance services.

(1) If a title insurer delegates filing authority to a third-party filer, each filing must include as supporting documentation a letter signed by an officer of the title insurer authorizing the third-party filer to make filings on behalf of the title insurer.

(2) The title insurer may not delegate responsibility for the content of a filing to a third-party filer. The commis-

sioner considers errors and omissions made by the third-party filer to be errors and omissions of the title insurer.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the title insurer.

WSR 10-07-131

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed March 23, 2010, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-04-084.

Title of Rule and Other Identifying Information: Public records disclosure.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on April 27, at 10:00 a.m.

Date of Intended Adoption: April 27, 2010.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822, by April 26, 2010.

Assistance for Persons with Disabilities: Contact Dale R. Brown by April 26, 2010, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to establish the procedures the department of licensing will follow in order to provide full access to public records.

Reasons Supporting Proposal: Model rules developed by the attorney general.

Statutory Authority for Adoption: RCW 42.56.040, [42.56.]070, 46.01.110.

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: Walt Fahrer, 8005 "A" River Drive S.E., Tumwater, WA, (360) 359-4015; Implementation and Enforcement: Hannah Fultz, 8005 "A" River Drive S.E., Tumwater, WA, (360) 359-4013.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not affect small business.

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

March 23, 2010

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-005 Authority and purpose. (1) RCW ((42.17.260(1))42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency.

(2) The purpose of these rules is to establish the procedures the department of licensing will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the department of licensing and establish processes for both requestors and the department of licensing staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the department of licensing will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-010 Definitions. (1) The definitions set forth in RCW ((42.17.020)42.56.010 shall apply to this chapter.

(2) "Designee" is a department employee authorized by the public records officer to receive and respond to a public records request.

(3) The "department of licensing" is the agency created pursuant to chapter 46.01 RCW. The department of licensing shall hereinafter be referred to as the department. Where appropriate, the term department also refers to the staff and employees of the department of licensing.

(4) "Director" means the director of the department of licensing as appointed by the governor ((pursuant to RCW 46.01.090)).

(5) "Listing (list)" means an item-by-item series of names, figures, words or numbers written or printed one after the other.

(6) "Individual" means a natural person.

(7) "Commercial purpose" means using or intending to use information for the purpose of facilitating a profit expecting business activity.

(8) "Profession" when applied to department records, or the release of department record information, means any state regulated business, profession or occupation administered by the assistant director, business and professions division.

AMENDATORY SECTION (Amending WSR 92-09-107, filed 4/20/92, effective 5/21/92)

WAC 308-10-015 Location of administrative office.

The administrative office of the department and its director and staff ((are)) is located in the Highways-Licenses Building, 1125 Washington Street Southeast, Olympia 98504. The administrative office of the public records officer is located at 8005-A River Drive Southeast, Olympia 98501.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-020 Operations and procedures. (1)

The department is organized under a director, deputy director, chief financial officer, chief information officer and three assistant directors. Each assistant director and officer is delegated authority to act in a specific functional area. The five major functional components are: ~~((Vehicle services,))~~ Driver and vehicle services, driver policy and programs, finance and administration division, information services, and business and professions division.

(2) The director of the department is appointed by the governor, with consent of the senate, and holds office at the pleasure of the governor.

(a) Subject to statutory limitations the director has complete charge of the department. The director may delegate any power or duty vested in the office to any assistant or subordinate, but remains responsible for the official acts of the officers and employees.

(b) By the specific powers of legislation and delegation the director is charged with the responsibility and authority to act and direct in the following areas:

(i) Efficiently administer the laws pertaining to licensing of vehicles, vehicle operators, professions, occupations, real estate, vessels, and businesses.

(ii) Adopt and enforce rules consistent with, and necessary to carry out, the provisions of existing laws.

(c) Each assistant director and officer reports directly to the deputy director, unless otherwise prescribed.

(d) Unless specifically delegated the director shall establish and maintain relationships with the state's executive offices, legislature, and other state agencies, other states and other states' agencies, agencies of the federal government, state and national associations, local and municipal governments, boards and commissions, and the press.

(e) The director shall have direct authority over matters pertaining to public information, research, and legal issues.

(3) The assistant director, driver and vehicle services, has authority to act in the following areas:

(a) Administer laws pertaining to:

(i) Vehicle and vessel licensing and excise tax programs;

(ii) Fuel tax programs;

(iii) Proration and reciprocity programs;

(iv) Vehicle and vessel dealer, manufacturer licensing and inspection programs; ~~((and))~~

(v) Miscellaneous vehicle licensing programs including: Transporters, wreckers, hulk haulers, abandoned vehicles, tow truck operators, scrap processors, snowmobile and ORV vehicle dealers; and

(vi) Driver licensing and nondriver identification card programs.

(b) Adopt and enforce rules and standards to carry out the provisions of existing law.

(c) Administer the licensing functions of county auditors, and licensing agents who have been appointed by county auditors to act on behalf of the department.

(4) The assistant director, driver ~~((services))~~ policy and programs, has authority to act in the following areas:

(a) Administer the laws pertaining to driver licensing, financial responsibility, and driver improvement~~((and examining))~~;

(b) Adopt and enforce rules and standards to carry out the provisions of existing law~~((and~~

~~((Determine field office locations and initiate property acquisition))~~.

(5) The assistant director, business and professions division, has authority to act in the following areas:

(a) Administer the laws in conjunction with appointed boards pertaining to the following professions, occupations, and businesses:

Appraisers
Architects
Auctioneers
Bail bonds
Boxing
Camping resorts
Cemeteries
Collection agencies
Cosmetologists
Court reporters
Driver training schools
Employment agencies
Engineers
Firearms
Funeral directors
Geologists
Home inspectors
Land surveyors
Landscape architects
Limousines
Martial arts
Notaries public
On-site wastewater treatment
Real estate
Private investigators
Security guards
Sellers of travel
Timeshares
Tattoo and body piercing
Vehicle for hire (includes taxis)
Wrestling
Uniform commercial code (UCC)

(i) The assistant director of the business and professions division helps administer the laws in conjunction with appointed boards, who exercise administrative and regulatory functions. Those boards are as follows:

Real Estate Appraiser Commission
Board of registration for architects

Board of funeral directors and embalmers
 Cemetery licensing board
 Collection agency board
 Cosmetology, barbering, esthetics, and manicuring advisory board
 Professional engineers and land surveyors board
 Landscape architect board
 Real estate commission
 On-site wastewater design advisory committee
 Geologist licensing board

(ii) Correspondence to these boards should be directed to the program units for the boards.

(b) Adopt and enforce the rules, regulations and standards in conjunction with appointed boards to carry out the provisions of existing laws.

(c) Establish and maintain relationships with commissions, boards, societies, associations, and agencies both external and internal to this state in order to enhance the department's capability for recommending improvements in legislation, rules, or regulations relative to professions, occupations, or businesses.

(d) Administer the laws pertaining to Uniform Commercial Code, business licensing and registration.

(6) The chief financial officer, finance and administration division, has authority to act in the following areas:

(a) Develop, promote, and direct department activities and programs which relate to:

- (i) Budget and management systems;
- (ii) Supply and equipment procurement;
- (iii) Records management;
- (iv) Fiscal and revenue accounting;
- (v) Contracts;
- (vi) Safety and risk management;
- (vii) Facilities;
- (viii) ~~(Mail)~~ Customer service center operations;
- (ix) Transportation;
- (x) Commute trip reduction;
- (xi) Sustainability;
- (xii) Public records disclosure;
- (xiii) Mail center operations;

(b) Organize, provide, and manage integrated staff services to best serve the overall interests of the department.

(7) The chief information officer, information services, has the authority to act in the following areas:

(a) Develop, promote, coordinate, and direct department activities which relate to the automated processing of data.

(b) Consult and work with other state agencies in structuring and phase-in of interagency related programs.

(c) Develop and implement a formal problem reporting system.

(8) The department conducts informal and formal proceedings in areas of its statutory authority as related in WAC 308-10-020. These proceedings are governed by chapters 34.05, 42.30 and 43.24 RCW, except that the denial, suspension, or revocation of drivers' licenses are not subject to provisions of chapter 34.05 RCW, the Administrative Procedure Act, other than those actions taken pursuant to chapter 46.29 RCW. The department has adopted rules in Title 308 WAC.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-025 Public records available. All public records of the department are deemed to be available for public inspection and copying during normal business hours pursuant to these rules, except as otherwise provided by chapters ~~((42-177))~~ 42.56 and 46.12 RCW, WAC 308-10-050 and 308-93-087. For the purposes of this chapter, the normal business hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-030 Public records officer. The department's public records officer shall be designated by the director and is the point of contact for public records requests. The person so designated shall be located in the ~~((main administrative offices of the department))~~ administrative office mentioned in WAC 308-10-015. The public records officer shall be responsible for the following: The implementation of the department's rules regarding release of public records, coordinating the staff of the department in this regard, maintaining, keeping current, and publishing an index of all agency records and ensuring compliance with the public records disclosure act requirements.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-040 Requests for public records. In accordance with requirements of chapter ~~((42-177))~~ 42.56 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request shall be made in writing upon the department's public records request form or by letter, fax, or e-mail addressed to the public records officer or designee where the record is held. The request shall include the following information:

- (a) The name and address of the person requesting the record.
- (b) The calendar date on which the request is made.
- (c) The nature of the request.
- (d) A reference to the requested record as it is described in the current department record index.

Note: If the material is not identifiable by reference to the department's current index, an accurate description of the record is ~~((requested))~~ required.

(e) The signature and other contact information including telephone number and any e-mail address. A signature is not required for requests submitted by e-mail.

(f) If for a "motor vehicle record" as defined in 18 U.S.C. 2725, a statement of the allowable use under 18 U.S.C. 2721 that will be made of the requested record.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the staff member to

whom the request is made to assist the member of the public in appropriately identifying the public record requested.

(3) Persons authorized by law to obtain lists of names of individuals from public records will be required to complete a statement agreeing not to release or use the information for commercial purposes.

(4) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records (~~(or a deposit. Pursuant to)~~ under WAC 308-10-045(~~(, standard photocopies will be provided at fifteen cents per page)~~)).

(5) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm, in writing, receipt of the information and the substance of the request.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-041 Processing of public records requests—General. (1) Providing "fullest assistance." The department is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment (~~(of a deposit)~~) for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided in a letter, by telephone or e-mail. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) Consequences of failure to respond. If the department does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer or designee to determine the reason for the failure to respond.

(4) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible

for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) Inspection of records.

(a) Consistent with other demands, the department shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the department's notification to him or her that the records are available for inspection or copying. The department will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the department to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the department may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(7) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set (~~(or)~~ of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the department has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate to the requestor that the department has closed the request.

(10) Later discovered documents. If, after the department has informed the requestor that it has provided all available records, the department becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

WAC 308-10-042 Processing of public records requests—Electronic records. (1) Requesting electronic

records. The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records. The public records officer or designee will provide the nonexempt records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps its records.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-045 Costs of providing copies of public records. (1) No fee shall be charged for the inspection of public records. The department shall charge a fee in the amount necessary to reimburse the department for its actual costs incident to providing copies of public records. The schedule of charges is:

ITEM	FEE
Copies produced on copying and duplicating equipment <u>including scanning</u>	15 cents per page
Computer generated listing, magnetic tapes or labels	Cost of services <u>and media</u>
Microfilm copies	75 cents per page
Postal charges	May be added to any copy of a public record if applicable
<u>Compact discs</u>	<u>Cost</u>

(2) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The department will not charge sales tax when it makes copies of public records.

(3) Payment may be made by check or money order to the department.

(4) When it is in the fiscal and administrative interest of the state, the public records officer or designee may waive charges of \$4.50 or less.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-050 Exemptions. (1) The department may determine that a public record requested is exempt under the provisions of chapter ~~((42.17))~~42.56 RCW. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure.

(2) Under RCW ~~((42.17.260))~~42.56.210, the department may delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ~~((42.17))~~42.56 RCW.

(3) The department will not release personal or highly restricted information, as defined in 18 U.S.C. 2725~~((3))~~ ~~(4)~~, from records pertaining to motor vehicle operator's licenses and permits, motor vehicle titles, motor vehicle reg-

istrations, and identification cards, unless the release both is considered a permissible use under 18 U.S.C. 2721 and is otherwise permitted by state law. In construing 18 U.S.C. 2721 (b)(2), the release of personal information for use in connection with matters of motor vehicle safety or driver safety shall be deemed to include the physical safety of persons as drivers, passengers or pedestrians and their motor vehicles or property.

(4) All denials of requests for public records will be accompanied by a written statement specifying the reason for the deletion or denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(5) The department is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-055 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the manager of administration, finance and administration division. That person will immediately consider the petition and either affirm or reverse the denial within ~~((two))~~ ten business days following the department's receipt of the petition, or within such other time as the department and the requestor mutually agree to.

(3) Review by the attorney general's office. Pursuant to RCW ~~((42.17.325))~~42.56.530, if the department denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW ~~((42.17.340))~~42.56.550 ~~((at the conclusion of two business days after the initial denial regardless of any internal administrative appeal)).~~

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-067 Public records indexing system. (1) The department has implemented a system of indexing for identification and location of the following records:

(a) All records issued before July 1, 1990, for which the department has maintained an index.

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

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

(d) Interpretive statements entered after June 30, 1990.

(e) Policy statements entered after June 30, 1990.

(2) The department shall maintain a general index of all its records available to the public for inspection and copying, including those records mentioned above.

(3) The general index of public records will be maintained and updated by the department. The public records officer is responsible for updating the general index. The index of records is available during regular business hours for public inspection at the department's ~~((main office located at the Department of Licensing, 1125 Washington Street S.E., Olympia, Washington 98504. The public records officer is responsible for updating the general index))~~ administrative office located at 8005-A River Drive Southeast, Olympia 98501 and is available on-line at www.dol.wa.gov.

AMENDATORY SECTION (Amending WSR 06-16-039, filed 7/26/06, effective 8/26/06)

WAC 308-10-070 Communications with department.

All written communications with the department pertaining to the administration or enforcement of chapter ~~((42-177))~~ 42.56 RCW and these rules shall be addressed as follows: Department of Licensing, c/o Public Records Officer, ~~((Highways Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504-8004))~~ 8005-A River Drive Southeast, Olympia 98501.

**WSR 10-07-137
PROPOSED RULES
BOARD OF**

PILOTAGE COMMISSIONERS

[Filed March 23, 2010, 1:20 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 363-116-300 Pilotage Rates for the Puget Sound pilotage district.

Hearing Location(s): 2901 Third Avenue, 4th Floor, Rainier Conference Room, Seattle, WA 98121, on May 4, 2010, at 9:00 a.m.

Date of Intended Adoption: May 4, 2010.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by April 26, 2010.

Assistance for Persons with Disabilities: Contact Shawna Erickson by April 29, 2010, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a Puget Sound pilotage district annual tariff.

The proposed rule reflects a range of adjustments to be charged for pilotage services in the Puget Sound pilotage dis-

trict for the 2010-2011 tariff year. The low end of the range is proposed by the Pacific Merchant Shipping Association (PMSA) and the high end of the range is proposed by the Puget Sound pilots (PSP). Upon consideration of all written and oral testimony, it is anticipated that the adopted rule will reflect an across-the-board adjustment to the tariff in a range between a decrease of ten percent and an increase of ten percent. An alternative adjustment proposed by PSP in lieu of an increase of ten percent is an increase to just the boarding charge category from the current \$47.00 to \$415.00.

Exceptions include two tariff categories specified below:

- The proposed rule reflects no adjustment to the \$10 training surcharge which supports pilot training stipends.
- The proposed rule reflects no adjustments to the transportation to vessels on Puget Sound category.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually.

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Puget Sound pilotage district expire on June 30, 2010. New rates must be set annually.

The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested parties.

Name of Proponent: Puget Sound pilots and Pacific Merchant Shipping Association, private.

Name of Agency Personnel Responsible for Drafting,

Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services.

The application of the range of proposed adjustments is clear in the description of the proposal and its anticipated effects as well as the proposed tariff shown below.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

March 23, 2010

Peggy Larson

Administrator

AMENDATORY SECTION (Amending WSR 09-12-072, filed 5/29/09, effective 7/1/09)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours July 1, ~~((2009))~~ 2010, through 2400 hours June 30, ~~((2010))~~ 2011.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Boarding charge:	\$((47.00)) <u>42.00 to \$52.00 or \$415.00</u>
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	
Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.	
Compass Adjustment	\$((339.00)) <u>305.00 to \$373.00</u>
Radio Direction Finder Calibration	\$((339.00)) <u>305.00 to \$373.00</u>
Launching Vessels	\$((509.00)) <u>458.00 to \$560.00</u>
Trial Trips, 6 hours or less (minimum \$((954.00)) <u>858.00 to \$1,049.00</u>)	\$((159.00)) <u>143.00 to \$175.00</u> per hour
Trial Trips, over 6 hours (two pilots)	\$((318.00)) <u>286.00 to \$350.00</u> per hour
Shilshole Bay – Salmon Bay	\$((199.00)) <u>179.00 to \$219.00</u>
Salmon Bay – Lake Union	\$((154.00)) <u>139.00 to \$169.00</u>
Lake Union – Lake Washington (plus LOA zone from Webster Point)	\$((199.00)) <u>179.00 to \$219.00</u>
Cancellation Charge	LOA Zone I
Cancellation Charge – Port Angeles:	LOA Zone II
(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)	

Waterway and Bridge Charges:

Ships up to 90' beam:

A charge of \$((250.00)) 225.00 to \$275.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$((119.00)) 107.00 to \$131.00 per bridge.

Ships 90' beam and/or over:

A charge of \$((340.00)) 306.00 to \$374.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to tran-

sit through bridges shall have an additional charge of \$((237.00)) 213.00 to \$261.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

Two or three pilots required:

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.

Docking Delay After Anchoring:

Applicable harbor shift rate to apply, plus \$((258.00)) 232.00 to \$284.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$((258.00)) 232.00 to \$284.00 for every hour or fraction thereof.

Sailing Delay:

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$((258.00)) 232.00 to \$284.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

Slowdown:

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$((258.00)) 232.00 to \$284.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

Delayed Arrival – Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$((258.00)) 232.00 to \$284.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of \$((0.0080)) 0.0072 to \$0.0088 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of \$((0.0821)) 0.0739 to \$0.0903 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be \$((0.0983)) 0.0885 to \$0.1081 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	\$195.00
Bangor	190.00
Bellingham	225.00

Direct Transit Charge

Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.

Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or disembark a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

\$((2,046.00))
1,841.00 to \$2,251.00
\$((275.00))
248.00 to \$303.00 per hour

Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities. ~~\$(275.00)~~
248.00 to \$303.00 per hour

Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses. ~~\$(510.00)~~
459.00 to \$561.00

Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia. ~~\$(484.00)~~
436.00 to \$532.00

Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range. ~~\$(612.00)~~
551.00 to \$673.00

Training Surcharge:

A surcharge of \$10.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

(LOA (Length Overall))	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
UP to 449	248	384	655	977	1,315	1,706
450-459	258	391	659	991	1,336	1,715
460-469	260	395	670	1,008	1,354	1,722
470-479	269	407	678	1,028	1,358	1,725
480-489	277	414	681	1,047	1,367	1,733
490-499	281	419	691	1,066	1,383	1,742
500-509	295	427	701	1,078	1,394	1,752
510-519	297	435	708	1,094	1,409	1,759
520-529	301	450	718	1,099	1,421	1,773
530-539	310	456	727	1,112	1,444	1,793
540-549	315	462	744	1,123	1,466	1,810
550-559	321	478	749	1,140	1,478	1,827
560-569	333	497	763	1,150	1,491	1,844
570-579	340	501	766	1,155	1,507	1,856
580-589	354	509	784	1,164	1,516	1,875
590-599	371	520	789	1,170	1,538	1,897
600-609	384	536	800	1,174	1,557	1,906
610-619	406	541	814	1,179	1,572	1,923
620-629	421	548	821	1,193	1,590	1,946
630-639	441	557	830	1,196	1,604	1,962
640-649	458	570	839	1,198	1,617	1,977
650-659	490	580	854	1,208	1,637	1,997
660-669	500	587	861	1,215	1,655	2,013
670-679	518	602	870	1,237	1,674	2,025
680-689	525	612	882	1,247	1,688	2,045
690-699	541	621	895	1,269	1,706	2,087
700-719	565	642	912	1,285	1,739	2,111
720-739	598	659	935	1,303	1,773	2,146

(LOA (Length Overall))	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
740-759	621	691	953	1,315	1,810	2,184
760-779	646	713	977	1,336	1,844	2,213
780-799	678	745	991	1,354	1,875	2,252
800-819	705	766	1,011	1,361	1,906	2,286
820-839	727	794	1,034	1,383	1,946	2,313
840-859	758	826	1,054	1,399	1,975	2,352
860-879	786	854	1,073	1,435	2,013	2,386
880-899	814	879	1,094	1,468	2,045	2,421
900-919	838	908	1,113	1,506	2,087	2,454
920-939	864	935	1,140	1,538	2,109	2,488
940-959	895	959	1,156	1,572	2,146	2,518
960-979	916	987	1,177	1,604	2,184	2,556
980-999	946	1,011	1,197	1,637	2,213	2,589
1000-1019	1,004	1,076	1,250	1,724	2,317	2,701
1020-1039	1,031	1,108	1,289	1,773	2,387	2,780
1040-1059	1,062	1,135	1,327	1,827	2,455	2,862
1060-1079	1,094	1,175	1,366	1,882	2,532	2,947
1080-1099	1,127	1,208	1,406	1,936	2,606	3,036
1100-1119	1,159	1,245	1,449	1,996	2,684	3,127
1120-1139	1,195	1,284	1,493	2,054	2,765	3,220
1140-1159	1,229	1,320	1,536	2,116	2,849	3,318
1160-1179	1,266	1,358	1,584	2,180	2,933	3,416
1180-1199	1,305	1,400	1,630	2,245	3,022	3,519
1200-1219	1,345	1,442	1,678	2,313	3,113	3,623
1220-1239	1,383	1,485	1,727	2,382	3,204	3,732
1240-1259	1,424	1,529	1,778	2,452	3,301	3,843
1260-1279	1,466	1,574	1,832	2,526	3,401	3,958
1280-1299	1,510	1,622	1,888	2,602	3,500	4,078
1300-1319	1,556	1,668	1,943	2,679	3,606	4,198
1320-1339	1,603	1,719	2,003	2,759	3,713	4,325
1340-1359	1,649	1,771	2,062	2,841	3,824	4,455
1360-1379	1,699	1,822	2,123	2,928	3,937	4,586
1380-1399	1,749	1,877	2,188	3,014	4,056	4,726
1400-1419	1,802	1,934	2,251	3,103	4,177	4,867
1420-1439	1,855	1,992	2,319	3,197	4,304	5,013
1440-1459	1,913	2,052	2,390	3,292	4,432	5,162
1460-1479	1,966	2,112	2,460	3,390	4,565	5,315
1480-1499	2,026	2,175	2,533	3,491	4,700	5,475
1500 & Over	2,087	2,241	2,608	3,598	4,840	5,638))

LOA (Length Overall)	ZONE I Intra Harbor		ZONE II 0-30 Miles		ZONE III 31-50 Miles		ZONE IV 51-75 Miles		ZONE V 76-100 Miles		ZONE VI 101 Miles & Over	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
	UP to 449	223	273	346	422	590	721	879	1,075	1,184	1,447	1,535
450 - 459	232	284	352	430	593	725	892	1,090	1,202	1,470	1,544	1,887
460 - 469	234	286	356	435	603	737	907	1,109	1,219	1,489	1,550	1,894
470 - 479	242	296	366	448	610	746	925	1,131	1,222	1,494	1,553	1,898
480 - 489	249	305	373	455	613	749	942	1,152	1,230	1,504	1,560	1,906
490 - 499	253	309	377	461	622	760	959	1,173	1,245	1,521	1,568	1,916
500 - 509	266	325	384	470	631	771	970	1,186	1,255	1,533	1,577	1,927
510 - 519	267	327	392	479	637	779	985	1,203	1,268	1,550	1,583	1,935
520 - 529	271	331	405	495	646	790	989	1,209	1,279	1,563	1,596	1,950
530 - 539	279	341	410	502	654	800	1,001	1,223	1,300	1,588	1,614	1,972
540 - 549	284	347	416	508	670	818	1,011	1,235	1,319	1,613	1,629	1,991
550 - 559	289	353	430	526	674	824	1,026	1,254	1,330	1,626	1,644	2,010
560 - 569	300	366	447	547	687	839	1,035	1,265	1,342	1,640	1,660	2,028
570 - 579	306	374	451	551	689	843	1,040	1,271	1,356	1,658	1,670	2,042
580 - 589	319	389	458	560	706	862	1,048	1,280	1,364	1,668	1,688	2,063
590 - 599	334	408	468	572	710	868	1,053	1,287	1,384	1,692	1,707	2,087
600 - 609	346	422	482	590	720	880	1,057	1,291	1,401	1,713	1,715	2,097
610 - 619	365	447	487	595	733	895	1,061	1,297	1,415	1,729	1,731	2,115
620 - 629	379	463	493	603	739	903	1,074	1,312	1,431	1,749	1,751	2,141
630 - 639	397	485	501	613	747	913	1,076	1,316	1,444	1,764	1,766	2,158
640 - 649	412	504	513	627	755	923	1,078	1,318	1,455	1,779	1,779	2,175
650 - 659	441	539	522	638	769	939	1,087	1,329	1,473	1,801	1,797	2,197
660 - 669	450	550	528	646	775	947	1,094	1,337	1,490	1,821	1,812	2,214
670 - 679	466	570	542	662	783	957	1,113	1,361	1,507	1,841	1,823	2,228
680 - 689	473	578	551	673	794	970	1,122	1,372	1,519	1,857	1,841	2,250
690 - 699	487	595	559	683	806	985	1,142	1,396	1,535	1,877	1,878	2,296
700 - 719	509	622	578	706	821	1,003	1,157	1,414	1,565	1,913	1,900	2,322
720 - 739	538	658	593	725	842	1,029	1,173	1,433	1,596	1,950	1,931	2,361
740 - 759	559	683	622	760	858	1,048	1,184	1,447	1,629	1,991	1,966	2,402
760 - 779	581	711	642	784	879	1,075	1,202	1,470	1,660	2,028	1,992	2,434
780 - 799	610	746	671	820	892	1,090	1,219	1,489	1,688	2,063	2,027	2,477
800 - 819	635	776	689	843	910	1,112	1,225	1,497	1,715	2,097	2,057	2,515
820 - 839	654	800	715	873	931	1,137	1,245	1,521	1,751	2,141	2,082	2,544
840 - 859	682	834	743	909	949	1,159	1,259	1,539	1,778	2,173	2,117	2,587
860 - 879	707	865	769	939	966	1,180	1,292	1,579	1,812	2,214	2,147	2,625
880 - 899	733	895	791	967	985	1,203	1,321	1,615	1,841	2,250	2,179	2,663
900 - 919	754	922	817	999	1,002	1,224	1,355	1,657	1,878	2,296	2,209	2,699
920 - 939	778	950	842	1,029	1,026	1,254	1,384	1,692	1,898	2,320	2,239	2,737
940 - 959	806	985	863	1,055	1,040	1,272	1,415	1,729	1,931	2,361	2,266	2,770
960 - 979	824	1,008	888	1,086	1,059	1,295	1,444	1,764	1,966	2,402	2,300	2,812
980 - 999	851	1,041	910	1,112	1,077	1,317	1,473	1,801	1,992	2,434	2,330	2,848
1000 - 1019	904	1,104	968	1,184	1,125	1,375	1,552	1,896	2,085	2,549	2,431	2,971
1020 - 1039	928	1,134	997	1,219	1,160	1,418	1,596	1,950	2,148	2,626	2,502	3,058
1040 - 1059	956	1,168	1,022	1,249	1,194	1,460	1,644	2,010	2,210	2,701	2,576	3,148
1060 - 1079	985	1,203	1,058	1,293	1,229	1,503	1,694	2,070	2,279	2,785	2,652	3,242
1080 - 1099	1,014	1,240	1,087	1,329	1,265	1,547	1,742	2,130	2,345	2,867	2,732	3,340
1100 - 1119	1,043	1,275	1,121	1,370	1,304	1,594	1,796	2,196	2,416	2,952	2,814	3,440
1120 - 1139	1,076	1,315	1,156	1,412	1,344	1,642	1,849	2,259	2,489	3,042	2,898	3,542
1140 - 1159	1,106	1,352	1,188	1,452	1,382	1,690	1,904	2,328	2,564	3,134	2,986	3,650
1160 - 1179	1,139	1,393	1,222	1,494	1,426	1,742	1,962	2,398	2,640	3,226	3,074	3,758
1180 - 1199	1,175	1,436	1,260	1,540	1,467	1,793	2,021	2,470	2,720	3,324	3,167	3,871
1200 - 1219	1,211	1,480	1,298	1,586	1,510	1,846	2,082	2,544	2,802	3,424	3,261	3,985

LOA (Length Overall)	ZONE I Intra Harbor		ZONE II 0-30 Miles		ZONE III 31-50 Miles		ZONE IV 51-75 Miles		ZONE V 76-100 Miles		ZONE VI 101 Miles & Over	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
1220 - 1239	1,245	1,521	1,337	1,634	1,554	1,900	2,144	2,620	2,884	3,524	3,359	4,105
1240 - 1259	1,282	1,566	1,376	1,682	1,600	1,956	2,207	2,697	2,971	3,631	3,459	4,227
1260 - 1279	1,319	1,613	1,417	1,731	1,649	2,015	2,273	2,779	3,061	3,741	3,562	4,354
1280 - 1299	1,359	1,661	1,460	1,784	1,699	2,077	2,342	2,862	3,150	3,850	3,670	4,486
1300 - 1319	1,400	1,712	1,501	1,835	1,749	2,137	2,411	2,947	3,245	3,967	3,778	4,618
1320 - 1339	1,443	1,763	1,547	1,891	1,803	2,203	2,483	3,035	3,342	4,084	3,893	4,758
1340 - 1359	1,484	1,814	1,594	1,948	1,856	2,268	2,557	3,125	3,442	4,206	4,010	4,901
1360 - 1379	1,529	1,869	1,640	2,004	1,911	2,335	2,635	3,221	3,543	4,331	4,127	5,045
1380 - 1399	1,574	1,924	1,689	2,065	1,969	2,407	2,713	3,315	3,650	4,462	4,253	5,199
1400 - 1419	1,622	1,982	1,741	2,127	2,026	2,476	2,793	3,413	3,759	4,595	4,380	5,354
1420 - 1439	1,670	2,041	1,793	2,191	2,087	2,551	2,877	3,517	3,874	4,734	4,512	5,514
1440 - 1459	1,722	2,104	1,847	2,257	2,151	2,629	2,963	3,621	3,989	4,875	4,646	5,678
1460 - 1479	1,769	2,163	1,901	2,323	2,214	2,706	3,051	3,729	4,109	5,022	4,784	5,847
1480 - 1499	1,823	2,229	1,958	2,393	2,280	2,786	3,142	3,840	4,230	5,170	4,928	6,023
1500 & Over	1,878	2,296	2,017	2,465	2,347	2,869	3,238	3,958	4,356	5,324	5,074	6,202

WSR 10-07-145

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 24, 2010, 8:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-02-112.

Title of Rule and Other Identifying Information: Chapter 16-30 WAC, Restricted feedlots and restricted holding facilities.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Second Floor, Conference Room 259, Olympia, WA 98504, on April 29, 2010, at 1:00 p.m.; and at the Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA 98926, on May 10, 2010, at 1:00 p.m.

Date of Intended Adoption: June 1, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., May 11, 2010.

Assistance for Persons with Disabilities: Contact WSDA receptionist by April 23, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-30 WAC to establish three types of restricted holding facilities. The first type of holding facility is one where imported animals are held in quarantine until they meet animal health import requirements. The second type of holding facility is a dry feed yard with no provision for grazing where cattle that have been imported into the state and are destined for slaughter only are confined for feeding. These cattle can only be moved to a federally

inspected slaughter plant. The third type of holding facility is a holding facility for permanently quarantined animals.

Reasons Supporting Proposal: These changes are necessary to prevent the spread of disease in the state and to protect the public's health and welfare.

Statutory Authority for Adoption: Chapters 16.36 and 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard Eldridge, DVM, Olympia, (360) 902-1878.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they are negligible costs on the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 24, 2010
Robert W. Gore
Deputy Director

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

WAC 16-30-010 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the department of agriculture or the director's authorized representative.

"Official individual identification" means identifying an animal or group of animals using devices or methods including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of brand inspection from a brand inspection authority who is recognized by the director.

"Restricted ~~((cattle))~~ animals" means ~~((cattle))~~ animals being held in a restricted holding facility or a restricted feedlot.

~~("Restricted feedlot" means a dry feed yard with no provision for grazing where cattle specified in this rule are confined for feeding and kept separate and apart from all other cattle.~~

~~"Restricted holding facility" means a dry feed yard with no provision for grazing where cattle are held to meet import test requirements.~~

~~"Test-eligible" means bulls over six months of age, brucellosis vaccinated female dairy cattle over twenty months of age, and brucellosis vaccinated beef breed female cattle over twenty-four months of age.))~~

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

WAC 16-30-025 Restricted feedlots. (1) A restricted feedlot is a designated area that is isolated from all other non-restricted areas within a feedlot. All cattle in a restricted feedlot must remain in slaughter channels. Restricted feedlots must meet the following standards:

(a) Cattle in the restricted feedlot must not share water or feeding facilities accessible to other areas.

(b) Restricted feedlots must be clearly identified as such by signs permanently affixed at all corners stating "restricted feeding area" in letters a minimum of six inches in height.

(c) There must be a minimum of thirty feet between restricted feedlots and other lots and facilities.

(d) No common fences and gates may be used.

(2) The purpose of a restricted feedlot is to accept for feeding purposes with no provision for grazing or commingling with unrestricted cattle:

(a) Female cattle from a Class Free state that are not officially brucellosis vaccinated and not knowingly exposed to brucellosis;

(b) Cattle that enter Washington state on a brand certificate that includes the entry permit number and without a certificate of veterinary inspection; and

(c) Cattle imported from Canada. These cattle must be confined to the initial restricted feedlot until moved to slaughter.

(3)(a) Restricted feedlots may buy and import cattle from a Class A state if the cattle do not originate from a herd

known to be exposed to brucellosis. Female cattle entering a restricted feedlot from a Class A state must be:

(i) Officially brucellosis vaccinated; or

(ii) Brucellosis tested negative within thirty days prior to movement.

(b) Cattle may not be imported from restricted feedlots that accept cattle known to be exposed to brucellosis.

(4) The classification of states and areas as Class Free and Class A is designated by United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) in Title 9 CFR Part 78.41 (January 1, 2006) and is defined in *Brucellosis Eradication: Uniform Methods and Rules*, effective October 1, 2003.

AMENDATORY SECTION (Amending WSR 09-03-018, filed 1/9/09, effective 2/9/09)

WAC 16-30-030 Conditions of permit to operate a restricted feedlot. The operator of a restricted feedlot must abide by the following conditions:

(1) There shall be no contact between animals not also similarly restricted.

(2) No cattle shall be removed from the restricted feedlot except to a federally inspected slaughter plant, a slaughter plant of like status, or a restricted feedlot of like status.

(3) The restricted feedlot will be maintained in a condition that follows common industry practices to mitigate disease risk.

(4) The owner or manager of a restricted feedlot will notify the department ((will be notified)) immediately of any outbreak of any infectious or contagious disease.

(5) The disposal of dead livestock will be in accordance with the laws relating to the disposal of dead livestock and in accordance with chapter 16-25 WAC.

(6) Accurate records will be kept for six years accounting for all cattle entering and leaving the restricted feedlot. Records must be open for review by authorized department of agriculture personnel during normal business hours, and must be provided to the department upon the director's request.

(7) Proper facilities shall be provided for inspection of brands, branding, and identification of cattle.

(8) The state veterinarian has the authority to enter the restricted feedlot at any reasonable time to conduct tests, examinations, and inspections.

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

WAC 16-30-035 Types of restricted holding facilities.

(1) Restricted holding facilities are isolated areas approved and licensed by the director, as advised by the ~~((designated brucellosis and tuberculosis epidemiologist. Such facilities are specifically for cattle that have been imported into the state but have not met the department's brucellosis and tuberculosis entry requirements.~~

~~(2) The restricted holding facility area shall house restricted cattle separate and apart from all other cattle.~~

~~(3) Upon negative brucellosis and tuberculosis test results, restricted cattle will be released from the holding facility.~~

~~(4) Milk from restricted cattle may not be used for human consumption.~~

~~(5) Restricted holding facilities must be clearly identified as such by signs permanently affixed at all corners stating "restricted holding facility" in letters a minimum of six inches in height.) state veterinarian. Fees associated with restricted holding facilities are referenced in chapter 16-91 WAC.~~

~~(2) There are three categories of restricted holding facilities.~~

~~(a) A category 1 restricted holding facility is a facility where imported animals are held in quarantine until they meet animal health import requirements.~~

~~(b) A category 2 restricted holding facility is a dry feed yard with no provision for grazing where cattle that have been imported into the state and are destined for slaughter only are confined for feeding. Cattle in a category 2 restricted holding facility must remain in slaughter channels and move only to a federally inspected slaughter plant or other restricted facilities of like status.~~

~~(c) A category 3 restricted holding facility is a holding facility for permanently quarantined animals.~~

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

WAC 16-30-038 Conditions of permit to operate ~~((a))~~ restricted holding ~~((facility))~~ facilities. (1) The following are the basic requirements for all categories of restricted holding facilities:

~~(a) The restricted holding facility area shall house restricted animals separate and apart from all other nonrestricted animals. There may be no contact between animals not also similarly restricted and no commingling between separate shipments of animals.~~

~~(b) The restricted holding facility will be maintained in a sanitary condition to mitigate disease risk.~~

~~(c) The department of agriculture will be notified immediately of any outbreak of any infectious or contagious disease.~~

~~(d) Milk from restricted animals may not be used for human consumption.~~

~~(e) Restricted holding facilities must be clearly identified as such by signs permanently affixed at all corners stating "restricted holding facility" in letters a minimum of six inches in height.~~

~~(f) The disposition of dead animals will be in accordance with the laws relating to the disposal of dead livestock and in accordance with chapter 16-25 WAC.~~

~~(g) Accurate records will be kept for six years to account for all animals entering and leaving the restricted holding facility. Records must be open for review by authorized department of agriculture personnel during normal business hours, and must be provided to the department upon the director's request.~~

~~(h) The state veterinarian has the authority to enter the restricted holding facility at any reasonable time to conduct tests, examinations, and inspections.~~

(2) Additional requirements for a category 1 restricted holding facility. In addition to the basic require-

ments for all types of restricted holding facilities, the operator of a category 1 restricted holding facility must abide by the following conditions:

~~((H)) (a) All ~~((cattle))~~ animals entering a category 1 restricted holding ~~((facilities))~~ facility must have official individual identification listed on the certificate of veterinary inspection.~~

~~((Z)) (b) No animals may be removed from the category 1 restricted holding facility until they meet state and federal import regulations.~~

~~(c) Animals may be removed from the restricted holding facility without meeting state and federal import regulations if they are sent to a federally inspected slaughter establishment and have not commingled with any other animals not also similarly restricted. Animals that have commingled with others not also similarly restricted must be tested negative for disease within thirty days before being released from the holding facility.~~

(3) Additional requirements for a category 2 restricted holding facility. In addition to the basic requirements for all types of restricted holding facilities, the operator of a category 2 restricted holding facility must abide by the following conditions:

~~(a) There may be no contact between cattle not also similarly restricted and no commingling between separate shipments of cattle.~~

~~((3) No cattle may be removed from the restricted holding facility until they meet state and federal import regulations.~~

~~(4)) (b) Cattle may be removed from the restricted holding facility without meeting state and federal import regulations if they are sent immediately to a federally inspected slaughter plant.~~

~~((5) The restricted holding facility will be maintained in a sanitary condition.~~

~~(6) The department of agriculture will be notified immediately of any outbreak of any infectious or contagious disease.~~

~~(7) The disposition of dead cattle will be in accordance with the laws relating to the disposal of dead livestock and in accordance with chapter 16-25 WAC.~~

~~(8) Accurate records will be kept for six years to account for all cattle entering and leaving the restricted holding facility. Records must be open for review by authorized department of agriculture personnel during normal business hours, and must be provided to the department upon the director's request.)~~

~~(c) There must be a minimum of thirty feet between the restricted holding facility and other lots and facilities.~~

~~(d) No common fences and gates may be used.~~

~~(e) Animals in the restricted holding facility must not share water or feeding facilities accessible to other areas.~~

~~(f) The state veterinarian will conduct at least two random, unannounced audits during each licensing period.~~

(4) Additional requirements for category 3 restricted holding facilities. In addition to the basic requirements for all types of restricted holding facilities, the operator of a category 3 restricted holding facility must abide by the following conditions:

(a) The operator of a category 3 restricted holding facility must abide by quarantine conditions set forth by the state veterinarian.

(b) Accurate records will be kept accounting for all animals entering the category 3 restricted holding facility for the length of the quarantine.

(c) An animal in a category 3 restricted holding facility may be legally removed from the facility only upon the animal's death or if the animal is moved from the location by permit from the state veterinarian's office on a United States Department of Agriculture VS form 1-27 for the movement of restricted or quarantined animals to another category 3 restricted holding facility.

(d) If an animal dies or is moribund in a category 3 restricted holding facility, the operator of the holding facility will immediately notify the state veterinarian of the animal's condition. The state veterinarian may require inspection and testing of the animal before disposal.

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

WAC 16-30-039 ((Permit)) Applications for a restricted feedlot or restricted holding facility. (1) Application forms to establish a restricted feedlot or restricted holding facility may be obtained from:

Washington State Department of Agriculture
Animal Services Division
1111 Washington St. S.E.
P.O. Box 42577
Olympia, Washington 98504-2577
Phone: 360-902-1878.

(2) Applicants for restricted feedlots and restricted holding facilities must provide the following information on the application form:

- (a) Name and address of applicant;
- (b) Location of the restricted feedlot or restricted holding facility; and
- (c) Drawing of the layout of the restricted feedlot or restricted holding facility.

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

WAC 16-30-040 Expiration and revocation of restricted feedlot and restricted holding facility permits. (1) All permits for restricted feedlots and holding facilities expire on the 30th day of June of the year following the date of issue. Restricted feedlots and holding facilities must be inspected annually upon renewal and at any other time as determined by the director. Renewal of a restricted feedlot or a restricted holding facility is contingent upon accurate recordkeeping.

(2) Any violation of chapter 16.36 RCW or any of the rules adopted under that chapter is sufficient cause for the suspension or revocation of any permit to operate a restricted feedlot or restricted holding facility. In all proceedings for suspension or revocation of a restricted feedlot or restricted holding facility permit, the owner or manager has the right to

request a hearing before revocation is made permanent. Any action shall be taken under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-30-050	Brands.
WAC 16-30-060	Brand time.
WAC 16-30-070	Place of brand.

WSR 10-07-146

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 24, 2010, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-103.

Title of Rule and Other Identifying Information: Chapter 16-54 WAC, Animal importation.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Second Floor, Conference Room 259, Olympia, WA 98504, on April 29, 2010, at 2:00 p.m.; and at the Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA 98926, on May 10, 2010, at 2:00 p.m.

Date of Intended Adoption: June 1, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., May 11, 2010.

Assistance for Persons with Disabilities: Contact WSDA receptionist by April 23, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-54 WAC to update import requirements to be consistent with other states. The department is proposing to amend the poultry test requirements, add a feral swine definition, amend the virgin bull definition, and amend the current laboratory testing requirements. Feral swine can carry the diseases of brucellosis and pseudorabies. The department prohibits entry of feral swine; therefore, it is necessary to define the difference of domestic swine and feral swine by creating a definition. The department is also proposing to amend the trichomoniasis section in that accredited veterinarians may not perform official trichomoniasis testing of bulls in Washington state until they have successfully completed a training provided by the department and pass a proficiency examination. This rule proposal also adds contagious equine metritis (CEM) to the import restrictions. CEM is a foreign animal disease that was introduced in the United States in 2009 and has the potential to be detrimental to our equine industry.

Reasons Supporting Proposal: These rule amendments are necessary to prevent the spread of infectious and communicable diseases in Washington livestock.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 24, 2010
Robert W. Gore
Deputy Director

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-010 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited free state" means a state that has been determined by United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) to have a zero prevalence of cattle and bison herds affected with bovine tuberculosis as listed in Title 9 CFR Part 77.79 (January 1, 2006).

"Approved veterinary laboratory" means a laboratory that has been approved by National Veterinary Services Laboratories.

"Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or from APHIS, USDA executed by a licensed and accredited veterinarian or a veterinarian approved by APHIS, USDA. The certificate of veterinary inspection is also known as an "official health certificate."

"Class free and Class A, B, and C states" means states that are classified for brucellosis by USDA, APHIS in Title 9 CFR Part 78.41 (January 1, 2006).

"Consigned" means to deliver for custody or sale.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Domestic bovine" means domesticated cattle, including bison.

"Domestic equine" means horses, donkeys, mules, ponies, and other animals in the *Equidae* family.

"Entry permit" means prior written permission issued by the director to admit or import animals or animal reproductive products into Washington state.

"Exotic animal" means species of animals that are not native to Washington state but exist elsewhere in the world in the wild state.

"Feral swine" means animals included in any of the following categories:

• Animals of the genus *Sus* that are free roaming on public or private lands and do not appear to be domesticated;

• Swine from domesticated stocks that have escaped or been released or born into the wild state;

• European wild hogs and their hybrid forms (also known as European wild boars or razorbacks), regardless of whether they are free roaming or kept in confinement; or

• Animals of the family *Tayassuidae* such as peccaries and javelinas, regardless of whether they are free roaming or kept in confinement.

"Immediate slaughter" means livestock will be delivered to a federally inspected slaughter plant within three days of entry into Washington state.

"Mature vaccinate" means a female bovine over the age of twelve months that has been vaccinated, under directions issued by the state of origin, with a mature dose of brucellosis vaccine.

"Modified accredited state" means a state that has been determined by USDA, APHIS to have a prevalence of bovine tuberculosis of less than 0.1 percent of the total number of herds of cattle and bison as listed in Title 9 CFR Part 77.11 (January 1, 2006).

"Movement permit" means an entry permit that is valid for six months and permits the entry of domestic equine into Washington state.

"NPPIP" means the National Poultry Improvement Plan.

"Official brucellosis test" means the official test defined by Title 9 CFR Part 78.1 (January 1, 2006).

"Official brucellosis vaccinate" means an official adult vaccinate or official calfhood vaccinate as defined by Title 9 CFR Part 78.1 (January 1, 2006).

"Official identification" means identifying an animal or group of animals using USDA-approved or WSDA-approved devices or methods, including, but not limited to, official tags, unique breed registry tattoos, and registered brands when accompanied by a certificate of inspection from a brand inspection authority who is recognized by the director.

"Poultry" means chickens, turkeys, ratites, waterfowl, game birds, pigeons, doves, and other domestic fowl (~~designated by statute~~). (~~Poultry does not mean free ranging birds defined as wildlife in RCW 77.08.010(16).~~)

"Restricted feedlot" means a feedlot holding a permit issued under chapter 16-30 WAC.

"Stage I, II, III, IV, or V pseudorabies state" means states as classified by the Pseudorabies Eradication State-Federal-Industry Program Standards (November 1, 2003).

"USDA, APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

"Virgin bull" means a sexually (~~(active)~~) intact male bovine less than twelve months of age (~~((or a sexually intact male bovine between twelve and twenty-four months of age))~~) that is certified by the owner or the owner's designee as having had no breeding contact with female cattle.

"Wild animals" is defined in RCW 77.08.010(~~((17))~~) (61).

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-068 Restrictions. (1) It is a violation to import animals into Washington state that do not comply with the requirements of this chapter or any other Washington state regulation relating to animal health and care, or to the importation and movement of poultry, hatching eggs, and wildlife.

(2) All animals entering Washington state must comply with the requirements of USDA, APHIS regulations found at Title 9 CFR for movement or importation from foreign countries.

(3)(a) Livestock entering Washington state from a state where a reportable disease listed in WAC 16-70-010 has been diagnosed within the past thirty days must be accompanied by a valid entry permit and a certificate of veterinary inspection.

(b) The certificate of veterinary inspection shall also include written verification that the animals have not been exposed to any reportable disease (~~((not located within ten miles of an area where such a disease has been diagnosed))~~).

(c) In the case of a state where vesicular stomatitis has been diagnosed, the certificate of veterinary inspection for susceptible livestock must be issued within twenty-four hours of shipment to Washington state and must contain:

(i) The temperature reading of each (~~(animal)~~) equine at the time of inspection; and

(ii) The following statement written by an accredited veterinarian:

"All animals identified on this certificate have been examined and found to be free from clinical signs of vesicular stomatitis. During the past thirty days, these animals have not been exposed to vesicular stomatitis (~~((or located within ten miles of an area where vesicular stomatitis has been diagnosed))~~)."

(d) Cattle entering Washington state from a state or a foreign state or province where vesicular stomatitis has been diagnosed must be held at their destination separate and apart from all other cattle for a period of seven days and reexamined by an accredited veterinarian at the end of that period.

(e) In the case of a state where contagious equine metritis (CEM) has been diagnosed, the certificate of veterinary inspection for equine must contain the following statement: "The equine and equine reproductive products listed in this document have not originated from a premises where *T. equigenitalis* has been isolated during the sixty days immediately preceding importation to Washington or from a location currently under quarantine or investigation for CEM. No female equine in the shipment has been bred naturally to, or inseminated with, semen from an intact male positive for CEM or from an intact male resident upon positive premises

or under quarantine or investigation for CEM. The equine showed no clinical signs of CEM on the day of inspection or semen collection."

(4) Dogs, cats, and ferrets must be accompanied by an entry permit and proof of current rabies vaccination if they originate from a rabies quarantined area (~~((or an area where the state or country of origin has designated terrestrial rabies as endemic))~~).

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-071 Domestic equine and equine reproductive products—Importation requirements. Import health requirements.

(1)(a) In addition to the other requirements of this chapter, all (~~((horses, donkeys, mules, and other))~~) domestic equine and equine reproductive products entering Washington state must be accompanied by a certificate of veterinary inspection.

(b) Equine vaccinated against equine viral arteritis (EVA) must be accompanied by a vaccination certificate.

(c) Reproductive products from donors that test positive for EVA must be accompanied by an application and entry permit.

(d) Domestic equine from the western states of Oregon, Idaho, California, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, and New Mexico may enter Washington state for shows, rides, or other events either with a certificate of veterinary inspection or with a document similar to the Equine Certificate of Veterinary Inspection and Movement Permit. Individual trips cannot exceed ninety days.

(e) An itinerary of interstate travel must be filed with the department within fourteen days of the expiration of the movement permit.

(2) All certificates and forms may be obtained from and sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577

Exemptions to import health requirements.

(3) Horses traveling into Washington state with their Oregon or Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.

Import test requirements.

Equine infectious anemia (EIA).

(4) All domestic equine, except foals under six months of age accompanying their negative tested dams, must have a negative test for equine infectious anemia (EIA) within twelve months before entering Washington state.

Exemptions to EIA test requirements.

(5) Domestic equine moving to Washington from Oregon are excluded from EIA test requirements.

Equine viral arteritis (EVA).

(6) Intact males over six months of age must test antibody negative for EVA within thirty days before entry into Washington state or have proof of vaccination.

(7) Vaccinated equine that test antibody positive for EVA must be accompanied by a certificate of veterinary inspection that provides proof of:

(a) A prevaccination negative antibody blood test;

(b) Vaccination within ten days of the prevaccination blood test; and

(c) Approved method of animal identification. Approved methods of identification are:

(i) Photograph or clearly drawn picture of the animal (both sides and front);

(ii) Brand (hot iron or freeze brand);

(iii) Microchip; and/or

(iv) Lip tattoo.

(8) Intact males over six months of age and equine reproductive products from donors that test positive for EVA may enter Washington state only if accompanied by an entry permit and a statement on the certificate of veterinary inspection verifying that the consignee:

(a) Has been advised of the positive antibody test results and the associated risks of EVA infection;

(b) Agrees to follow the recommendations of the Office International des Epizooties of the World Organization of Animal Health regarding EVA and USDA recommendations found in the *Equine Viral Arteritis Uniform Methods and Rules*, effective April 19, 2004; and

(c) Consents to the shipment.

(9) Intact males that test antibody positive for EVA are required to have an entry permit and may be subject to quarantine.

(10) Equine semen and embryos require an entry permit and must originate from donors that have proof of vaccination or a negative antibody test for EVA during the current breeding season.

(11) Equine semen and embryos from antibody positive donors must be used or implanted only in vaccinated or seropositive mares. These mares must be isolated for twenty-one days following insemination or implantation.

(12) Additional testing for EVA may be required during emergency disease conditions declared by the director.

Piroplasmiasis.

(13) Any equine that has ever tested positive for piroplasmiasis may not enter Washington state.

(14) Any equine that has originated from a country or state where piroplasmiasis is endemic must be negative to a C-ELISA test within thirty days before entry into Washington state, and must be quarantined upon arrival and retested within sixty to ninety days. Horses that test positive on the post-arrival C-ELISA test are not permitted to remain in the state and must be removed.

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-082 Domestic bovine animals—Importation requirements. Import health requirements.

(1) Domestic bovine entering Washington state must have a certificate of veterinary inspection and an entry permit issued by the office of the state veterinarian prior to entry. Entry permits are required on all ~~((feeder))~~ cattle entering restricted feedlots or slaughter facilities and are required to be obtained by the brand inspector of the state of origin and recorded on the brand document.

(2) Before entering Washington state, Canadian cattle, including calves, must be identified on the right hip by a "CAN" brand (C open-A N).

Exemptions to import health requirements.

(3) Unless an emergency rule is in effect, a certificate of veterinary inspection is not required for domestic bovine that are:

(a) Consigned to federally inspected slaughter plants for immediate slaughter; or

(b) Consigned to state-federal approved livestock markets for sale for immediate slaughter only; or

(c) Consigned to specifically approved livestock markets or restricted holding facilities where import requirements can be met; or

(d) Consigned to a restricted feedlot, unless originating from a state or country with less than free status; or

(e) Cattle moving interstate from contiguous states on grazing permits.

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-085 Domestic and foreign bovine tuberculosis requirements. (1) All domestic bovine from a modified accredited advanced or lower state must have a negative tuberculosis (TB) test within sixty days before entry into Washington state. Domestic bovine from a modified accredited or lower state shall be held separate and apart from native cattle for sixty days and retested negative at least sixty days after entry into Washington state.

(2) **Beef cattle from selected tuberculosis free states or countries, as determined by the state veterinarian:**

(a) May be required to have a negative TB test within sixty days before entry; and

(b) Must be officially identified.

(3) Dairy cattle (including steers) six months of age or older must:

(a) Test negative for bovine tuberculosis within sixty days before entering Washington state; and

(b) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.

~~((3))~~ **(4) Dairy heifers, steers, and bull calves less than six months of age** must:

(a) Be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility;

(b) Be held separate and apart from all other domestic bovine until they test negative for bovine tuberculosis after six months of age; and

(c) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.

~~((4))~~ (5) Cattle used for rodeo or timed events.

(a) All cattle used for rodeo or timed events, except those imported directly from Mexico, must be accompanied by proof recorded on a certificate of veterinary inspection of a negative bovine tuberculosis test within twelve months before entry into Washington state.

(b) Calves under six months old that were born and have continuously resided in the state of Washington are excluded from this requirement.

~~((5))~~ (6) Mexican cattle - All cattle imported from Mexico that enter Washington, including those imported for rodeo or recreation purposes, must be sexually neutered and must bear official Mexican identification and brand before entry.

(a) All Mexican cattle must be accompanied by proof of two negative bovine tuberculosis tests conducted in the United States after entry from Mexico. The second negative test must be a minimum of sixty days after the first test and within thirty days before entry into Washington state.

(b) All Mexican cattle that remain in the state of Washington shall be tested annually for tuberculosis.

(c) If Mexican cattle entering Washington state are not accompanied by proof of two negative bovine tuberculosis tests prior to entry, they will be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility and kept separate and apart from Washington cattle until the completion of required tests.

(d) Sexually intact Mexican beef cattle may enter only with a prior entry permit and at the discretion of the director.

Exemptions to domestic bovine tuberculosis test requirements.

~~((6))~~ (7) Dairy cattle are exempt from bovine tuberculosis testing requirements if they:

(a) Originate from an accredited bovine tuberculosis-free herd, as defined by USDA, APHIS in Title 9 CFR Chapter 1 Part 77 (January 1, 2006), and if an accredited herd number and the date of the last bovine tuberculosis test are shown on the certificate of veterinary inspection;

(b) Are consigned to federally inspected slaughter plants for immediate slaughter; or

(c) Are consigned to slaughter through state and federally approved sale yards and remain in slaughter channels.

~~((7))~~ (8)(a) Cattle that have not met the department's tuberculosis requirements may enter, with approval from the director, a restricted holding facility in Washington state until testing requirements have been met.

(b) The restricted holding facility must be approved by the director and operated in accordance with a written agreement between the facility owner and the director.

(c) The restricted holding facility must be maintained and all inspections and testing done at the owner's expense.

~~((8))~~ (9) Dairy steers and spayed heifers are exempt from bovine tuberculosis testing requirements before entry into Washington state if they are entering restricted feedlots to be fed for slaughter.

~~((9))~~ (10) Mexican cattle are exempt from the second bovine tuberculosis test and isolation requirements if their official Mexican identification remains intact and they are consigned to a federally inspected slaughter plant for immediate slaughter.

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-086 Bovine trichomoniasis requirements. (1) **Breeding bulls** may be imported into the state of Washington if they meet the following requirements:

(a) The bulls originate from a herd wherein all bulls have tested negative for bovine trichomoniasis since they were removed from female cattle; ~~((and))~~ or

(b) The bulls have tested negative to a bovine trichomoniasis ~~((culture))~~ quantitative polymerase chain reaction (QPCR) test within thirty days before import and have had no contact with female cattle from the time of the test to the time of import; or

(c) The bulls have tested negative to a bovine trichomoniasis culture test, if from a state that recognizes a culture test as an official test; or

(d) If the bulls originate from a herd where one or more bulls or cows have been found infected with bovine trichomoniasis within the past twelve months, the bulls must have three consecutive negative bovine trichomoniasis culture tests one week apart, if from a state that recognizes a culture test as an official test, or ((one)) two negative ((polymerase chain reaction-))QPCR((s)) tests one week apart if in Washington state. The samples for each test must be collected within thirty days before cattle are imported into Washington state, and an import permit must be obtained from the director and include a certifying statement that the bulls originated from an infected herd.

(2) Before arrival at their destination in Washington state, all imported bulls must be identified with official identification or an official trichomoniasis bangle tag.

(3) Bulls that enter Washington state without meeting the bovine trichomoniasis requirements of this section will be quarantined at the owner's expense until they have had ~~((three consecutive negative bovine trichomoniasis culture tests one week apart or one))~~ two negative PCR tests one week apart.

(4)(a) Any bull or cow that is positive to a trichomoniasis ~~((culture))~~ test, and any herd in which one or more bulls or cows are found infected with trichomoniasis is considered infected.

(b) In the case of bulls testing positive to trichomoniasis, the herd shall be quarantined pending an epidemiological investigation to determine the source of the infection, and as long as infection persists in the herd.

(c) Infected bulls will be quarantined and will not be used for breeding. They must be slaughtered, sold for slaughter, or sent to a restricted feedlot to remain in slaughter channels.

(5) **Certification and proficiency testing and types of tests.** The state veterinarian will determine trichomoniasis training for veterinarians and laboratories, and the types of tests used to determine trichomoniasis infection. All sampling will be obtained by pipette scrapings from the prepuce and glans of a bull.

~~((Only veterinarians registered with WSDA shall collect samples for official tests for trichomoniasis. Prior to being granted registered status, all veterinarians who will collect samples for trichomoniasis testing shall attend an educational seminar conducted by the animal services division on trichomoniasis and proper sample collection techniques.))~~

All trichomoniasis testing of bulls in Washington state shall be performed by a veterinarian accredited by the United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS). In addition, all accredited veterinarians testing bulls in Washington state for trichomoniasis are required to successfully complete training and pass a trichomoniasis testing procedure proficiency examination provided by the department. Effective January 1, 2011, accredited veterinarians may not perform official trichomoniasis testing of bulls in Washington state until they have successfully completed the training and passed the proficiency examination.

A schedule of training opportunities is available by contacting the department at:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
360-902-1878

(b) Registered veterinarians shall only utilize official laboratories recognized by the state veterinarian for ~~((culture))~~ testing of trichomoniasis samples.

(c) Registered veterinarians collecting samples in the state of Washington shall submit results of all trichomoniasis tests and all official identification on official trichomoniasis test and report forms to the animal services division within five business days of receiving test results from an official laboratory or identifying virgin bulls with official trichomoniasis bangle tags.

(d)(i) Polymerase chain reaction is accepted as an official test when completed by a qualified laboratory approved by the director and when the sample is received by the laboratory within forty-eight hours of collection.

(ii) Other tests for trichomoniasis may be approved as official tests by the state veterinarian after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

(iii) An official test is one in which the sample is received in the official laboratory in good condition within forty-eight hours of collection. Samples in transit for more than forty-eight hours will not be accepted for official testing and must be discarded. Samples that have been frozen or exposed to high temperatures must also be discarded.

Exemptions to bovine trichomoniasis test requirements.

(6) **Virgin bulls** are exempt from bovine trichomoniasis test requirements. If sold, virgin bulls must be accompanied by a certificate signed by the owner or the owner's designee that they have had no breeding contact with female cattle.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-090 Goats—Importation and testing requirements. Import health requirements.

(1) All goats entering Washington state must be accompanied by a certificate of veterinary inspection. The certificate of veterinary inspection must state that the ~~((animals))~~

goats are free from clinical signs or known exposure to any infectious or communicable disease including, but not limited to, footrot, sore mouth, and caseous lymphadenitis.

(2) Female dairy goats six months of age or older must test negative for brucellosis and tuberculosis within thirty days before they enter Washington state.

(3) Sexually intact goats must have official USDA scrapie identification.

Exemption to import health requirements.

(4) Goats traveling into Washington state with their Oregon and Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-145 Poultry and game birds, including ratites—Importation and testing requirements. Import health requirements.

(1) All poultry ~~((and game birds, including ratites)), excluding doves and pigeons,~~ imported into Washington state must be accompanied by a ~~((certificate of veterinary inspection))~~:

(a) Certificate of veterinary inspection; or

(b) USDA NPIP VS form 9-3 (Report of Sales of Hatching Eggs, Chicks, and Poults); or

(c) USDA VS form 17-6 (Certificate for Poultry or Hatching Eggs for Export) ~~((will be accepted in lieu of the certificate of veterinary inspection))~~.

~~((b))~~ For hatching eggs and baby poultry, a USDA NPIP VS form 9-3 (Report of Sales of Hatching Eggs, Chicks, and Poults) may be used in lieu of the certificate of veterinary inspection.

~~((e))~~ (2) The certificate of veterinary inspection and the USDA VS form 17-6 must include either the NPIP number or negative results of the required tests.

~~((2))~~ (3) Poultry or hatching eggs must originate from flocks or areas not under state or federal restriction.

~~((3))~~ (4) Each ratite entering Washington state must be permanently identified with USDA approved identification. The type of identification must be listed on the certificate of veterinary inspection.

Import test requirements.

~~((4))~~ (5) Poultry ~~((and game birds must:~~

~~((a) Originate from)), poults, and eggs, excluding doves and pigeons, that originate from flocks or hatcheries that have a pullorum-typhoid clean rating given by the state animal health official or are from an NPIP participant flock ~~((that has met))~~ must meet the classification requirements ~~((for pullorum-typhoid, Salmonella enteritidis, and avian influenza; or~~~~

~~((b) Test negative within thirty days before entering Washington for pullorum-typhoid, S. enteritidis, and avian influenza. Serum testing or NPIP member status is also required for the following species:~~

(i) Bobwhite quail (*Colinus virginianus*).

(ii) Coturnix quail (*Coturnix coturnix*).

- (iii) ~~Pure or hybrid Ring-necked pheasant (*Phasianus colchicus*);~~
- (iv) ~~Chukar (*Alectoris chukar*);~~
- (v) ~~Hungarian partridge (*Perdix perdix*);~~
- (5) ~~Hatching eggs must originate from an NPIP participant flock that has met classification requirements for the diseases listed in subsection (4)(a) of this section. If the parent breeder flock is not an NPIP participant, the parent birds must be tested for the above diseases within thirty days before entry.~~
- (6) ~~Turkeys and wild turkeys, their poults, and eggs must originate from a producer who is participating in the mycoplasmosis control phase of the NPIP or must have been tested~~

~~serologically negative for *M. gallisepticum* and *M. synoviae* within thirty days of entry.) stated in subsection (8) of this section.~~

~~(6) If poultry do not originate from an NPIP participant flock, they must test negative for the diseases listed in subsection (8) of this section thirty days before entry into the state of Washington.~~

~~(7) If hatching eggs are from non-NPIP participant flocks, then the parent breeder flock must be tested for the diseases in subsection (8) of this section within thirty days before the hatching eggs enter the state of Washington.~~

~~(8) Poultry, excluding doves and pigeons, must have a negative test for the following diseases:~~

<u>Disease control classifications</u>	<u>Poultry type</u>			
	<u>Egg-type chickens</u>	<u>Meat-type chickens</u>	<u>Turkeys</u>	<u>Other¹</u>
<u>Pullorum-typhoid</u>	YES	YES	YES	YES ²
<u>Avian influenza</u>	YES	YES	YES	YES
<u><i>Mycoplasma gallisepticum</i></u>	-	-	YES	-
<u><i>Mycoplasma synoviae</i></u>	-	-	YES	-
<u><i>Salmonella enteritidis</i></u>	YES (commercial) ³	-	-	-

¹Waterfowl, hobby, fancy, exhibition chickens, game birds, ratites, and backyard flocks.
²Excluding waterfowl.
³Commercial means producers with three thousand or more birds regardless of shipment size.

Exemptions to import health requirements.

~~((7)) (9) Doves, pigeons, waterfowl, game birds, and poultry destined for immediate slaughter are exempt from the certificate of veterinary inspection and testing requirements.~~

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-160 Birds other than poultry, including exotic birds—Importation and testing requirements. Import health requirements.

(1) All birds other than poultry entering Washington state require a certificate of veterinary inspection that contains the following statement:

"To the best of my knowledge, the birds listed on this certificate are not infected with exotic Newcastle disease, psittacosis, or avian influenza and have been free from clinical signs of or known exposure to infectious or communicable disease during the past thirty days."

(2) All birds must be individually identified with a numbered leg band or in a manner appropriate to the species.

Exemptions to import health requirements.

(3) Family pet birds are exempt from the certificate of veterinary inspection and identification requirements if they:

- (a) Are two or less in number; and
- (b) Have not been purchased within thirty days of entry into Washington state; and
- (c) Are traveling by private conveyance with their owners.

WILD AND EXOTIC ANIMALS (~~AND BIRDS~~), INCLUDING ZOO ANIMALS

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-180 Wild and exotic animals (~~and birds~~)—Importation and testing requirements. Import health requirements.

(1) Wild and exotic animals (~~and birds~~) entering Washington state must be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian licensed in the state of origin, or accompanied by an international certificate of health.

(2) All wild and exotic animals must be accompanied by an entry permit.

Import test requirements.

(3) **Brucellosis:** Within thirty days before entering Washington state, negative serologic testing must be conducted on the following categories of captive wild or exotic animals that are more than six months of age:

Table 1.

Wild and exotic animals that must be tested for brucellosis

Tested For	Species Scientific Name	Common Name Examples
<i>Brucella abortus</i>	<i>Camelidae</i>	• Vicuna • Guanaco
	<i>Cervidae</i>	• Elk • Caribou • Moose • Reindeer

(d) For all captive wild or exotic animals not listed in Table 2 in subsection (2)(b) of this section, the following statement signed by the animal's owner or agent must be placed on the official certificate of veterinary inspection:

"To my knowledge, the animals listed on this certificate are not infected with tuberculosis and have not been exposed to animals infected with tuberculosis during the past twelve months."

(5) **Pseudorabies:** All wild swine imported for zoos, exhibitions or to a research facility must test negative for pseudorabies no more than thirty days before entry into Washington state and must be held in quarantine for thirty to sixty days pending a postentry retest.

(6) **Equine infectious anemia:** All wild horses, donkeys, and hybrids of the family *Equidae* must test negative on an approved test for equine infectious anemia no more than six months before entry into Washington state.

(7) **Elaphostrongylinae** (*Parelaphostrongylus tenvis* (meningeal worm) and *Elaphostrongylus cervis* (muscle worm)): Before entering Washington state, all *Cervidae* must be examined for *Elaphostrongylinae* infection in the absence of anthelmintic treatment that could mask detection of the parasite.

(a) **All *Cervidae* residing for at least six months** west of a line through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas or geographical boundaries as otherwise designated by the state veterinarian must have a negative fecal exam for dorsal-spined larvae made by an approved laboratory using the Baermann technique (~~and~~). Animals must be certified that they have not been treated with or exposed to anthelmintics for at least thirty days before testing.

(b) **All *Cervidae* residing for less than six months** west of a line through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas or geographical boundaries as otherwise designated by the state veterinarian or from east of that line must be held in a pre-entry quarantine for thirty to sixty days and have two fecal tests for dorsal-spined larvae made by an approved laboratory using the Baermann technique.

(i) The first test must be conducted at least thirty days and not more than forty days before the second test.

(ii) Fecal samples of at least thirty grams per sample are to be collected by an accredited veterinarian from the animal's rectum and identified by the animal's official identification number.

(iii) During the thirty-day testing period, test animals must be held in quarantine and isolated from all other *Cervidae* not included in the shipment.

(iv) If any animal tests positive to either of the two fecal tests, neither that animal nor any other animal held in quarantine with the infected animal may be imported into Washington state.

(c) All imported *Cervidae* must be held for one hundred eighty days in an onsite quarantine and be available for inspection by the director during this time.

(d) Every thirty, sixty, ninety, one hundred twenty, one hundred fifty, and one hundred eighty days after arrival, fecal samples from the animals must be tested by the Baermann technique in an approved laboratory and be found negative

for dorsal-spined larvae. Animals that test positive for dorsal-spined larvae must either be removed from Washington state or destroyed.

(e) To prevent the presence of the gastropod intermediate hosts of *Elaphostrongylinae* larvae, the quarantine site must be prepared and inspected before the imported animals enter. Preparation includes:

(i) Providing a hard surface, such as asphalt or concrete, on which to keep the animals;

(ii) Spraying the quarantine area with an EPA-registered molluscicide; and

(iii) Spraying a four-meter wide tract around the perimeter of the holding compound with an EPA-registered molluscicide. This perimeter tract must be treated once every five days and within twenty-four hours of precipitation (10 mm or more) to ensure that the gastropod population is kept to zero within the compound.

(8) **Rabies:** Any carnivorous mammal taken from the wild is prohibited from entering Washington state if rabies has been diagnosed in the state of origin during the past twelve months.

WSR 10-07-147

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 24, 2010, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-108.

Title of Rule and Other Identifying Information: Chapter 16-70 WAC, Animal diseases—Reporting.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Second Floor, Conference Room 259, Olympia, WA 98504, on April 29, 2010, at 3:00 p.m.; and at the Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA 98926, on May 10, 2010, at 3:00 p.m.

Date of Intended Adoption: June 1, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., May 11, 2010.

Assistance for Persons with Disabilities: Contact WSDA receptionist by April 23, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-70 WAC to help clarify the process on reporting diseases from the OIE (World Organization of Animal Health) reportable disease list. Proposed amendments include adding caseous lymphadenitis and malignant catarrhal fever (all forms) to the reportable disease list.

Reasons Supporting Proposal: The amendments will make it easier for animal health veterinarians and technicians to comply with disease reporting requirements and will contribute to the overall health, safety, and welfare of the state's citizens, livestock, and pet animals.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 24, 2010
Robert W. Gore
Deputy Director

AMENDATORY SECTION (Amending WSR 07-10-087, filed 5/1/07, effective 6/1/07)

WAC 16-70-020 Other diseases reportable to WSDA.

~~(1)((a))~~ In addition to the diseases published on the OIE notifiable disease list, the state veterinarian may request reports on other diseases of concern from a statistical or survey standpoint associated with overall disease control measures.

~~((b))~~ (2) Any veterinarian or veterinary laboratory ~~((may voluntarily))~~ must report to the office of the state veterinarian ~~((other diseases that are not on the OIE notifiable disease list or not))~~ any of the diseases listed ~~((below))~~ in subsection (5) of this section. Reports may be faxed to 360-902-2087 or sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577

~~((2))~~ In addition to the diseases that are on the OIE notifiable disease list, the following diseases must be reported immediately to the office of the state veterinarian:

- ~~Beef measles (*Teania saginata*)~~
- ~~Chronic wasting disease in cervids (Transmissible Spongiform Encephalopathy)~~
- ~~Contagious ecthyma (Orf)~~
- ~~Hantavirus~~
- ~~Infectious Coryza in poultry (*Hemophilus gallinarum*)~~
- ~~Listeriosis~~
- ~~Low pathogenic avian influenza H5/H7~~
- ~~Lyme disease~~

- ~~Plague (*Yersinia pestis*)~~
- ~~Potomac horse fever (*Erliechiosis*)~~
- ~~Salmonellosis (any livestock species)~~
- ~~Seabies (any livestock species)~~
- ~~Shigella toxin producing *E. coli*~~
- ~~Strangles in equine (*Streptococcus equi*)~~

(3) In addition to reporting requirements listed in the chart below, laboratories must send to the office of the state veterinarian reports of cultures of isolates from *Mycobacterium tuberculosis*, *Cryptococcus* excluding confirmed *Cryptococcus neoformans*, and Vancomycin resistant *Staphylococcus aureus* immediately after they are identified or the next business day.

(4) Veterinary laboratory directors must submit positive specimens of the diseases listed in subsection (3) of this section and any requested information to the state public health laboratories at:

Washington State Public Health Laboratories
Washington State Department of Health
1610 N.E. 150th Street
Seattle, Washington 98155

(5) The tables below describe the time frames associated with reportable diseases.

<u>EMERGENCY CONDITIONS</u> <u>or DISEASE</u> <u>Report to state veterinarian immediately</u> <u>upon suspicion</u>	
<u>MULTIPLE SPECIES</u>	
•	<u>Anthrax (<i>Bacillus anthracis</i>)</u>
•	<u>Crimean Congo hemorrhagic fever</u>
•	<u>Foot-and-mouth disease</u>
•	<u>Heartwater (<i>Cowdria ruminantium</i>)</u>
•	<u>Japanese encephalitis</u>
•	<u>Livestock exposed to toxic substances which may threaten public health</u>
•	<u>Malignant catarrhal fever (all forms)</u>
•	<u><i>Mycobacterium tuberculosis</i></u>
•	<u>Rabies in any species (excluding bats)</u>
•	<u>Rift Valley fever</u>
•	<u>Rinderpest (cattle plague)</u>
•	<u>Screwworm myiasis (<i>Cochliomyia hominivorax</i> or <i>Chrysomya bezziana</i>)</u>
•	<u>Surra (<i>Trypanosoma evansi</i>)</u>
•	<u>Theileriosis (Corridor disease, East Coast fever)</u>
•	<u>Unexplained increase in dead or diseased animals</u>
•	<u>Vancomycin resistant (<i>Staphylococcus aureus</i>)</u>
•	<u>Vesicular stomatitis</u>
<u>BOVINE</u>	
•	<u>African trypanosomiasis (Tsetse fly diseases)</u>
•	<u>Bovine babesiosis (piroplasmosis)</u>
•	<u>Bovine spongiform encephalopathy (mad cow)</u>

<u>EMERGENCY CONDITIONS</u> <u>or DISEASE</u> Report to state veterinarian immediately upon suspicion
<ul style="list-style-type: none"> • <u>Contagious bovine pleuropneumonia (<i>Mycoplasma mycoides mycoides</i>)</u> • <u>Lumpy skin disease</u> <p><u>CAPRINE/OVINE</u></p> <ul style="list-style-type: none"> • <u>Contagious agalactia (<i>Mycoplasma agalactia</i>)</u> • <u>Contagious caprine pleuropneumonia (<i>Mycoplasma capricolum capripneumoniae</i>)</u> • <u>Nairobi sheep disease</u> • <u>Peste des petits ruminants (goat plague)</u> • <u><i>Salmonella abortus ovis</i></u> • <u>Sheep and goat pox</u> <p><u>PORCINE</u></p> <ul style="list-style-type: none"> • <u>African swine fever</u> • <u>Classical swine fever (hog cholera)</u> • <u>Nipah virus</u> • <u>Swine vesicular disease</u> • <u>Vesicular exanthema of swine</u> <p><u>POULTRY</u></p> <ul style="list-style-type: none"> • <u>Exotic Newcastle disease (Viscerotropic velogenic Newcastle disease)</u> • <u>High pathogenic avian influenza and low pathogenic avian influenza</u> • <u>Turkey rhinotracheitis</u> <p><u>EQUINE</u></p> <ul style="list-style-type: none"> • <u>African horse sickness</u> • <u>Dourine (<i>Trypanosoma equiperdum</i>)</u> • <u>Equine piroplasmosis (<i>Theileria equi</i> and <i>Babesia caballi</i>)</u> • <u>Glanders (Farcy) (<i>Pseudomonas mallei</i>)</u> • <u>Hendra virus (Equine morbillivirus)</u> • <u>Venezuelan equine encephalomyelitis</u> <p><u>OTHER SPECIES</u></p> <ul style="list-style-type: none"> • <u>Viral hemorrhagic disease of rabbits (calicivirus)</u>

<u>CONDITIONS OF REGULATORY</u> <u>IMPORTANCE</u> Report to state veterinarian within twenty-four hours of suspicion or confirmation
<p><u>MULTIPLE SPECIES</u></p> <ul style="list-style-type: none"> • <u>Bluetongue</u> • <u>Brucellosis</u> <ul style="list-style-type: none"> • <u>Bovine (<i>Brucella abortus</i>)</u> • <u>Canine (<i>Brucella canis</i>)</u> • <u>Caprine (<i>Brucella abortus</i> and <i>B. melitensis</i>)</u> • <u>Cervids (<i>Brucella abortus</i>)</u> • <u>Ovine (<i>Brucella ovis</i>)</u>

<u>CONDITIONS OF REGULATORY</u> <u>IMPORTANCE</u> Report to state veterinarian within twenty-four hours of suspicion or confirmation
<ul style="list-style-type: none"> • <u>Porcine (<i>Brucella suis</i>)</u> • <u><i>Cryptococcus</i> not confirmed to be <i>Cryptococcus neoformans</i></u> • <u>Plague (<i>Yersinia pestis</i>)</u> • <u>Pseudorabies (Aujeszky's disease)</u> • <u>Tularemia</u> • <u>West Nile virus</u> <p><u>BOVINE</u></p> <ul style="list-style-type: none"> • <u>Bovine tuberculosis (<i>Mycobacterium bovis</i>)</u> • <u>Trichomoniasis (<i>Trichomonas fetus</i>)</u> <p><u>CAPRINE/OVINE</u></p> <ul style="list-style-type: none"> • <u>Contagious ecthyma (Orf)</u> • <u>Scrapie</u> <p><u>POULTRY</u></p> <ul style="list-style-type: none"> • <u>Avian infectious laryngotracheitis</u> • <u>Ornithosis (Psittacosis or avian chlamydiosis) (<i>Chlamydia psittaci</i>)</u> • <u>Pullorum disease (fowl typhoid) (<i>Salmonella gallinarum</i> and <i>S. pullorum</i>)</u> <p><u>EQUINE</u></p> <ul style="list-style-type: none"> • <u>Contagious equine metritis (<i>Taylorella equigenitalis</i>)</u> • <u>Ehrlichiosis (Potomac horse fever)</u> • <u>Equine encephalomyelitis (Eastern and Western equine encephalitis)</u> • <u>Equine infectious anemia (swamp fever)</u> • <u>Equine rhinopneumonitis (Equine herpesvirus-1 neurologic form)</u> <p><u>OTHER SPECIES</u></p> <ul style="list-style-type: none"> • <u>Chronic wasting disease in cervids</u> • <u>Tuberculosis in cervids</u>

<u>MONITORED CONDITIONS</u> Report by monthly summaries
<p><u>MULTIPLE SPECIES</u></p> <ul style="list-style-type: none"> • <u>Avian tuberculosis (<i>Mycobacterium avium</i>)</u> • <u>Echinococcosis/Hydatidosis (<i>Echinococcus</i> species)</u> • <u>Johne's disease (<i>Mycobacterium avium</i> paratuberculosis)</u> • <u>Leishmaniasis</u> • <u>Leptospirosis</u> • <u>Listeriosis</u> • <u>Lyme Disease</u> • <u>Q Fever (<i>Coxiella burnetii</i>)</u> • <u>Salmonella</u> • <u>Scabies</u>

MONITORED CONDITIONS
Report by monthly summaries

BOVINE

- Anaplasmosis (Anaplasma marginale or A. centrale)
- Beef measles (Teania saginata)
- Bovine genital campylobacteriosis (Campylobacter fetus venerealis)
- Bovine viral diarrhea
- Enzootic bovine leukosis (Bovine leukemia virus)
- Infectious bovine rhinotracheitis (Bovine herpesvirus-1)

CAPRINE/OVINE

- Caprine (contagious) arthritis/encephalitis
- Caseous lymphadenitis
- Enzootic abortion of ewes (Chlamydia psittaci)
- Maedi-Visna (Ovine progressive pneumonia)

PORCINE

- Porcine circovirus (post-weaning multisystemic wasting syndrome)
- Porcine cysticercosis (Taenia solium in humans)
- Porcine reproductive and respiratory syndrome
- Transmissible gastroenteritis (coronavirus)
- Trichinellosis (Trichinella spiralis)

POULTRY

- Avian infectious bronchitis
- Avian mycoplasmosis (Mycoplasma synoviae)
- Duck viral hepatitis
- Fowl cholera (Pasteurella multocida)
- Infectious bursal disease (Gumboro disease)
- Infectious coryza (Avibacterium paragallinarum)
- Marek's disease
- Mycoplasmosis (Mycoplasma gallisepticum)

EQUINE

- Equine influenza
- Equine rhinopneumonitis (Equine herpesvirus-1 Non-neurologic form)
- Equine viral arteritis
- Strangles (Streptococcus equi)
- Pigeon Fever (Corynebacterium pseudotuberculosis)

OTHER SPECIES

- Fish diseases on the OIE notifiable disease list
- Heartworm
- Hemorrhagic diseases of deer (bluetongue, adenovirus, and epizootic hemorrhagic disease)
- Myxomatosis in commercial rabbits

WSR 10-07-148**PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed March 24, 2010, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-106.

Title of Rule and Other Identifying Information: Chapter 16-71 WAC, Equine infectious anemia.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Second Floor, Conference Room 259, Olympia, WA 98504, on April 30, 2010, at 9:00 a.m.; and at the Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA 98926, on May 11, 2010, at 8:30 a.m.

Date of Intended Adoption: June 1, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., May 11, 2010.

Assistance for Persons with Disabilities: Contact WSDA receptionist by April 23, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-71 WAC to add five new sections regarding equine diseases. The five new sections include the following diseases: Equine viral arteritis, equine herpes virus, equine piroplasmiasis, strangles and vesicular stomatitis. The department also proposes to change the name of this WAC to "Equine diseases in Washington state."

Reasons Supporting Proposal: The amendments are necessary to safeguard the health of the equine industry as the listed diseases have become a threat to the equine in Washington state.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: RCW 16.36.040.

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

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 24, 2010
Robert W. Gore
Deputy Director

Chapter 16-71 WAC

EQUINE ((~~INFECTIOUS ANEMIA~~)) DISEASES IN WASHINGTON STATE

AMENDATORY SECTION (Amending WSR 00-14-059, filed 7/3/00, effective 8/3/00)

WAC 16-71-010 Definitions. ~~((+))~~ "Certificate of veterinary inspection (CVI)" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or by the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS). This certificate must be executed by a licensed and accredited veterinarian or a veterinarian approved by USDA APHIS. The certificate of veterinary inspection is also known as an "official health certificate."

"Department" means the Washington state department of agriculture.

~~((2))~~ "Director" means the director of the Washington state department of agriculture or his or her ((~~duty~~)) authorized representative.

~~((3))~~ "Equine(s)" means horses, donkeys, mules, ponies, zebras, and others in the Equidae family.

~~((4))~~ "Equine Infectious Anemia (EIA)" means infection with the equine infectious anemia lentivirus, affecting both sexes, all ages, all breeds and all species of equines. Infected equines remain carriers for life, constituting a potential source for spread of the infection. There is no known cure or treatment.

~~(5)~~ "Official health certificate" means a legible certificate of veterinary inspection executed on an official form published by the state of origin or by the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS). This certificate must be issued by a licensed, accredited veterinarian or a veterinarian approved by USDA APHIS.

~~(6))~~ "Herd plan" means a written management agreement between the animal owner and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner and the United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) veterinary services area veterinarian-in-charge, in which each participant agrees to undertake actions specified in the herd plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd and to work toward eradicating the disease in the infected herd.

"Official test" means ~~((blood samples tested))~~ a laboratory test by USDA-approved laboratories or by people authorized by the state of origin's animal health officials to conduct the tests.

~~((7))~~ "Reactor" means an equine found positive on an official EIA test.) "VS form 1-27" means a United States department of agriculture permit form for the movement of restricted or quarantined livestock.

NEW SECTION

WAC 16-71-015 Forms used in this chapter. Forms used in this chapter may be obtained from the department at:

Animal Services Division
Washington State Department of Agriculture
1111 Washington St. S.E.
Olympia, WA 98504-2560
Phone: 360-902-1878.

EQUINE INFECTIOUS ANEMIA

AMENDATORY SECTION (Amending WSR 00-14-059, filed 7/3/00, effective 8/3/00)

WAC 16-71-022 Equine infectious anemia procedures. (1) Equine infectious anemia (EIA) is an infection by the equine infectious anemia lentivirus that affects both sexes, all ages, all breeds, and all species of equine. Infected equine remain carriers for life, constituting a potential source for spread of the infection. There is no known cure or treatment.

(2)(a) Positive diagnosis of EIA is made with the agar gel immunodiffusion test (AGID or Coggins test), competitive enzyme-linked immunosorbent assay (cELISA test) or other official test. A supplementary AGID will be conducted to confirm positives detected with other official tests.

(b) Blood samples for EIA testing will be collected by licensed, accredited veterinarians at the owners' request and expense. At sample collection, the veterinarian will make an accurate, detailed identification of the equine on an official test request form. Positive test results are to be reported to state and federal animal health authorities. ((Owners will be advised of the procedure if equines are found positive on the official test. The owner must sign an agreement regarding disposition of a reactor. The agreement should follow a herd plan as defined in chapter 16.36 RCW.

(2) All equines over six months of age entering the state must be accompanied by an official health certificate and a record of a negative EIA test conducted within six months prior to importation. Exceptions to the EIA test requirement:

- (a) Equines consigned for immediate slaughter;
- (b) Equines consigned to a veterinary clinic for the purpose of treatment or surgery, under the supervision of a veterinarian. These equines must return to the state of origin following treatment or surgery and must not be commingled, housed or corralled in common with any other equine;
- (c) Equines under six months old;
- (d) Oregon origin equines under a reciprocal arrangement; and
- (e) Idaho origin equines may be excluded when a reciprocal arrangement exists for Washington origin equines moving into Idaho.)

(3) The management or board of governors at race tracks, rodeos, shows, fairs or other assembly points may

require ~~((negative, official EIA tests within six months prior to))~~ more restrictive testing for all equine before consignment to an assembly point or participation ((for all equines consigned to these assembly points or participating)) in an event((s)).

AMENDATORY SECTION (Amending WSR 00-14-059, filed 7/3/00, effective 8/3/00)

WAC 16-71-030 EIA quarantine. (1)(a) ~~((Within twenty four hours after positive test results are known, reactors))~~ EIA positive equine will be quarantined to the ((pre-mises)) location of origin or other location approved by the director, as provided for in ((chapter 16.36)) RCW 16.36.010. ((The quarantine will remain in effect until confirmation of reactor status and the reactor's disposition.))

(b) ~~The quarantine will be released only upon the ((reactor's)) positive equine's death or ((when it)) if the animal is legally moved from the ((premises)) quarantine location by permit on a VS form 1-27. ((If reactor status is disclosed while the equine is on a premises other than the owner's, permission may be granted to move the animal to the owner's premises. Reactors can only move by permit on a VS form 1-27. State and federal animal health authorities will conduct an epidemiological investigation to identify other equines exposed to EIA by contact with the reactor.))~~

(c) ~~All equine((s having contact with the reactor must))~~ exposed to EIA positive equine will be quarantined. The quarantine will be removed on these ((contact)) exposed equine((s)) and movement allowed only after a negative, official EIA test at least ((60)) ninety days after ((removal of)) the ((reactor)) positive equine have been removed from the quarantine premises.

(2) ~~((Confirmed reactors))~~ Positive equine must be ((euthanized.))

(a) ~~Placed in ((a)) permanent quarantine in a restricted holding facility for the life((-)) of the equine under a herd plan developed to control the spread of the diseases, as provided for in RCW 16.36.005; or~~

(b) ~~Donated to a diagnostic or research facility((-, legally moved to slaughter)); or~~

(c) Legally removed from the state on a VS form 1-27; or

(d) Euthanized. A state or federal animal health ~~((authority))~~ official or a licensed~~((;))~~ and accredited veterinarian will conduct euthanasia.

(3) For lifelong quarantine, a state or federal animal health ~~((authority))~~ official must approve the isolation facility. The isolation facility must be located at least two hundred yards from any other equine, and must keep the ((reactor)) positive equine separate from all other equine((s)). ((#)) The facility must be screened to prevent transmission of EIA by insect((s)) vectors.

~~((With))~~ (4) In consultation ((of)) with an entomologist, an insect control program must be developed, approved by the director, and must be followed routinely. ((The isolation facility must be located at least 200 yards from any other equines. The department will pay for and hold a lifetime brand inspection on those equines held in lifetime quarantine.))

(5) ~~If the ((reactor)) positive equine is donated((-, moved to slaughter)) to a research facility or removed from the state, it can only move by permit on a VS form 1-27. For removal from the state, the receiving state must agree in advance to accept the ((reactor)) positive equine.~~

AMENDATORY SECTION (Amending WSR 00-14-059, filed 7/3/00, effective 8/3/00)

WAC 16-71-035 Identification of ((reactors)) EIA positive equine. Confirmed ~~((reactors))~~ EIA positive equine will be permanently identified by lip tattooing or branding with a hot iron, chemical brand, or freeze brand. A lip tattoo is applied to the inside surface of the upper lip and consists of the numbers 91 followed by the letter A, with each character being at least one inch high and three-fourths of an inch wide. A brand is applied on the left side of the neck or left shoulder and consists of the numbers 91 followed by the letter A, with each character being at least two inches high. Permanent identification will be applied by state or federal animal health authorities ((or by licensed, accredited veterinarians. Permanent identification is not necessary if the reactor is moved directly to slaughter under permit with a VS form 1-27 and the vehicle is officially sealed)).

EQUINE VIRAL ARTERITIS (EVA)

NEW SECTION

WAC 16-71-065 Equine viral arteritis. (1) Equine viral arteritis (EVA) is a contagious equine disease. Although typically not life threatening to otherwise healthy adult horses, EVA is of special concern because it can result in abortion in pregnant mares, illness and death in young foals, and establishment of the carrier state in stallions. Equine viral arteritis is a manageable disease that can be prevented through a vaccination program.

(2) If equine test positive for EVA:

(a) The owner of intact males over six months of age and equine reproductive products from donors that test positive for EVA must comply with the United States Department of Agriculture (USDA) *Equine Viral Arteritis Uniform Methods and Rules*, effective April 19, 2004.

(b) Intact males that test antibody positive for EVA may be subject to quarantine.

(c) Equine semen and embryos from antibody positive donors must be used or implanted only in vaccinated or seropositive mares. These mares must be isolated for twenty-one days following insemination or implantation.

NEW SECTION

WAC 16-71-070 Adoption of USDA equine viral arteritis uniform methods and rules. In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of the United States Department of Agriculture (USDA) *Equine Viral Arteritis Uniform Methods and Rules*, effective April 19, 2004. The department maintains a copy of this document for public inspection. You may also find the information on the internet at:

http://www.aphis.usda.gov/animal_health/animal_diseases/eva/downloads/eva-umr.pdf

EQUINE HERPES VIRUS (EHV1)

NEW SECTION

WAC 16-71-080 Equine herpes virus. (1) The neurological form of equine herpes virus (EHV1) is a contagious equine disease that can cause respiratory disease, neurological disease, and abortion.

(2) Horses that show clinical signs consistent with neurological EHV1 and test positive to a PCR test for neurological EHV1 will be dealt with by the state veterinarian on a case-by-case basis.

EQUINE PIROPLASMOSIS

NEW SECTION

WAC 16-71-090 Equine piroplasmosis. (1) Equine piroplasmosis (EP) is a tick-borne disease caused by two parasitic organisms, *Theileria equi* and *Babesia caballi*, and is transmitted to horses by ticks or improperly disinfected needles or surgical instruments. EP causes clinical signs such as fever, anemia, lethargy, jaundice, dependent edema, and labored breathing.

(2) Horses that test positive to any of the following tests must either be euthanized or removed from the state within thirty days of diagnosis:

(a) cELISA (competitive enzyme-linked immunosorbent assay);

(b) CF (complement fixation);

(c) PCR (polymerase chain reaction); or

(d) IFA (immunofluorescent antibody).

(3) Equine found positive to piroplasmosis must be:

(a) Permanently quarantined in a restricted holding facility for the life of the equine under a herd plan developed to control the spread of the disease, as provided for in RCW 16.36.005; or

(b) Donated to a diagnostic or research facility; or

(c) Legally removed from the state on a VS form 1-27; or

(d) The equine is euthanized and disposed of under the direct supervision of a state or federal animal health official.

STRANGLES

NEW SECTION

WAC 16-71-100 Strangles. (1) Strangles (also known as equine distemper) is a contagious, upper respiratory tract infection of equines caused by a bacterium, *Streptococcus equi var equi*. Strangles is enzootic in domesticated horses worldwide.

(2) Horses that test positive to *Streptococcus equi* will be dealt with by the state veterinarian on a case-by-case basis.

VESICULAR STOMATITIS

NEW SECTION

WAC 16-71-110 Vesicular stomatitis. Equine that have been diagnosed with vesicular stomatitis will be held in quarantine with all exposed and susceptible species at the location where livestock were diagnosed until twenty-one days following the cessation of all clinical signs of disease in animals at that location.

WSR 10-07-149

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 24, 2010, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-107.

Title of Rule and Other Identifying Information: Chapter 16-80 WAC, Pseudorabies in swine.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Second Floor, Conference Room 259, Olympia, WA 98504, on April 30, 2010, at 10:00 a.m.; and at the Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA 98926, on May 11, 2010, at 9:30 a.m.

Date of Intended Adoption: June 1, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., May 11, 2010.

Assistance for Persons with Disabilities: Contact WSDA receptionist by April 23, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-80 WAC to create a definition for feral swine and to bring the current language up-to-date with current standards as well as make it clear and readable. The department also proposes to change the name of this WAC to "Swine diseases regulated in Washington state."

Reasons Supporting Proposal: These changes are necessary to ensure consistency among the animal health regulations and to safeguard the health, safety, and welfare of the swine industry and citizens of this state.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: RCW 16.36.040.

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

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1)

requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 24, 2010
Robert W. Gore
Deputy Director

Chapter 16-80 WAC

((PSEUDORABIES IN)) SWINE DISEASES REGULATED IN WASHINGTON STATE

AMENDATORY SECTION (Amending WSR 00-06-066, filed 3/1/00, effective 4/1/00)

WAC 16-80-005 Definitions. ~~((+))~~ In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Department" means the Washington state department of agriculture.

"Director" means the director of agriculture of the state of Washington or his or her authorized representative((s)).

~~((2)) "Department" means the department of agriculture of the state of Washington.~~

~~(3) "Approved pseudorabies vaccine" means only those biological products that are approved by and produced under license of the United States Department of Agriculture (USDA) for injection into swine for the purpose of enhancing their resistance to pseudorabies, are specific gene deletion vaccines and are authorized for use in a specific herd by the state veterinarian.~~

(4)) "Exposed" means to have had contact with an animal infected with an infectious or communicable disease.

"Feral swine" means animals included in any of the following categories:

- Animals of the genus *Sus* that are free roaming on public or private lands and do not appear to be domesticated;
- Swine from domesticated stocks that have escaped or been released or born into the wild state;
- European wild hogs and their hybrid forms (also known as European wild boars or razorbacks), regardless of whether they are free roaming or kept in confinement; or
- Animals of the family *Tayassuidae* such as peccaries and javelinas, regardless of whether they are free roaming or kept in confinement.

"Official USDA-approved identification" means ((a) USDA issued backtag or an cartag bearing state identification and a unique number)) methods of identification, as approved in 9 C.F.R. Chapter 1, Section 71.19, January 1, 2009.

~~((5))~~ "Pseudorabies infected herd" means a herd of swine in which pseudorabies has been diagnosed in one or more animals by the National Veterinary Service Laboratory

(NVSL) or a state laboratory approved by USDA to conduct official pseudorabies tests.

~~((6) "Expose" means to have contact with an animal infected with the pseudorabies virus.~~

~~(7) "Pseudorabies" means a contagious, infectious and communicable disease caused by a herpesvirus that affects swine and other animals.~~

~~(8) "Official pseudorabies test" means a test for the diagnosis of pseudorabies conducted in a USDA-approved laboratory. These tests include, but are not limited to, serum neutralization (SN), virus isolation, fluorescent antibody, latex agglutination, particle concentration fluorescence immunoassay (PCFIA) and enzyme-linked immunosorbent assay (ELISA-))~~ "USDA" means the United States Department of Agriculture.

NEW SECTION

WAC 16-80-006 Adoption of USDA pseudorabies eradication program standards. In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of the USDA pseudorabies eradication state-federal-industry program standards, effective November 1, 2003. The department maintains a copy of this document for public inspection. You may also find the information on the internet at: http://www.aphis.usda.gov/animal_health/animal_diseases/pseudorabies/downloads/program_stds.pdf

NEW SECTION

WAC 16-80-008 Adoption of USDA swine brucellosis control and eradication program standards. In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of the USDA swine brucellosis control and eradication state-federal-industry program standards, effective April, 1998. The department maintains a copy of this document for public inspection. You may also find the information on the internet at: http://www.aphis.usda.gov/animal_health/animal_dis_spec/swine/downloads/sbruumr.pdf

NEW SECTION

WAC 16-80-009 Surveillance program. All blood samples from Washington swine submitted to the department's laboratory or to a USDA-approved laboratory for pseudorabies or brucellosis testing will be tested for both pseudorabies and swine brucellosis using official USDA-approved tests.

AMENDATORY SECTION (Amending WSR 00-06-066, filed 3/1/00, effective 4/1/00)

WAC 16-80-010 Quarantine. All swine ~~((herds))~~ infected with or exposed to classical swine fever (hog cholera), pseudorabies, swine brucellosis, or any other reportable, infectious, or communicable disease will be quarantined and officially tested for ((pseudorabies)) the above listed diseases by state or federal officials. If the owner of any such swine ~~((herd))~~ refuses to allow the department to test, the swine

(~~here~~) and the premises on which they are quarantined will remain quarantined until released under (~~WAC 16-80-020~~) RCW 16.36.010 or 16.36.020. No animal or products of such animals will be removed from the premises while they are under quarantine except as provided in RCW 16.36.010 or 16.36.020.

AMENDATORY SECTION (Amending WSR 00-06-066, filed 3/1/00, effective 4/1/00)

WAC 16-80-035 Indemnity for (~~pseudorabies~~) infected or exposed swine. (1) Under RCW 16.36.090, the director may order the slaughter or destruction of any swine affected with or exposed to classical swine fever (hog cholera), pseudorabies, swine brucellosis, or any other reportable, infectious, or communicable disease. (~~The state veterinarian must approve the disposal methods of those swine destroyed.~~)

(2) Under RCW 16.36.096, subject to the availability of (~~sufficient~~) funds appropriated for this specific purpose, the director may pay an indemnity (~~for any swine~~) in an amount of up to seventy-five percent of appraised or salvage value of the animal ordered slaughtered or destroyed. (~~When the indemnity is approved, the amount that will be paid is one hundred dollars for any sow past fifty days pregnant or with suckling piglets, fifty dollars for boars and open sows or sows less than fifty days pregnant, and fifty dollars for breeding gilts over two hundred fifty pounds live weight. An indemnity of up to seventy-five percent of appraised value of feeding stock will be paid when destroyed rather than slaughtered.~~)

(3) No indemnity will be paid if:

(~~(1) The statewide infection rate exceeds 0.1% of total swine herds in the state; or~~

(2)) (a) The swine belong to the federal government or any of its agencies, this state or any of its political subdivisions, or any municipal corporations; or

(~~(3)~~) (b) The swine were (~~brought into this state within six months of being ordered slaughtered or destroyed~~) not imported into this state in compliance with state importation regulations found in chapter 16-54 WAC.

(4) The state veterinarian must approve of the disposal methods of any swine ordered destroyed.

AMENDATORY SECTION (Amending WSR 00-06-066, filed 3/1/00, effective 4/1/00)

WAC 16-80-045 Identification of swine. (~~Bears and sows~~) All swine moving through public livestock (~~auction yards~~) markets or collection facilities in intrastate or interstate commerce must (~~be tagged with~~) have official USDA-approved identification(~~(- All swine moving in interstate commerce must be identified)~~) in compliance with (~~federal regulation~~) 9 C.F.R. Chapter 1, Section 71.19 (~~(a & b)~~), January 1, 2009.

NEW SECTION

WAC 16-80-060 Feral swine. Feral swine are illegal in the state of Washington. If found, feral swine will be eradicated and disposed of in a humane manner.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-80-007	Surveillance program.
WAC 16-80-015	Sale of quarantined animals.
WAC 16-80-020	Quarantine and release.
WAC 16-80-025	Disinfecting premises.
WAC 16-80-030	Disinfecting vehicles.
WAC 16-80-040	Vaccination.
WAC 16-80-047	Mandatory reporting of suspected pseudorabies.

WSR 10-07-150

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 24, 2010, 8:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-105.

Title of Rule and Other Identifying Information: Chapter 16-604 WAC, Public livestock markets—Health, brands and weights and measures.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Second Floor, Conference Room 259, Olympia, WA 98504, on April 30, 2010, at 11:00 a.m.; and at the Kittitas County Event Center, Heritage Center, 512 North Poplar Street, Ellensburg, WA 98926, on May 11, 2010, at 10:30 a.m.

Date of Intended Adoption: June 1, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., May 11, 2010.

Assistance for Persons with Disabilities: Contact WSDA receptionist by April 23, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-604 WAC to correct references to the Code of Federal Regulation as well as make it clear and readable. The department also proposes to change the name of this WAC to "Public livestock markets—Health, facilities, and sanitation."

Reasons Supporting Proposal: The proposed amendments will make the rules easier to understand and interpret.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: RCW 16.36.040.

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

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 24, 2010
Robert W. Gore
Deputy Director

Chapter 16-604 WAC

PUBLIC LIVESTOCK MARKETS—HEALTH, ~~(BRANDS AND WEIGHTS AND MEASURES)~~ FACILITIES, AND SANITATION

AMENDATORY SECTION (Amending WSR 92-21-022, filed 10/13/92, effective 11/13/92)

WAC 16-604-009 Definitions. For the purposes of this order:

~~((1))~~ "Market" means public livestock market as defined in RCW 16.65.010(1).

~~((2))~~ "C.F.R." means Code of Federal Regulations.

"Consigned" means to deliver for sale at a public livestock market.

"Department" means the department of agriculture of the state of Washington.

~~((3))~~ "Director" means the director of the department or ~~(his)~~ the director's duly authorized representative.

~~((4))~~ "Licensee" means any person licensed to operate a public livestock market.

~~((5))~~ "Livestock" ~~((except as used in the brand inspection regulations of this order))~~ means ~~((all))~~ cattle, bison, horses, mules, donkeys, swine, sheep, goats, rabbits, llamas, alpacas, ratites, poultry ~~((and rabbits))~~, waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.

~~((6))~~ "Livestock" as used in the brand inspection regulations of this order means all cattle of whatever species, breed or age.

~~((7))~~ "Lot" means livestock of one ownership.

~~((8))~~ "Market" means public livestock market as defined in RCW 16.65.010(1).

"Market veterinarian" means a ~~((graduate))~~ veterinarian licensed in the state of Washington, accredited by USDA, and ~~((employed by))~~ contracted with a public livestock market.

AMENDATORY SECTION (Amending WSR 92-21-022, filed 10/13/92, effective 11/13/92)

WAC 16-604-020 Facilities and sanitation. Licensees shall provide facilities and sanitation for the prevention of livestock diseases at their public livestock markets, as follows:

(1) The licensee shall be responsible for the moving and yarding of livestock necessary for ~~((brand))~~ animal health inspection. Personnel employed by the ~~((salesmarket))~~ public livestock market will be required to sort and designate any ~~((apparent))~~ unhealthy animals, as determined by the market veterinarian, before they are admitted into trade channels.

(2) The floors of all pens and alleys that are part of a public livestock market shall be constructed of concrete or similar impervious material and kept in good repair, with a slope of not less than one-fourth inch per foot to adequate drains leading to an approved system ~~((= Provided, That))~~. The director may designate certain pens within such public livestock markets as feeding and holding pens and the floors and alleys of such pens shall not be subject to the aforementioned surfacing requirements.

(3) Feeding and holding pens maintained in an area adjacent to a public livestock market shall be constructed and separated from such public livestock market, in a manner prescribed by the director, in order to prevent the spread of communicable diseases to the livestock sold or held for sale in such public livestock market.

(4) All yards, chutes and pens used in handling livestock shall be constructed of such material which will render them easily cleaned and disinfected, and such yards, pens and chutes shall be kept clean, sanitary and in good repair at all times, as required by the director.

(5) Sufficient calf pens of adequate size to prevent overcrowding shall be provided, and such pens when used shall be cleaned and disinfected no later than the day subsequent to each sale.

(6) All swine pen facilities shall be covered and when used shall be cleaned and disinfected no later than the day subsequent to each sale.

(7) A water system carrying a pressure of forty pounds and supplying sufficient water to thoroughly wash all pens, floors, alleys and equipment shall be provided.

(8) Sufficient quarantine pens of adequate capacity shall be provided. Such pens shall be used to hold only cattle reacting to brucellosis and tuberculosis or to quarantine livestock with other contagious or communicable diseases and shall be:

(a) Hard surfaced with concrete or similar impervious material and shall be kept in good repair.

(b) Provided with separate watering facilities.

(c) Painted white with the word "quarantine" painted in red letters not less than four inches high on such quarantine pen's gate.

(d) Provided with a tight board fence not less than five and one-half feet high.

(e) Cleaned and disinfected not later than one day subsequent to the date of sale.

To prevent the spread of communicable diseases among livestock, the director shall have the authority to cause the cleaning and disinfecting of any area or all areas of a public

livestock market and equipment or vehicles with a complete coverage of disinfectants approved by the director.

AMENDATORY SECTION (Amending WSR 92-21-022, filed 10/13/92, effective 11/13/92)

WAC 16-604-025 Health regulations. (1) The director shall require such testing, treating, identifying, examining and recordkeeping of livestock by a market veterinarian and/or livestock market as in the director's judgment may be necessary to prevent the spread of brucellosis, tuberculosis, or any other infectious, contagious or communicable disease among the livestock of this state.

(2) For livestock health purposes, the director shall establish procedures for inspection of livestock markets for compliance with sanitary requirements and to observe livestock being handled. Such inspections shall be conducted by animal health inspection personnel working under the jurisdiction of the director. Such inspectors will not issue health certificates, perform "private treaty work" or engage in functions other than those in connection with surveillance for communicable, infectious animal diseases and sanitary measures. Operators of markets shall arrange with a market veterinarian to perform animal health inspections, issue health certificates or certificates of veterinary inspection, perform private treaty work, and perform any testing, quarantine, or movement restrictions of animals as directed by the director of agriculture or required by federal law. Departmental inspectors will work in cooperation with any market veterinarians in performing yard inspections.

(3) Markets handling swine shall be required to identify all boars and sows with official identification. Markets must comply with chapters 16-54 and 16-80 WAC and ~~((Title 9, Code of Federal Regulations, Parts 71 and 76,))~~ 9 C.F.R. Sec. 71.19 and 71.20 when handling swine for market.

(4) No livestock may leave the market for points outside the state of Washington without first meeting the requirements of the state of destination and ~~((Title 9, Subchapter C, Code of Federal Regulations))~~ 9 C.F.R. Parts 71 through 89, interstate transportation of animals (including poultry) and animal products.

(5) Any animal or animals which have been found by the ~~((inspector))~~ market veterinarian to be diseased or unhealthy shall be handled in accordance with instructions ~~((of a))~~ from the office of the state veterinarian as to disposition. ~~((He))~~ The market veterinarian may require they be marked "slaughter only" and:

(a) Be sold only to immediate slaughter at a federally inspected slaughter plant;

(b) Require they be sold "as is" with an announcement;

(c) Require they be returned to consignor with or without quarantine; or

(d) Require they be held under quarantine in the yard.

(6) ~~((Brucellosis.))~~ Market requirements.

(a) Animal health requirements as prescribed in chapters 16-54 and 16-86 WAC shall be met for animals entering or released from the public livestock markets. Those public livestock markets that are not specifically approved as per ~~((Title 9, Part 78, Subchapter C, Code of Federal Regulations))~~ 9 C.F.R. Part 78 that wish to provide brucellosis blood testing

as approved by the director shall comply with the facilities requirements for specifically approved ~~((salesyards))~~ public livestock markets. Specifically approved ~~((yards (Title 9, Part 78, Code of Federal Regulations))~~ markets (9 C.F.R. Part 78) can accept cattle and bison from out-of-state without meeting the import requirements provided that all Washington state animal health requirements are met at the ~~((yard))~~ market upon arrival and the animals are consigned to sell through a specifically approved market. Those ~~((yards))~~ markets not specifically approved, or animals that are not consigned to sell through a specifically approved market, can only receive from out-of-state only those cattle and bison that have met all animal health requirements prior to entering the state.

(b) Animals released from Washington markets to points outside the state shall be in compliance with Federal Interstate Regulations and must meet the import requirements of the state of destination.

(c) ~~((Salesyard))~~ Public livestock market brucellosis reactors will be:

(i) Tagged with reactor identification tags in the left ear and branded "B" ~~((on the left jaw))~~ according to 9 C.F.R. Sec. 78.1.

(ii) Placed in a "quarantine pen."

(iii) Sold at the close of the regular sale to licensed slaughterer or their designated agent operating under federal or state inspection or return to the farm of origin under a written quarantine.

(iv) The market veterinarian shall issue VS Form 1-27 on all suspects or reactors immediately after their sale or detection and the original copy must accompany the animals to slaughter or back to the farm of origin. The pink and yellow copies are to be mailed immediately to the state veterinarian, Olympia, and the green copy mailed immediately to the destination of shipment ~~((or shall accompany shipment)).~~

(v) All brucellosis reactors consigned and transported directly to a licensed slaughtering establishment for immediate slaughter cannot be transported with any animals not so consigned. All trucks and railway cars or other conveyances used for the transportation of such reactors shall be cleaned and disinfected at destination under state and federal supervision.

(7) ~~((For the purpose of tracing dealer consigned livestock to herds of origin for health purposes, the certificates of permit (S.F. No. 4847) will be the accepted document for transferring tracing information to the director at the market.~~

~~Exceptions — this section does not apply to dairy cattle under twenty months nor beef cattle under twenty-four months of age.)~~ Within the state of Washington, a certificate of permit (haul slip) must be provided to the department by the market for transferring disease tracing information on resident cattle.

(8) All public livestock markets shall officially identify all sexually intact cattle and bison over eighteen months of age with an official backtag prior to being presented for sale. Records of the backtags applied to the animal indicating seller, buyer, and brucellosis vaccination status if animal is a female shall be maintained by the market for a period of one year.

(9) ~~((Immediate slaughter))~~ Slaughter-only livestock.

(a) Livestock purchased through a market in the state of Washington for slaughter (~~(in the state of Washington may)~~) only must be consigned (~~(only)~~) to a (~~(licensed slaughtering establishment,)~~) federally inspected slaughter plant; or restricted dry feed lot(~~(?)~~) where all livestock remain in slaughter channels; or another market for sale for (~~(immediate)~~) slaughter. Such animals will be cleared from the market on a Washington state cattle brand certificate and must reach the declared point of destination (~~(at)~~), slaughter establishment or restricted feed lot, within (~~(ten days)~~) twelve hours of first being declared (~~(immediate slaughter)~~) slaughter-only livestock. Identification tags may not be removed and clearance papers must be presented with the animals at declared point of destination and livestock shall not be diverted to any other point.

(b) Cattle that have been declared (~~(immediate slaughter)~~) slaughter-only cattle shall not be commingled with cattle not so declared.

(c) No Washington state cattle brand certificate will be issued at any market unless the purchaser first certifies the exact name and physical address of the destination of such domestic animals (~~(or animal)~~) and such animals are identified to herd of origin in a manner prescribed by the (~~(director)~~) state veterinarian.

(10) Health of swine.

(a) Intrastate consignments. Washington swine that are healthy, (~~(unexposed)~~) not known to be affected with or exposed to any contagious or infectious swine diseases, and not under quarantine may enter and leave any market in the state after veterinary inspection.

(b) Interstate consignments.

(i) Slaughter swine. Swine not known to be affected with or exposed to infectious or communicable swine diseases may be (~~(moved)~~) imported into the state without (~~(health)~~) a certificate of veterinary inspection to a recognized (~~(slaughtering center)~~) federally inspected slaughter plant, (public stockyards under federal supervision) or (~~(livestock market)~~) specifically approved livestock market under (~~(Part 76, Title 9, Code of Federal Regulations)~~) 9 C.F.R. Sec. 71.19 for immediate slaughter, and may not be diverted (~~(enroute)~~) en route. The waybills or certificates for shipment must contain an entry permit number obtained from the office of the state veterinarian and must state for "slaughter only to a federally inspected slaughter plant."

(ii) Feeder and breeder swine - must have originated from states in Stage IV or Stage V pseudorabies free status and/or comply with the entry requirements as stated in chapter 16-54 WAC. Animals must be accompanied by an official (~~(health)~~) certificate of veterinarian inspection stating that they are clinically free of symptoms of infectious and contagious disease or exposure thereto, unless consigned to a specifically approved livestock market (~~(approved)~~) under (~~(Part 76, Title 9, CFR)~~) 9 C.F.R. Part 85. The certificate of veterinary inspection will contain an entry permit number obtained from the office of the state veterinarian and the consignor and consignee will be properly listed with exact (~~(mailing)~~) physical origin and destination addresses clearly shown. Such (~~(hogs)~~) swine must not come in contact with (~~(hogs)~~) swine from states of unlike status prior to or during shipment, and must have been transported in one continuous movement.

(c) Swine brucellosis. All interstate swine over six months of age entering public livestock markets to be sold for breeding purposes must have been tested and found negative to swine brucellosis within thirty days prior to entry or originate in a validated swine brucellosis free herd or state. Swine not in compliance with this requirement will not be sold as breeder swine. (~~(Swine originating from a herd where brucellosis is known to exist will not be sold as breeder swine.)~~)

WSR 10-07-158

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed March 24, 2010, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-21-042.

Title of Rule and Other Identifying Information: Chapter 246-145 WAC, Body art, body piercing, electrology and tattooing standards for sterilization procedures and infection control.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road N.E., Olympia, WA 98501, on May 3, 2010, at 1:30 p.m.

Date of Intended Adoption: May 6, 2010.

Submit Written Comments to: Patti Rathbun, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 586-7424, by April 26, 2010.

Assistance for Persons with Disabilities: Contact Tami Thompson by April 26, 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 proposed rules is to establish sterilization and infection control requirements for body art and body piercing in addition to tattoo artists and electrologists. Sterilization and infection control requirements have been in place for tattooing and electrology since 2002. Sterilization and infection control requirements for body art, body piercing and tattooing will be enforced by the department of licensing through its licensing program.

Reasons Supporting Proposal: SSB 5391 which passed in 2009 amended RCW 70.54.340 to require the department of health to establish sterilization and infection control requirements for body artists and body piercers in addition to electrologists and tattoo artists.

Statutory Authority for Adoption: RCW 70.54.340.

Statute Being Implemented: RCW 70.54.340.

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 requirements established by these rules will be enforced by the department of licensing through the licensing program.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Patti Rathbun, 101 Israel Road S.E., Tumwater, WA 98501,

(360) 236-4067; Implementation and Enforcement: Ben Rogers, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-1380.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Patti Rathbun, P.O. Box 47890, Olympia, WA 98504-7890, phone (360) 236-4067, fax (360) [(360)] 586-7424, e-mail patti.rathbun@doh.wa.gov. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

March 24, 2010
Mary C. Selecky
Secretary

Chapter 246-145 WAC

BODY ART, BODY PIERCING, ELECTROLOGY AND TATTOOING STANDARDS FOR STERILIZATION PROCEDURES AND INFECTION CONTROL

AMENDATORY SECTION (Amending WSR 02-11-109, filed 5/20/02, effective 6/20/02)

WAC 246-145-001 Purpose and scope. These rules establish standard universal precautions for preventing the spread of diseases by using sterilization procedures and infection control in the ~~((commercial))~~ practices of electrology, body art, body piercing, and tattooing.

AMENDATORY SECTION (Amending WSR 02-11-109, filed 5/20/02, effective 6/20/02)

WAC 246-145-010 Definitions. For the purpose of these rules, the following words and phrases have the following meanings unless the context clearly indicates otherwise.

(1) "Antiseptic" means an agent that destroys disease causing microorganisms on human skin or mucosa.

(2) "Aseptic technique" means a procedure that prevents contamination of any object or person.

(3) "Bloodborne pathogens" means microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, Hepatitis B virus (HBV), Hepatitis C virus (HBC) and human immunodeficiency virus (HIV).

(4) "Body art" means the practice of invasive cosmetic adornment including the use of branding and scarification. Body art also includes the intentional production of scars upon the body. Body art does not include any health-related procedures performed by licensed health care practitioners under their scope of practice.

(5) "Body piercing" means the process of penetrating the skin or mucous membrane to insert an object, including jew-

elry, for cosmetic purposes. Body piercing also includes any scar tissue resulting from or relating to the piercing. Body piercing does not include the use of stud and clasp piercing systems to pierce the earlobe in accordance with the manufacturer's directions and applicable FDA requirements. Body piercing does not include any health-related procedures performed by licensed health care practitioners under their scope of practice, nor does anything in this act authorize a person registered to engage in the business of body piercing to implant or embed foreign objects into the human body or otherwise engage in the practice of medicine.

(6) "Branding" means inducing a pattern of scar tissue by use of a heated material (usually metal) to the skin creating a serious burn which eventually results in a scar.

(7) "Department" means the department of licensing.

(8) "Disinfectant" means a substance or solution, registered with the United States Environmental Protection Agency (EPA) that kills or inactivates viruses and pathogenic microorganisms, but not necessarily their spores.

(9) "Disinfect" or "disinfection" means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

(10) "Electrologist" means a person who practices the business of electrology for a fee.

~~((2))~~ (11) "Electrology" means the process of permanently removing hair by using solid needle or probe electrode epilation, including:

(a) Thermolysis, being of shortwave, high frequency type;

(b) Electrolysis, being a galvanic type; or

(c) A combination of both which is accomplished by a superimposed or sequential blend.

~~((3))~~ (12) "FDA" means United States Food and Drug Administration.

(13) "Gloves" means single-use disposable medical grade gloves that are FDA approved.

~~((4))~~ (14) "Sterilization" means a process that destroys all forms of microbial life, including highly resistant bacterial spores.

~~((5))~~ (15) "Tattoo artist" means a person who practices the business of tattooing for a fee.

~~((6))~~ (16) "Hand sanitizer" means an alcohol-based sanitizer with a concentration of 60% to 95% ethanol or isopropanol.

(17) "Jewelry" means any personal ornament inserted into a newly pierced area, which must be made of surgical implant-grade stainless steel, solid 14k or 18k white or yellow gold, niobium, titanium, or platinum, or a dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.

(18) "Licensee" means a shop, business or individual licensed to practice body art, body piercing or tattooing.

(19) "Procedure(s)" means body art, body piercing, and tattooing procedures.

(20) "Sanitize" means a procedure that reduces the level of microbial contamination so that the item or surface is considered safe.

(21) "Scarification" means altering skin texture by cutting the skin and controlling the body's healing process in

order to produce wounds, which result in permanently raised wheals or bumps known as keloids.

(20) "Sharps" means any objects (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, presterilized, single-use needles, scalpel blades, and razor blades.

(21) "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal and that is labeled with the international biohazard symbol.

(22) "Single-use" means products, instruments or items that are intended for one-time use and are disposed of after each use including, but not limited to, cotton swabs or balls, tissue or paper products, paper or plastic cups, gauze and sanitary coverings, razors, needles, scalpel blades, stencils, ink cups and protective gloves.

(23) "Sterilization" means a process that destroys all forms of microbial life, including highly resistant bacterial spores.

(24) "Sterilizer" means an apparatus that is registered and listed with the FDA for destroying all forms of microbial life, including highly resistant bacterial spores.

(25) "Tattooing" means ~~((the))~~ to pierce or puncture the human skin with a needle or other instrument for the purpose of implanting an indelible mark, ~~((figure, or decorative design introduced by insertion of nontoxic dyes))~~ or pigment~~((s))~~ into ~~((or under the subcutaneous portion of))~~ the skin ~~((upon the body of a live human being for cosmetic or figurative purposes)).~~

(26) "Universal precautions" is an approach to infection control as defined by the Center for Disease Control (CDC). According to the concept of universal precautions, all human blood and certain body fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), Hepatitis B virus (HBV) and other bloodborne pathogens.

NEW SECTION

WAC 246-145-015 Restrictions. (1) Electrologists, and individuals licensed to perform body piercing, body art and tattooing, shall not perform procedures:

- (a) While under the influence of alcohol or drugs;
- (b) If they have weeping dermatitis or draining sores;
- (c) On a client who appears to be under the influence of alcohol or drugs; or
- (d) On a client who has evident skin lesions or skin infections in the area of the procedure, including sunburn.

(2) Animals are not permitted in body art, body piercing and tattooing procedure areas, except for guide and service animals accompanying persons with disabilities. Aquariums are allowed in a waiting room and nonprocedural area. No animals are allowed in the sterilization area.

AMENDATORY SECTION (Amending WSR 02-11-109, filed 5/20/02, effective 6/20/02)

WAC 246-145-020 Standard universal precautions for preventing the spread of disease in electrology. ~~((+ Electrologists—))~~ The following universal precautions must be used by electrologists in the care of all clients.

~~((a))~~ (1) Wash hands with soap and water immediately before and after each client contact;

~~((b))~~ (2) Wash hands and other skin surfaces immediately and thoroughly if contaminated with blood or other body fluids;

~~((c))~~ (3) Wash hands immediately before ~~((fresh, unused))~~ single-use disposable gloves are put on and after gloves are removed;

~~((d))~~ (4) Clean the client's skin by applying an antiseptic or antibacterial solution prior to and following treatment;

~~((e))~~ (5) Wear ~~((fresh, unused))~~ new gloves with each client to prevent skin and mucous membrane exposure contact with blood or other body fluids of each client;

~~((f))~~ (6) Wear gloves for touching blood and body fluids, mucous membranes, or nonintact skin of all clients, and for handling items or surfaces soiled with blood or body fluids;

~~((g))~~ (7) Change gloves after contact with each client;

~~((h))~~ (8) Immediately remove gloves that are torn or have small pinholes, wash hands and put on ~~((fresh, unused))~~ new gloves;

~~((i))~~ (9) Take precautions to prevent injuries caused by needles and other sharp instruments or devices during procedures; when cleaning used instruments; during disposal of used needles; and when handling sharp instruments after procedures;

~~((j))~~ (10) Prevent needlestick injuries by not recapping needles ~~((, not bending))~~ or breaking needles by hand and by not otherwise manipulating contaminated needles by hand;

~~((k))~~ (11) Dispose of used disposable needles and other sharp items in puncture-resistant containers;

~~((l))~~ (12) Inspect hands for small cuts, sores and abrasions; if present, use a Seal-skin product or bandage. If the electrologist has weeping dermatitis or draining sores, the electrologist should avoid contact with clients and equipment until the weeping dermatitis or draining sores are healed;

~~((m))~~ (13) Regularly clean and disinfect countertops; regularly clean walls when visibly soiled; regularly vacuum and clean carpets and floors; and

~~((n))~~ (14) Clean and disinfect other frequently touched surfaces including, but not limited to, equipment and lamps between each client.

~~((2) Tattoo artists—The following universal precautions must be used by tattoo artists in the care of all clients.~~

~~((a) Wash hands with soap and water immediately before and after each client contact;~~

~~((b) Wash hands and other skin surfaces immediately and thoroughly if contaminated with blood or other body fluids;~~

~~((c) Wash hands immediately before fresh, unused gloves are put on and after gloves are removed;~~

~~((d) Clean the client's skin by applying an antiseptic or antibacterial solution prior to and following treatment;~~

~~((e) Wear fresh, unused gloves with each client to prevent skin and mucous membrane exposure contact with blood or other body fluids of each client;~~

~~((f) Wear gloves for touching blood and body fluids, mucous membranes, or nonintact skin of all clients, and for handling items or surfaces soiled with blood or body fluids;~~

~~((g) Change gloves after contact with each client;~~

~~(h) Immediately remove gloves that are torn or have small pinholes, wash hands and put on fresh, unused gloves;~~

~~(i) Take precautions to prevent injuries caused by needles and other sharp instruments or devices during procedures, when cleaning used instruments, during disposal of used needles, and when handling sharp instruments after procedures;~~

~~(j) Prevent needlestick injuries by not recapping needles, not bending or breaking needles by hand and by not otherwise manipulating by hand;~~

~~(k) Dispose of used disposable needles and other sharp items in puncture-resistant containers;~~

~~(l) Inspect hands for small cuts, sores, and abrasions; if present, use a Seal-skin product or bandage. If a tattoo artist has weeping dermatitis or draining sores, the tattoo artist should avoid contact with clients and equipment until the weeping dermatitis or draining sores are healed;~~

~~(m) Regularly clean and disinfect countertops; regularly clean walls when visibly soiled; and regularly vacuum and clean carpets and floors;~~

~~(n) Clean and disinfect other frequently touched surfaces such as, clip cords, pigment holders, pigment bottles, pens, equipment and lamps between each client; and~~

~~(o) Take other measures to prevent cross-contamination as included in national standards per RCW 70.54.340.))~~

AMENDATORY SECTION (Amending WSR 02-11-109, filed 5/20/02, effective 6/20/02)

WAC 246-145-030 Sterile procedures in electrology.

~~((1) Electrologist --)~~ To ensure that clients are not exposed to disease through needles or other instruments, electrologists must:

~~((a)) (1) Use single-use, presterilized disposable needles on one client and then dispose of the needle immediately in a puncture-resistant container;~~

~~((b)) (2) Not use reusable needles;~~

~~((c)) (3) Use single-use sharp items on only one client and dispose of the items immediately in a puncture-resistant container;~~

~~((d)) (4) Only reuse cleaned and sterilized sharp items and instruments that are intended for multiple use;~~

~~((e)) (5) Thoroughly clean and sterilize reusable sharp items and instruments between clients;~~

~~((f)) (6) Accumulate reusable sharp items and instruments in a holding container by submersion in a solution of a protein-dissolving enzyme detergent and water;~~

~~((g)) (7) Sterilize reusable items in a steam autoclave or dry-heat sterilizer, which is used, cleaned and maintained according to the manufacturer's instructions;~~

~~((h)) (8) Resterilize a reusable sterile instrument before using it on a client, if it is contaminated by dropping, by touching an unsterile surface, by a torn package, by the package being punctured, damaged, wet or by some other means;~~

~~((i)) (9) Immediately dispose of a single-use item in a puncture-resistant container, if it is contaminated by dropping, by touching an unsterile surface, by a torn package, by the package being punctured, damaged, wet or by some other means;~~

~~((j)) (10) Immediately dispose of an instrument in a puncture-resistant container if the expiration date has passed; and~~

~~((k)) (11) Monitor sterilizers to determine that all conditions of sterilization are met. This includes:~~

~~((i)) (a) Assuring that sterilizers have a thermometer and timer to indicate whether adequate heat has been applied to packaged equipment;~~

~~((ii)) (b) Using or checking chemical indicators on each package to assure the items have been exposed to the sterilization process;~~

~~((iii)) (c) Sterilizers must be tested by biological spore tests according to the manufacturer's instructions. In the event of a positive biological spore test, the electrologist must take immediate action to ensure all conditions of sterilization are met; and~~

~~((iv)) (d) Documentation of monitoring must be maintained either in the form of a log reflecting dates and person(s) conducting the testing or copies of reports from an independent testing entity. The documentation must be maintained at least three years.~~

~~((2) Tattoo artists -- To ensure that clients are not exposed to disease through needles or other instruments, tattoo artists must:~~

~~(a) Use single-use, presterilized disposable needles on one client and then dispose of the needle immediately in a puncture-resistant container;~~

~~(b) Not use reusable needles;~~

~~(c) Use single-use sharp items on only one client and dispose of the items immediately in a puncture-resistant container;~~

~~(d) Only reuse cleaned and sterilized sharp items and instruments that are intended for multiple use;~~

~~(e) Thoroughly clean and sterilize reusable sharp items and instruments between clients;~~

~~(f) Accumulate reusable sharp items and instruments in a holding container by submersion in a solution of a protein-dissolving enzyme detergent and water;~~

~~(g) Sterilize reusable items in a steam autoclave or dry-heat sterilizer, which is used, cleaned and maintained according to the manufacturer's instructions;~~

~~(h) Resterilize a reusable sterile instrument before using it on a client, if it is contaminated by dropping, by touching an unsterile surface, by a torn package, by the package being punctured, damaged, wet or by some other means;~~

~~(i) Immediately dispose of a single-use item in a puncture-resistant container, if it is contaminated by dropping, by touching an unsterile surface, by a torn package, by the package being punctured, damaged, wet or by some other means;~~

~~(j) Immediately dispose of an instrument in a puncture-resistant container if the expiration date has passed; and~~

~~(k) Monitor sterilizers to determine that all conditions of sterilization are met. This includes:~~

~~(i) Assuring that sterilizers have a thermometer and timer to indicate whether adequate heat has been applied to packaged equipment;~~

~~(ii) Using or checking chemical indicators on each package to assure the items have been exposed to the sterilization process;~~

~~(iii) Sterilizers must be tested by biological spore tests according to the manufacturer's instructions. In the event of a positive biological spore test, the tattoo artist must take immediate action to ensure all conditions of sterilization are met; and~~

~~(iv) Documentation of monitoring must be maintained either in the form of a log reflecting dates and person(s) conducting the testing or copies of reports from an independent testing entity. The documentation must be maintained at least three years.))~~

AMENDATORY SECTION (Amending WSR 02-11-109, filed 5/20/02, effective 6/20/02)

WAC 246-145-040 Penalty for not complying with rules. Any electrologist (~~or tattoo artist~~) out of compliance with the rules in this chapter will be guilty of a misdemeanor.

NEW SECTION

WAC 246-145-050 Standard universal precautions for preventing the spread of disease in body art, body piercing, and tattooing. The following universal precautions must be used by persons licensed to practice body art, body piercing, and tattooing:

(1) Use sterile instruments and aseptic techniques at all times during a procedure.

(2) Use only presterilized single-use disposable needles for body piercing and tattooing on one client and then dispose of the needles immediately in a sharps container.

(3) Wear a clean outer garment and prevent hair from coming into contact with the client. All necklaces, bracelets, or other personal items must be removed or covered by the outer garment or gloves to prevent the item coming in contact with the client.

(4) Wash hands and wrists thoroughly in warm running water with soap for at least twenty seconds, scrub around and under fingernails, rinse completely and dry with a clean single-use towel or hand dryer. Handwashing must be done immediately before and after performing a procedure.

(5) Inspect hands for small cuts, sores and abrasions. If present, use a Seal-skin product or bandage.

(6) Licensees with weeping dermatitis or draining sores must avoid contact with clients and equipment until the weeping dermatitis or draining sores are healed.

(7) Wear gloves during procedures and while assembling instruments. Licensees must wash hands immediately before single-use disposable gloves are put on and after gloves are removed.

(8) Wear gloves to prepare the client's skin (washing and shaving) and then discard the gloves after completing the preparation. A new pair of gloves must be put on before continuing the procedure.

(9) Remove gloves immediately, wash hands or use a hand sanitizer, and put on new gloves, when gloved hands break aseptic technique (e.g., touching eyes, nose or mouth, answering the phone, opening a door, or retrieving an item from the floor) during a procedure, or when gloves are torn or have small pinholes.

(10) If a licensee sustains a needle stick, they shall resume the procedure with clean and sterile equipment after rewashing hands and putting on new gloves.

(11) Change gloves after contact with each client.

(12) Clean and disinfect chairs, tables, work spaces, counters, and general use equipment in the procedure area between each client. Follow manufacturers' instructions for proper use of disinfecting (or detergent) products.

(13) Use appropriate barrier films to cover all items gloved hands would normally come into contact with during a procedure. These items include, but are not limited to, machine heads, clip cords, spray bottles, seat adjustment controls, power control dials or buttons and work lamps.

(14) Use single-use stencils. Petroleum jellies, soaps and other products used in the application of stencils must be dispensed and applied using aseptic technique and in a manner to prevent contamination of the original container and its contents. The applicator must be single-use.

(15) Use only single-use pigment or ink containers for each client. Pigments and ink shall be dispensed from containers in a manner to prevent contamination to the unused portion. Individual containers of ink or pigment must be discarded after use.

(16) Use single-use razors during procedures and dispose of them in a sharps container.

(17) In the event of blood flow, use products that are single-use to control or check the blood flow or absorb the blood. Used products must be disposed of immediately in appropriate covered container. The use of styptic pens or alum solids to control blood flow is prohibited.

(18) Inks or pigments must not be banned or restricted by the FDA and must not be mixed with improper ingredients. Information indicating the source of all inks and pigments shall be available to the department upon request.

(19) Use single-use marking instruments or instruments sanitized by design, such as alcohol based ink pens, on intact skin that has been treated with an antiseptic solution. Any marking instrument that comes in contact with mucous membranes or broken skin shall be single-use.

(20) All jewelry, as defined in WAC 246-145-010, must be obtained in presterilized packaging from the manufacturer or be sterilized on-site prior to the procedure.

(21) Cleanse the client's skin before and after a procedure by washing the skin with a FDA registered antiseptic solution applied with a clean, single-use product. A sanitary covering must be placed over the procedure site when appropriate.

(22) Wearing new gloves open each package containing a sterile instrument in the presence of the client and handle each instrument in a manner to prevent contamination of the instrument.

(23) Prevent needlestick injuries by not recapping needles or breaking needles by hand and by not otherwise manipulating contaminated needles by hand.

(24) Disposal of sharps containers must comply with the local solid waste program through the licensee's local county health department.

NEW SECTION

WAC 246-145-060 Sterile procedures in body art, body piercing and tattooing. (1) To prevent clients from being exposed to diseases through needles or other instruments, licensees must:

(a) Use single-use, presterilized disposable needles on one client and then dispose of the needle immediately in a sharps container. Reusable needles must not be used.

(b) Use single-use sharps on only one client and dispose of the items immediately in a sharps container.

(c) Reuse only cleaned and sterilized instruments that are intended for multiple use between clients. A distinct, separate area must be used for cleaning instruments, wrapping/packaging the items and for handling and storing sterilized instruments. Prior to sterilizing and as soon as practical after use, instruments must be brushed or swabbed to remove foreign material or debris, rinsed, then either:

(i) Submersed and soaked in a protein dissolving detergent or enzyme cleaner; or

(ii) Immersed in detergent and water in an ultrasonic cleaning unit used according to the manufacturer's instructions; and

(iii) Rinsed and dried prior to packaging for sterilization. Ensure that the rinse step is adequate for removing cleaning residues to levels that will not interfere with the subsequent sterilization process.

(iv) Inspect instrument surface for breaks in integrity that would impair either cleaning or sterilization. Ensure that detergents or enzymatic cleaners are compatible with the metals and other materials used in the instruments.

(d) Seal cleaned instruments in bags/packing materials that are compatible with the sterilization process and are sufficiently strong to resist puncture and tears and are cleared by the FDA. Label sterilized instruments with a load number that indicates the sterilizer used, the cycle or load number, and the date of sterilization.

(e) Sterilize instruments using a monitored sterilizer. Follow the sterilization times, temperatures and other parameters recommended by the manufacturers of the instruments, sterilizer and packaging used.

(f) Arrange all items to be sterilized so all surfaces will be directly exposed to the sterilizing agent, which means loading procedures must allow for free circulation of steam (or another sterilant) around each item.

(g) Use mechanical, chemical and biologic monitors to ensure the effectiveness of the sterilization process.

(i) Monitor each load with mechanical (e.g., time, temperature, pressure) and chemical (internal and external) indicators. If the internal chemical indicator is visible, an external indicator is not needed.

(ii) At least monthly use biologic indicators to test effectiveness of sterilizer with an FDA cleared commercial preparation of spores intended specifically for the type and cycle parameters of the sterilizer.

(h) For each sterilization cycle, record the type of sterilizer and cycle used; the load identification number; the load contents; the exposure parameters (e.g., time and temperature); the operator's name or initials, and the results of the mechanical, chemical and biological monitoring. Records

must be retained for three years and must be provided to the department upon request.

(i) Perform preventive maintenance of sterilizer as directed by the manufacturer's instructions.

(j) Handle sterilized instruments using aseptic technique to prevent contamination. Store in secure, dry, clean cabinets or other secure covered containers to prevent contamination and packaging being compromised (e.g., wet, punctured, torn).

(2) If a licensee only uses sterile single-use, disposable instruments, sharps and products, and uses sterile supplies, a sterilizer is not required.

WSR 10-07-160**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services)

[Filed March 24, 2010, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-047.

Title of Rule and Other Identifying Information: The division of developmental disabilities (DDD) is amending WAC 388-831-0010 and 388-831-0030 to include individuals who have a history of violent behaviors which demonstrate the likelihood to commit a violent act. This amendment reflects the legislation contained in RCW 71A.12.210.

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 27, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than April 28, 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 DSHSR-PAURulesCoordinator@dshs.wa.gov, fax(360) 664-6185, by 5 p.m. on April 27, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by April 6, 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: This rule is necessary for the preservation of public health, safety or general welfare by expanding the population who have community protection issues and may be eligible for services.

Reasons Supporting Proposal: This rule is necessary for the preservation of public safety as it affects individuals who have a history of violent behaviors. This group of individuals was inadvertently omitted from the permanent rule filed previously. This amendment reflects legislation contained in RCW 71A.12.210.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.210.

Statute Being Implemented: RCW 71A.12.210.

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: Meredith Kelly, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3524; Implementation: Shirley Everard, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3444; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. An agency is not required to prepare a separate small business economic impact statement (SBEIS) under RCW 19.85.040 if it prepared an analysis under RCW 34.05.328 that meets the requirements of an SBEIS, and if the agency reduced the costs imposed by the rule on small business to the extent required by RCW 19.85.030(3). The portion of the analysis that meets the requirements of RCW 19.85.040 shall be filed with the code reviser and provided to any person requesting it in lieu of a separate SBEIS.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(ii), the following types of rules do not require a cost-benefit analysis: (ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

March 18, 2010

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending 08-20-118, filed 9/30/08, effective 10/31/08)

WAC 388-831-0010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

"Certified community protection program residential services" means access to twenty-four hour supervision, instruction, and support services as identified in the person's individual support plan.

"Community protection program" See WAC 388-831-0020.

"Constitutes a risk to others" means a determination of a person's risk and/or dangerousness based upon a thorough assessment by a qualified professional. Actuarial risk assessment instruments should be used to supplement clinical judgment whenever appropriate.

"Department" means the department of social and health services.

"Developmental disability" means that condition defined in WAC 388-823-0040 and RCW 71A.10.020(3).

"Disclosure" means providing copies of professional assessments, incident reports, legal documents, and other

information pertaining to community protection issues to ensure the provider has all relevant information. Polygraph and plethysmograph reports are excluded from disclosure.

"Division" means the division of developmental disabilities (DDD).

"Managed successfully" means that a person supported by a community protection program does not engage in the behavior identified in WAC 388-831-0030 and RCW 71A.12.210.

"Opportunistic behavior" means an act committed on impulse, which is not premeditated. In determining whether an act is opportunistic, the original motive or intent of the offense or crime will be considered.

"Predatory" means acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or casual acquaintances with whom no substantial personal relationship exists. Predatory behavior may be characterized by planning and/or rehearsing the act, stalking, and/or grooming the victim.

"Program participant" means a person who has agreed to and is receiving services and supports in the community protection program.

"Qualified professional" means a licensed psychologist, psychiatrist, or a certified or affiliate sex offender treatment provider with at least three years prior experience working with individuals with developmental disabilities, and:

- If the person being assessed has demonstrated sexually aggressive or sexually violent behavior, that person must be assessed by a certified sex offender treatment provider, or affiliate sex offender treatment provider working under the supervision of a certified sex offender treatment provider; or
- If the person being assessed has demonstrated violent, dangerous, or aggressive behavior, that person must be assessed by a licensed psychologist or psychiatrist who has received specialized training in the treatment of or has at least three years prior experience treating violent or aggressive behavior.

"Restrictive procedures" or "Restrictions" means procedures that restrict a client's freedom of movement, restrict access to client property, prevent a client from doing something the client wants to do, require a client to do something the client does not want to do, or remove something the client owns or has earned.

"Risk assessment" means the written opinion of a qualified professional stating, at a minimum:

- Whether a person meets the criteria in WAC 388-831-0030 and RCW 71A.12.210; and
- What restrictions are necessary to keep people safe.

"Service provider" means a person or agency contracted with the department or a sub-contractor who delivers services and supports to a community protection program participant.

"Specialized environment" means a place where the program participant has agreed to supervision in a safe, structured manner specifying rules, requirements, restrictions, and expectations for personal responsibility in order to maximize community safety.

"Treatment team" means the program participant and the group of people responsible for the development, imple-

mentation, and monitoring of the person's individual supports and services. This group may include, but is not limited to, the case resource manager, therapist, residential provider, employment/day program provider, and the person's legal representative and/or family, provided the person agrees to the family member's involvement.

("Violent offense" means any felony defined as a violent offense in RCW 9.94A.030.)

"Violent" or "violence" means acts that meet the criteria for crimes listed in RCW 9.94A.030(32), 9.94A.030(45), 9.94A.030(46), 9.94A.030(54), or 9A.48.040, whether or not the person who committed the acts has been charged with or convicted of the crime.

"Waiver" means the community-based program funded under section 1915(c) of Title XIX of the federal social security act and chapter 388-845 WAC.

AMENDATORY SECTION (Amending WSR 08-20-118, filed 9/30/08, effective 10/31/08)

WAC 388-831-0030 Who are individuals with community protection issues? You are considered an individual with community protection issues if:

(1) You have been determined to have a developmental disability as defined in WAC 388-823-0040 and RCW 71A.10.020(3); and

(2) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been charged with or convicted of a crime of sexual violence as defined in chapter 9A.44 or 71.09 RCW;

(b) You have been charged with or convicted of a crime involving sexual acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been charged with or convicted of one or more violent crimes as defined in RCW 9.94A.030(45);

(d) You have not been charged with or convicted of a crime identified in (2)(a), (b), or (c) above, but you have a history of violent, stalking, sexually violent, predatory and/or opportunistic behavior which a qualified professional has determined demonstrates a likelihood to commit a violent, sexually violent and/or predatory act (~~based on current behaviors that may escalate to violence, as determined by a qualified professional~~); and

(3) You constitute a current risk to others as determined by a qualified professional.

(4) Charges or crimes that result in acquittal are excluded.

WSR 10-07-163

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 09-09—Filed March 24, 2010, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-076.

Title of Rule and Other Identifying Information: Chapter 173-50 WAC, Accreditation of environmental laboratories, the amendments will change the fee structure of ecology's environmental laboratory accreditation program and some business practices to reflect a cut in the program budget. There will also be housekeeping amendments and clarification of the grounds for revoking or suspending accreditation.

Hearing Location(s): Lacey Community Center, 6729 Pacific Avenue, Lacey, on April 27, 2010, at 1:00 p.m.; and at the Moses Lake Fire Department, 701 East Third Avenue, Moses Lake, on April 29, 2010, at 10:00 a.m.

Date of Intended Adoption: August 6, 2010.

Submit Written Comments to: Stewart M. Lombard, P.O. Box 488, Manchester, WA 98353-0488, e-mail stew.lombard@ecy.wa.gov, fax (360) 895-6180, by May 7, 2010.

Assistance for Persons with Disabilities: Contact Joan LeTourneau, (360) 407-6764, by April 20, 2010. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Our current fee structure does not cover the cost of the state environmental laboratory accreditation program. In section 301 of ESHB 1244, the 2009 legislature authorized ecology to increase fees in the 2009-2011 biennium as necessary to meet the actual costs of conducting business. We have eliminated one chemist position and need to raise fees by about forty-five percent to fully fund the remaining program. With the loss of one of our six chemists, we will also need to change some business practices specified in the rule. Specifically, ecology will reduce the frequency of on-site inspections at nondrinking water laboratories, but increase proficiency testing requirements for some of these labs. Without these changes, we cannot cover the cost of the program and will not meet the requirements of the current rule. This proposal will result in an increase in the annual fees we charge environmental laboratories for the accreditation necessary for them to report results to the department of ecology, department of health (DOH), and other entities which require the use of accredited laboratories. The proposal also relaxes the requirement for on-site inspections of nondrinking water laboratories, but increases proficiency testing requirements for some of these labs to help them remain in compliance with the rule.

Reasons Supporting Proposal: 1. Legislative authorization to increase fees to meet the costs of conducting business.

2. Budget reduction in existing program mandates changes to current business practices, including reduced on-site inspection frequencies and increased proficiency testing requirements.

3. Need to clarify rule enforcement provisions and also the grounds for revoking or suspending accreditation.

4. Need to eliminate reciprocity agreements with other states, and also eliminate exemption provisions for certain wastewater discharge laboratories.

5. Housekeeping amendments are needed to bring the rule up-to-date and clarify the definition of some rule language.

Statutory Authority for Adoption: RCW 43.21A.230 allows ecology to accredit environmental laboratories and to assess fees to cover the department's costs. DOH has delegated to ecology in a memorandum of understanding its RCW 43.20.050 authority to certify drinking water laboratories. In section 301 of ESHB 1244, the 2009 legislature gave ecology authority to raise fees for lab accreditation.

Statute Being Implemented: RCW 43.21A.230 allows ecology to accredit environmental laboratories and to assess fees to cover the department's costs. DOH has delegated to ecology in a memorandum of understanding its RCW 43.20.050 authority to certify drinking water laboratories. In Section 301 of ESHB 1244, the 2009 legislature gave ecology authority to raise fees for lab accreditation.

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

Name of Proponent: Washington department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Stewart M. Lombard, 2350 Colchester Drive, P.O. Box 488, Manchester, WA 98353-0488, (360) 895-6148.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Note: Due to size limitations relating to the filing of documents with the code reviser, the small business economic impact statement (SBEIS) does not contain the appendices that further explain ecology's analysis. Additionally, it does not contain the raw data used in this analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request.

Executive Summary: Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined that the amendments to chapter 173-50 WAC have a disproportionate impact on small business. Therefore, we must include cost-minimizing features in the rule where it is legal and feasible to do so.

Background:

Use of Accredited Labs: Ecology's Executive Policy 1-22 requires that all environmental data is generated by laboratories capable of providing accurate and legally defensible data, shown by their successful participation in ecology's lab accreditation program. Applicable environmental data include, but are not limited to, results from analysis of water, sediment, sludge, air, soil, plant and animal tissue, and hazardous waste. Applicable analyses include chemical, physical, biological, microbiological, radiological, or other scientific determinations which provide recorded qualitative and/or quantitative results.¹

In addition, use of accredited labs is required explicitly by rules pertaining to:

Water supplies.

MTCA (Model Toxics Control Act) hazardous substance analyses.

NPDES (national pollutant discharge elimination system) and other water and stormwater discharge permit programs.

Building codes.

Solid waste landfills.

Solid waste handling standards.

Solid fuel burning devices.

Background of Proposed Rule Amendments: The existing lab accreditation rule (chapter 173-50 WAC) and the included fee structure supporting the environmental lab accreditation program (ELAP) was last updated in 2002. Ecology has been collecting accreditation fees based on that structure since that time, generating revenues that increasingly fail to reflect or cover the costs of administering the lab accreditation program. Over the last three biennia (2004 through 2009), the deficit has grown at an average rate of twenty percent per biennium. The percentage of costs in excess of revenue has grown at an average of 9.5 percentage points each biennium.²

In 2009, as part of fiscal appropriations for the coming biennium, the legislature authorized fee increases to meet costs: The department is authorized to increase the following fees in the 2009-2011 biennium as necessary to meet the actual costs of conducting business and the appropriation levels in this section: Environmental lab accreditation, dam safety and inspection, biosolids permitting, air emissions new source review, and manufacturer registration and renewal.³

Ecology also reduced program costs to meet the appropriation levels set by the legislature's budget. This led to the elimination of one of seven employees in the ELAP program. With one less person to do the work, ecology is not able to audit and accredit as many labs as in the past.

With these lower projected costs, and other proposed amendments to the proficiency testing and auditing sections of the rule, ecology then developed the proposed fee structure.

Existing Lab Accreditation Process⁴: Under the existing rule, to become accredited, a lab must:

Submit a complete application and pay the appropriate fee.

Submit an acceptable quality assurance manual.

Successfully analyze required proficiency testing samples.

Pass an on-site assessment by ecology or another recognized assessor entity.

To retain accreditation, a participating lab must: Submit results of performance testing sample analyses.

Make required improvements in its quality assurance program.

Report significant changes in facility, equipment, personnel, or quality assurance/control procedures.

Submit a renewal application and pay annual fees.

Submit to required on-site assessments and implement the required recommendations.

Application for Accreditation: Ecology's lab accreditation application process requires labs to provide information on the resources the lab may be use [using] to conduct the tests for which accreditation is requested. This includes: General information about the lab.

Participation in proficiency testing studies.

Discussion of the matrices and testing methods for which a lab is requesting accreditation.

This may also include national environmental laboratory accreditation program (NELAP) accreditation, or accreditation in another state with which ecology has a reciprocity agreement, to support third-party accreditation.

Quality Assurance Manual: The quality assurance (QA) manual identifies policies and procedures designed to achieve reliable results at a lab, and to support external confidence in those results. This includes:

The organizational structure of the lab and the personnel responsible for quality assurance.

A policy with respect to objectives for data quality, including qualitative and quantitative goals, and how they are established.

Policies regarding sampling procedures, as well as the receipt, logging, storage, handling, and acceptance or rejection of samples.

Analytical methods used for testing.

Calibration and quality control (QC) procedures.

Procedures for monitoring performance.

Procedures for data recording, reduction, validation, entry, and reporting.

Timing and responsibility for system assessments and proficiency testing.

Requirements for QA/QC reporting to management, and the frequency of those reports.

Proficiency Testing: Labs that apply for lab accreditation by ecology must submit one set of proficiency testing (PT) results, specific to the parameters for which the lab is seeking accreditation. Ecology has approved a set of providers of PT samples that labs may use for this purpose.⁵

Labs seeking to continue accreditation must submit two sets of chemistry PT study results each year (semiannually), and one set of microbiology PT study results for drinking water accreditation.

On-Site Assessments: The on-site assessment involves a visit to the lab by ecology's lab accreditation unit. This is not required for some labs with third-party accreditation. Assessors examine documentation and other evidence demonstrating that the lab can produce accurate and defensible data. Assessors verify information provided in the lab's submitted application and quality assurance manual.

The existing lab accreditation rule requires that on-site assessments may be no longer than three years apart, unless a cause for delay is documented. For documented causes, on-site assessments may be four years apart, except for labs accredited to analyze drinking water, and NELAP-accredited labs.⁶

Existing Lab Accreditation Fees: The existing lab accreditation fee structure is summarized in WAC 173-50-190. It is broken down by both the matrix and test type. Fees owed, per parameter for which a lab applies to be accredited, range between \$60 and \$345. Similar tests for different matrices carry different fees in some cases - for example, the general chemistry and trace metals tests are \$5 more expensive for nonpotable water than for potable. Table 1 outlines the existing fee structure, including maximum fees per accreditation category.

Table 1: Existing Lab Accreditation Fee Schedule (WAC 173-51-190)

Matrix	Category	Fee/Parameter	Maximum Fee
Nonpotable Water	Chemistry I (General)	\$65	\$1,150
	Chemistry II (Trace Minerals)	\$65	\$975
	Organics I (GC/HPLC)	\$115	\$975
	Organics II (GC/MS)	\$345	\$1,035
	Radioactivity	\$145	\$1,380
	Microbiology	\$175	\$520
	Bioassay/ Toxicity	\$230	\$1,435
	Immunoassay	\$65	\$390
Drinking Water	Physical	\$65	\$260
	Chemistry I	\$60	\$305
	Chemistry II	\$60	\$720
	Organics I	\$155	\$615
	Organics II	\$155	\$155
Solid and Chemical Materials	Microbiology	\$155	\$460
	Chemistry I	\$65	\$1,150
	Chemistry II	\$65	\$975
	Organics I	\$115	\$975
	Organics II	\$345	\$1,035
	Radioactivity	\$145	\$1,380
	Microbiology	\$175	\$520
	Immunoassay	\$65	\$390
Air and Emissions	Physical	\$65	\$260
	Chemistry I	\$65	\$1,150
	Chemistry II	\$65	\$97 [\$975]
	Organics I	\$115	\$975
	Organics II	\$345	\$1,035

Regulatory Baseline: The baseline for all analyses of the proposed rule amendments is the regulatory environment in the absence of any changes. Under the current regulatory framework, the process and fees for the accreditation of environmental laboratories would remain as described above. Without the adoption of the proposed rule amendments, the existing process would remain in place. In addition, ELAP would likely suffer cuts and reduced regulatory functionality under a low-revenue scenario.

Changes Under the Proposed Rule Amendments: The proposed amendments to chapter 173-50 WAC make significant changes to elements of the rule concerning fees and timing in the lab accreditation process.⁷ Ecology's accreditation of environmental labs, and fee increases for accreditation, are authorized by:

RCW 43.21A.230 Certification of environmental laboratories.

Ecology's memorandum of understanding (MOU) with the Washington state department of health.

ESHB 1244, Section 301.

Proposed changes to business practices reflect program reductions in the lab accreditation program, in response to cuts in the state budget.

Specific changes under the proposed amendments include changes to: The general fee structure and maximum fees per category.

- Proficiency testing requirements.
- Fees for acknowledgement of third-party accreditation.
- Organization names and references, updated to reflect current terminology.
- Limits on extensions to the time between on-site audits.
- Causes of revocation or suspension of accreditation.
- Streamlining rule language.
- Each of these is described in detail, below.

Changes to the Fee Schedule: The proposed rule amendments change the fee schedule to:

- Create uniformity across fees for the same accreditation category.
- Streamline the fee structure to facilitate public understanding.
- Reflect current costs of funding the lab accreditation program.

This includes reorganization of some accreditation categories into new groups. The proposed fees and maxima are listed in Table 2, below. The proposed rule amendments also include a minimum fee for any accreditation (direct or indirect through third-party accreditation) of \$300.

Category	Fee/Parameter	Fee/Method	Maximum Fee/Category
General Chemistry	\$80		\$1,600
Trace Metals		\$400	
Organics I		\$200	
Organics II		\$500	
Microbiology	\$200		
Radiochemistry	\$250		
Bioassay	\$300		\$3,000
Immunoassay	\$80		
Physical	\$80		

Changes to PT: The proposed rule changes the requirement for PT. Ecology proposed this change to create uniformity in PT requirements for microbiology testing. Under the baseline (existing) rule, two PT studies are required annually for chemistry parameters, and one PT study is required annually for microbiology parameters in drinking water. The proposed rule adds one microbiology PT study annually for non-drinking water matrices.

Changes to Third-Party Accreditation Fees: Ecology's proposed rule revises the fees related to accrediting a lab that has other accreditation accepted by ecology. This includes NELAP accreditation, as well as other third party accreditation. Ecology revised these fees to create uniformity across accreditation procedures, and updated them to represent the current costs of the ELAP, including recent cost and employment reductions.

Changes to Third-Party Accreditation Fees Include: In-state labs seeking recognition of third-party accreditation no longer pay \$345, and instead pay seventy-five percent of the appropriate fee set by the rule for each parameter covered by third-party accreditation.

Out-of-state labs with third-party accreditation no longer pay fees from the baseline (existing) fee schedule, but pay seventy-five percent of fees based on the new fee schedule in the proposed rule.

Drinking water labs no longer pay an additional fee of \$115.

Changes to Terminology: Since the last amendments to the lab accreditation rule, the names of some reference materials have changed. For example, EPA has updated its environmental protection agency manual for the certification of laboratories analyzing drinking water from the 4th edition to the 5th edition. These changes make no material change to regulatory requirements for lab accreditation.

Changes to Time between On-Site Audits and Length of Suspension: The proposed rule eliminates the three-year requirement for on-site audits for nondrinking water accredited facilities. This does not mean, however, that no supervision would occur, but rather that paper audits would still be performed under the proposed rule, and on-site investigation would occur as necessary. The proposed rule retains the three-year maximum time between on-site audits at labs accredited for analyzing drinking water.

The proposed rule also eliminates the six-month limit on the length of time a lab's accreditation may be suspended.

Changes to Causes of Revocation or Suspension: The proposed rule adds nonpayment of fees and the failure to maintain third-party accreditation as causes for suspension or revocation of an accreditation. It states that an application for accreditation will not move forward unless the applicant has paid the appropriate fees to ecology.

Streamlining Language: The proposed rule streamlines, reorganizes, and clarifies some language, to facilitate understanding and compliance of the rule. This includes updating and reorganization of definitions, without impact to their meaning in the regulation.

Compliance Costs for Washington Businesses: Ecology calculated, in the cost-benefit analysis (Ecology Publication No. 10-03-025) for the proposed rule amendments, that the proposed rule would result in both quantifiable costs and benefits to Washington businesses. These impacts on Washington businesses are as follows.

The **benefits** of the proposed amendments over twenty years include: **\$167 thousand** in reduced accreditation fees for some labs.

\$1.2 - 4.9 million in reduced on-site audit costs.

Higher assurance of quality results from some labs, stemming from increased frequency of proficiency testing.

Streamlined, clear, and uniform language facilitating compliance and equal treatment of tasks across labs.

Full independent funding of the ELAP through fees, rather than from the state general fund.

The costs of the proposed amendments over twenty years include: **\$3.5 million** in increased accreditation fees for some labs.

\$201 thousand in increased proficiency testing costs.

Lower assurance of quality results from some labs, stemming from decreased frequency of on-site inspections.

In this analysis, ecology examined the degree of disproportionality in the increased costs of compliance, across small versus large businesses.

Quantification of Costs and Ratios: Using employment numbers by location where available,⁸ and otherwise by firm, ecology divided each private entity's compliance costs by the number of employees to calculate cost per employee. New compliance costs resulting from the proposed rule language included net change in accreditation fees, and increased proficiency testing costs.

For the costs of compliance with accreditation fees as set by the proposed rule, as compared to the baseline, the average cost per employee, at the largest ten percent of firms, was \$0.89. At small businesses, this average cost was \$93 per employee. For the costs of compliance with increased proficiency testing requirements at some labs, the average cost per employee, at the largest ten percent of firms, was \$0.24. At small businesses, this average cost was \$51 per employee.⁹

These costs are mitigated by avoided costs associated with reduced on-site audits. Ecology could not confidently assign this benefit to particular businesses due to uncertainty, but expects the avoided costs to correlate with lab size at a declining rate. That is, larger labs would likely have higher costs of compliance with on-site audits, but they would also have economies of scale in those costs. Ecology expects this reduced compliance cost to disproportionately benefit small businesses, on a per-employee basis.

Clearly, the proposed rule has disproportionate cost impact on small businesses, and so ecology must include cost-reducing features in the proposed rule.

Action Taken to Reduce Small Business Impacts: Ecology's capacity to reduce the proposed rule's impact on small businesses was constrained by the scope of the rule making. However, ecology does take actions under the rule that facilitate small business compliance. The lab accreditation unit assists labs participating in ecology's laboratory accreditation program to the extent resources allow. Although they may be conducted in association with on-site assessments, assistance visits are not assessments, and a corrective action report is

not required from the lab in response to deficiencies noted during the visit.¹⁰ This provides for a lower cost way for labs to ensure their compliance with applicable requirements.

The proposed fee structure charges all labs, regardless of size, fees in proportion to the work ecology must do to grant or maintain their accreditation. This makes the proposed fee more equitable than the existing fee, which subsidizes larger labs with many types of accreditation through additional fees collected from smaller labs with more limited accreditation. If we had retained the existing fee structure and increased fees across-the-board by forty-five percent to recover program costs, this would have had a more disproportionate effect on small business. Also, the proposed fee structure eliminates maximum fees for several categories of testing, and increases the maximum fees in two remaining categories. Both of these changes benefit small business by decreasing subsidization of larger labs.

Small Business Involvement: In the rule development process for the proposed rule amendments, ecology communicated with small businesses, and included input from the small business community in its decision-making process. During November 17-19, 2009, ecology held workshops in Olympia, Everett, and Moses Lake. During these workshops, ecology presented material covering its intent in the rule making, possible options, and the interstate context of the Washington lab accreditation program relative to other states. Ecology collected and responded to comments received during these workshops.

North American Industry Classification System (NAICS) Codes of Impacted Industries: Based on existing environmental labs subject to Ecology accreditation, ecology determined which NAICS codes reflect businesses likely impacted by the proposed rule amendments. The likely impacted NAICS codes are listed in Table 3. This list includes all likely affected private-sector industries.

1125	2371	3114	3221	3328	4239	4452	5413	5629	7211
1133	2372	3115	3222	3345	4241	4471	5416	6111	7212
1153	2373	3116	3241	3364	4244	4539	5417	6113	8139
2211	2389	3210	3259	3391	4246	4883	5419	6215	8731
2213	3110	3219	3313	4233	4441	5311	5614	6231	

Impact on Jobs: By creating additional compliance costs to some businesses, the proposed rule amendments create transfers of money within and across industries. These financial impacts can then filter through the economy (additional or reduced resources to employ individuals, purchase inputs, etc.). Ecology does not believe the compliance costs generated by the proposed rule will result in impacts to lab revenues or competition in the market.

Ecology used the 2002 Washington state office of financial management input-output model to estimate the impacts of financial transfers created by the proposed rule amendments. Table 4 summarizes the distribution of job impacts across industries. The table includes only those industries in which more than 0.1 increase or decrease in jobs occurs per year. Ecology estimated that the proposed rule is likely to generate a small loss of 3.6 jobs in the state economy.¹¹ This

job loss comes from the combined impacts of quantifiable fee and proficiency testing costs created by the proposed rule, as well as the reduced compliance costs of on-site inspections.¹²

Industry	Change in Jobs*
Retail	-0.32414
Legal/Accounting and Bookkeeping/Management Services	-0.10611
Architectural, Engineering, and Computing Services	-0.20592
Educational Services	-1.40417

Table 4: Significant Annual Job impacts Across the Washington Economy	
Industry	Change in Jobs*
Ambulatory Health Care Services	-0.10186
Nursing and Residential Care Facilities, Social Assistance	-0.12333
Arts, Recreation, and Accommodation	-0.11665
Food Services and Drinking Places	-0.2087
Administrative/Employment Support Services	-0.18141
Waste Management/Other, and Agriculture Services	-0.18863
TOTAL CHANGES IN JOBS PER YEAR	-3.61450

*Industry impacts may not sum to the total due to smaller impacts in industries not listed, and to rounding.

¹Paraphrasing taken from ecology's web site <http://www.ecy.wa.gov/programs/eap/labs/accred-require.htm>, which also lists and links to ecology's requirements for use of accredited labs.

²The deficit grew from \$490 thousand in the 2004-2005 biennium, to \$588 thousand in 2006-2007, to \$704 thousand in 2008-2009. The percentage of costs over revenue grew from forty-seven percent, to fifty-five percent, to sixty-six percent in the respective biennia. Internal analysis. See communication with Stew Lombard and Gary Koshi dated October 20-21, 2009.

³ESHB 1244. Passed by the 61st legislature during the 2009 regular session, section 301(10), <http://apps.leg.wa.gov/documents/billdocs/2009-10/Pdf/Bills/House%20passed%20Legislature/1244-S.PL.pdf>.

⁴These procedures are discussed in-depth in ecology's lab accreditation guidance document: Procedural manual for the environmental laboratory accreditation program, November 2002. Ecology publication no. 02-03-055.

⁵This list is available from the lab accreditation unit at ecology, and is also published in Appendix E of the procedural manual for the environmental laboratory accreditation program, November 2002. Ecology publication no. 02-03-055.

⁶WAC 173-50-130.

⁷All proposed changes to rule language, and their significance in this analysis and the associated SBELS are described fully in Appendix A.

⁸Washington state department of employment security, www.workforceexplorer.com.

⁹Note that the reliability and precision of available employment data for impacted businesses is highly variable. Ecology used the best available data in its analyses, stemming from business sources, business databases, and public sources such as the Washington employment security department (see references for more information). For small businesses (especially those not publicly traded), employment data is more likely to be limited to a location, and may underestimate the true number of employees at a given firm. Large businesses are more likely to be publicly traded, exist in business information databases in their entirety, and offer information on employment to shareholders and in reports. This means that the employment data for large businesses is likely a better estimate of actual employment than for small businesses. Ecology chose to use this data because it was the best available, and provides a conservative view of the disproportionality of small versus large-business impacts. It is likely that the cost per employee reported for small businesses is an overestimate. All employment data was reported at the parent-company level to the extent available.

¹⁰WAC 173-50-220.

¹¹This annual loss does not indicate that nearly 4 positions would disappear each year, but rather that the equivalent of 3.6 positions would not exist over the full course of the 20 years.

¹²Ecology could not assign reductions in the cost of on-site audits to specific labs or entities, and so assumed all avoided costs would go to the Testing Laboratories industry (NAICS code 541380). In addition, job losses

fall as on-site audits become less frequent. The estimate provided here reflects an average delay of one year in on-site audits.

A copy of the statement may be obtained by contacting Stewart M. Lombard, P.O. Box 488, Manchester, WA 98353-0488, phone (360) 895-6148, fax (360) 895-6180, e-mail stew.lombard@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stewart M. Lombard, P.O. Box 488, Manchester, WA 98353-0488, phone (360) 895-6148, fax (360) 895-6180, e-mail stew.lombard@ecy.wa.gov.

March 24, 2010

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-020 Scope. (1) The Washington state environmental laboratory accreditation program (WA ELAP) applies to laboratories which conduct tests for or prepare analytical data for submittal to any entity requiring the use of an accredited laboratory. This includes laboratories that analyze drinking water. ~~((This rule also describes how the department of ecology participates in the National Environmental Laboratory Accreditation Program (NELAP) as an accrediting authority once the department is certified by the National Environmental Laboratory Accreditation Conference (NELAC).))~~

(2) Accreditation in itself does not authorize use of a specific method for any specific program or project. If such authorization is not granted in documentation governing a program or project within which samples are being analyzed, authorization should be obtained from the laboratory's data user.

(3) Accreditation does not guarantee validity of analytical data submitted by the accredited laboratory but rather assures that the laboratory has demonstrated its capability to reliably generate and report the analytical data (WAC 173-50-040, definition of "accreditation").

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-030 Objectives. Objectives of the ~~((accreditation program))~~ WA ELAP are to:

- Assure accredited laboratories have a demonstrated capability to accurately and defensibly analyze environmental samples;
- Assist environmental laboratories in improving their quality assurance/quality control procedures; and
- Foster cooperation between the state departments of ecology and health, local agencies, other users of environmental data, and operators of environmental laboratories.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-040 Definitions. Definitions in this section apply throughout this chapter, unless context clearly indicates otherwise.

"Accreditation" - the formal recognition by the department that an environmental laboratory is capable of producing accurate and defensible analytical data. This recognition is signified by issuance of a written certificate accompanied by a scope of accreditation indicating the parameters for which the laboratory is accredited.

- The term "accredit" as used in this chapter is intended to have the same meaning as the term "certify" as used in RCW 43.21A.230.

- Any laboratory accredited under this chapter shall be deemed to have been certified under RCW 43.21A.230.

- The department does not, by accrediting any laboratory pursuant to these rules, vouch for or warrant the accuracy of any particular work done or report issued by that laboratory.

"Accuracy" - the degree to which an analytical result corresponds to the true or accepted value for the sample being tested. Accuracy is affected by bias and precision.

"Analyte" - the constituent or property of a sample measured using an analytical method.

"Analytical data" - the recorded qualitative and/or quantitative results of a chemical, physical, biological, microbiological, radiochemical, or other scientific determination.

"Analytical method" - a written procedure for acquiring analytical data.

"Department" - the state of Washington department of ecology when the term is not followed by another state designation.

"Drinking water certification manual" - the Environmental Protection Agency *Manual for the Certification of Laboratories Analyzing Drinking Water*, ((4th)) 5th Edition, ((March 1997)) January 2005.

"Ecology accrediting authority" - the supervisor of the lab accreditation unit of the environmental assessment program of the department of ecology.

"Environmental laboratory" or "laboratory" - a facility:

- Under the ownership and technical management of a single entity in a single geographical ((local)) location;

- Where scientific ((examinations)) determinations are performed on samples taken from the environment, including drinking water samples; and

- Where data is submitted to the department of ecology, department of health, or other entity requiring the use of an accredited laboratory under provisions of a regulation, permit, or contractual agreement.

"Lab accreditation unit" - the lab accreditation unit of the ((environmental assessment program of the)) department of ecology.

~~("Mandatory analytical method" - a recognized written procedure for acquiring analytical data which is required by law or a regulatory agency of the federal, state, or local government.)~~

"Matrix" ((means)) - the ((substance from which a)) material to be analyzed ((is extracted)), including, but not

limited to, ground or surface water, wastewater, drinking water, air, solid waste, soil, tissue, nuclear waste, and hazardous waste. For the purposes of establishing a fee structure (WAC 173-50-190(4)), matrices are grouped as follows:

- Nonpotable water;
- Drinking water;
- Solid and chemical materials; and
- Air and emissions.

~~((NELAP accreditations may include other matrices as designated in the NELAC standards.~~

~~"NELAC" - the National Environmental Laboratory Accreditation Conference, a voluntary association of state and federal agencies.~~

~~"NELAC standards" - the standards for laboratory accreditation published by NELAC, September 5, 2001.~~

~~"NELAP" - the National Environmental Laboratory Accreditation Program governed by NELAC.)~~ **"On-site audit"** - an on-site inspection and evaluation of laboratory facilities, equipment, records and staff.

"Out-of-state laboratory" - a laboratory that is not located in the state of Washington.

"Parameter" - ~~((a single determination or sampling procedure, or group of related determinations or sampling procedures using a specific written method))~~ the combination of one or more analytes determined by a specific analytical method. Examples of parameters include:

- The analyte alkalinity by method SM 2320 B;
- The analyte zinc by method EPA 200.7;
- The set of analytes called volatile organic compounds (VOCs) by method EPA 8260; and
- The analyte Total Coli/Ecoli-count by method SM 9222 B/9221 F.

"Procedural manual" - until October 1, 2010, the Department of Ecology Procedural Manual for the Environmental Laboratory Accreditation Program dated November 2002, and beginning October 1, 2010, the Department of Ecology Procedural Manual for the Environmental Laboratory Accreditation Program dated September 2010.

"Proficiency testing (PT)" - evaluation of the results from the analysis of samples, the true values of which are known to the supplier of the samples but unknown to the laboratory conducting the analyses. PT samples are provided by a source external to the environmental laboratory.

~~("Quality control" - activities designed to assure analytical data produced by an environmental laboratory meet data quality objectives for accuracy and defensibility. Those activities may include routine application of statistically based procedures to evaluate and control the accuracy of analytical results.)~~

"Quality assurance (QA)" - activities intended to assure that a quality control program is effective. A QA program is a totally integrated program for assuring reliability of measurement data.

"Quality assurance (QA) manual" - a written record intended to assure the reliability of measurement data. A QA manual documents policies, organization, objectives, and specific QC and QA activities. Volume and scope of QA manuals vary with complexity of the laboratory mission.

~~("Recognized analytical method" - a documented analytical procedure developed through collaborative studies~~

by organizations or groups recognized by the users of the laboratory's analytical data.) **"Quality control (QC)"** - the routine application of statistically based procedures to evaluate and control the accuracy of analytical results.

"Regulatory program" - a program administered by a federal, state, or other regulatory agency.

~~("On-site assessment" - an on-site inspection of laboratory capabilities.~~

~~"Primary NELAP accreditation" - granting of NELAP accreditation by the ecology accrediting authority after having determined through direct evaluation that the laboratory is in conformance with the NELAC standards.)~~

~~("Secondary NELAP) Third-party accreditation" - recognition by the ecology accrediting authority of ((a NELAP)) accreditation ((that was)) granted by another ((NELAP)) accrediting authority.~~

"WA ELAP" - Washington state environmental laboratory accreditation program.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-050 Responsibilities of the department.

(1) The department maintains a procedural manual describing specifics of the accreditation process. As a minimum, the procedural manual describes the procedures for:

- Submitting an application and fee;
- Preparing a quality assurance manual;
- Performing proficiency testing;
- Conducting on-site ((assessments)) audits;
- Accrediting out-of-state laboratories;
- ((Issuing)) Granting, denying, suspending, and revoking accreditation; and
- Notifying laboratories and authorized government officials of accreditation actions.

The department will make the procedural manual available to all interested persons.

(2) Department personnel assigned to assess the capability of drinking water laboratories participating in the ~~((environmental laboratory accreditation program))~~ WA ELAP must meet the experience, education, and training requirements established in the ~~((Environmental Protection Agency))~~ drinking water certification manual.

~~((3) When granting NELAP accreditations, the ecology accrediting authority is responsible for those actions designated in applicable chapters of the NELAC standards. If a NELAC standard is more stringent than the corresponding standard in this chapter, the NELAC standard applies for laboratories seeking NELAP accreditation.)~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-060 Responsibilities of environmental laboratories. When applying for initial accreditation (see WAC 173-50-130 for maintaining an existing accreditation), managers of environmental laboratories must:

- Submit an application (WAC 173-50-063) and required fees (WAC 173-50-190) to the department fiscal officer;
- Submit a copy of the laboratory's quality assurance manual (WAC 173-50-067);

- Submit an initial set of acceptable PT ~~((sample analysis))~~ results (WAC 173-50-070); and

- Undergo an on-site ~~((assessment))~~ audit (WAC 173-50-080).

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-063 Application. (1) Through the application, laboratory managers:

- Request accreditation for specific parameters;
- Calculate fees due to the department; and
- Provide evidence that sufficient personnel and equipment are available to successfully perform analytical methods as specified in the application.

(2) Through review of the application submitted by the applicant laboratory, the lab accreditation unit determines if:

- Requested parameters are eligible for accreditation;
- The fee calculated by the applicant laboratory is correct; and
- Personnel and equipment are adequate to support successful performance of requested parameters.

(3) Following the review, the lab accreditation unit advises the applicant laboratory of any required changes.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-067 Quality assurance manual. (1) The lab accreditation unit reviews and approves the laboratory's QA manual prior to the initial on-site ~~((assessment))~~ audit. The QA manual submitted concurrently with the application must be in detail and scope commensurate with the size and mission of the laboratory. Guidelines for contents of the QA manual are in the procedural manual.

(2) The QA manual must address QA and QC requirements of applicable regulatory programs. For drinking water laboratories, such requirements are found in the drinking water certification manual.

~~((3) For laboratories applying for primary NELAP accreditation, QA requirements, including the conduct of specific QC tests, are those designated in the NELAC standards. If a NELAC standard is more stringent than the corresponding standard in this chapter, the NELAC standard applies for laboratories seeking NELAP accreditation.)~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-070 ((Performance audit)) Proficiency testing (PT). (1) The lab accreditation unit advises applying laboratories of specific requirements for participation in proficiency ~~((tests. Such tests are completed))~~ testing (PT) studies for applicable parameters ~~((no more frequently than twice annually. Current))~~. Proficiency tests conducted under the provisions of other recognized programs may be used to satisfy ~~((the accreditation program proficiency testing))~~ these requirements. The lab accreditation unit determines the sufficiency of such ~~((audits))~~ proficiency tests.

(2) ~~((Drinking water))~~ Accredited laboratories must analyze a minimum of one PT sample per applicable microbiol-

ogy parameter per year and two PT samples for applicable chemistry parameters per year.

(3) The lab accreditation unit may require the laboratory to submit raw data along with the report of analysis of PT samples.

(4) The lab accreditation unit may waive proficiency tests for certain parameters if PT samples are not readily available or for other valid reasons.

(5) Applying laboratories are responsible for obtaining PT samples from vendors (~~(certified by the National Institute of Standards and Technology (NIST) or otherwise)~~) approved by the lab accreditation unit. No fee shall be charged to the department for the purchase or analysis of PT samples.

~~((6) For laboratories applying for NELAP accreditation, proficiency testing requirements are those designated in the NELAC standards. If the NELAC standard is more stringent than the corresponding standard in this chapter, the NELAC standard applies for laboratories seeking NELAP accreditation.))~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-080 On-site ((assessment)) audit. The laboratory must undergo ~~((a system))~~ an on-site audit by the department to assess critical elements and areas of recommended practices. The laboratory must assist/accommodate department of ecology personnel during on-site ~~((assessments))~~ audits as required.

(1) **Critical elements for accreditation.** Elements of an environmental laboratory's operations which are critical to the consistent generation of accurate and defensible data are critical elements for accreditation. Critical elements are subject ~~((of))~~ to intense scrutiny throughout the accreditation process. The ecology accrediting authority may deny, revoke, or suspend accreditation for deficiencies in critical elements. Functional areas including critical elements are:

(a) **Analytical methods.** The on-site ~~((assessment))~~ audit seeks to determine if documentation of ~~((mandatory or recognized))~~ analytical methods:

- Are present at the laboratory;
- Readily available to analysts; and
- Being implemented. If the laboratory is using a locally-developed method, the on-site ~~((assessment))~~ audit may include an evaluation of the adequacy of that method.

(b) **Equipment and supplies.** The on-site ~~((assessment))~~ audit seeks to determine if sufficient equipment and supplies as required by analytical methods are:

- Available;
- Being adequately maintained; and
- In a condition to allow successful performance of applicable analytical procedures.

To gain and maintain accreditation, laboratories must demonstrate that equipment and supply requirements of applicable regulatory programs are being met.

(c) **QA and QC records.** The on-site ~~((assessment))~~ audit includes a review of QA and QC records for programs/projects within which the laboratory is generating analytical data for submission to the data user.

(d) **Sample management.** The on-site ~~((assessment))~~ audit includes a review of applicable procedures for receipt, preservation, transportation, and storage of samples. The laboratory is responsible only for those elements of sample management over which it has direct control. To gain and maintain accreditation, laboratories must demonstrate that sample management requirements of applicable regulatory programs are being met.

(e) **Data management.** The on-site ~~((assessment))~~ audit includes a review of activities necessary to assure accurate management of laboratory data including:

- Raw data;
- Calculations; and
- Transcription, computer data entry, reports of analytical results.

To gain and maintain accreditation, laboratories must demonstrate that data management requirements of applicable regulatory programs are being met.

(2) **Recommended practices.** Recommended practices are those elements of laboratory operations which might affect efficiency, safety, and other administrative functions, but do not normally affect quality of analytical data. Normally these practices would not be the basis for denial or revocation of accreditation status. Functional areas within which recommended practices may be noted are:

(a) **Personnel.** The department seeks to determine if managerial, supervisory, and technical personnel have adequate training and experience to allow satisfactory completion of analytical procedures and compilation of reliable, accurate data. Minimum recommended education and experience criteria for laboratory personnel are specified in the ~~((program))~~ procedural manual.

(b) **Facilities.** The department seeks to determine if laboratory facilities allow efficient generation of reliable, accurate data in a safe environment.

(c) **Safety.** The department may refer serious safety deficiencies to appropriate state or federal agencies.

~~(3) ((NELAC requirements. For laboratories applying for NELAP accreditation, on-site assessment requirements are those designated in the NELAC standards. If the NELAC standard is more stringent than the corresponding standard in this chapter, the NELAC standard applies.))~~

~~(4))~~ **Drinking water laboratory requirements.** For laboratories applying for accreditation of drinking water parameters, on-site ~~((assessment))~~ audit requirements are those designated in the drinking water certification manual. If such a standard is more stringent than the corresponding standard in this chapter, the drinking water certification manual applies.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-090 Evaluation and issuance of certificate. (1) After preliminary requirements (WAC 173-50-060 through 173-50-080) have been met, the lab accreditation unit submits a report to the affected laboratory concerning the results of the overall accreditation process. The report may:

- List((s)) findings;

- ~~((Assesses))~~ Assess the importance of each finding; and
- Make ~~((s))~~ recommendations concerning actions necessary to assure resolution of problems.

(2) After completing the accreditation review, the ecology accrediting authority decides whether accreditation should be granted.

(a) If accreditation is warranted, the department issues a certificate and accompanying scope of accreditation. The certificate remains the property of the department and must be surrendered to the department upon revocation or voluntary termination of accreditation status.

(b) If accreditation is not warranted, the department issues a report specifying areas of deficiency and steps necessary to upgrade the laboratory to accredited status. In such cases, the laboratory must provide documentation that the specified deficiencies have been corrected. Based on such documentation the ecology accrediting authority decides whether to grant or deny accreditation.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-100 Interim accreditation. ~~((+))~~ If ~~((for valid reasons resulting from a deficiency in))~~ the department ~~((and not))~~ is unable to complete the accreditation process through no fault of the laboratory, the ecology accrediting authority may grant interim accreditation ~~((may be granted))~~. To be considered for interim accreditation, the laboratory must:

- Submit an application and applicable fees;
- Successfully complete applicable proficiency tests; and
- Submit a QA manual that meets the requirements of WAC 173-050-067.

The lab accreditation unit may also require the laboratory to submit an analytical data package as evidence of analytical capability.

~~((2))~~ ~~For NELAP accreditation, the only valid reason for granting interim accreditation is the delay of an on-site assessment for reasons beyond the control of the laboratory.)~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-110 Provisional accreditation. (1) The ecology accrediting authority may grant provisional accreditation to laboratories which can consistently produce valid analytical data but have deficiencies requiring corrective action. When the laboratory has corrected such deficiencies, it must provide evidence of correction to the lab accreditation unit, or request a follow-up on-site ~~((assessment))~~ audit, as appropriate. If the lab accreditation unit determines the deficiencies have been corrected, the ecology accrediting authority awards full accreditation as in WAC 173-50-090.

(2) The ecology accrediting authority may renew a provisional accreditation for a subsequent accreditation period if laboratory management has demonstrated that all reasonable measures to correct deficiencies have been exhausted.

(3) For drinking water laboratories, specific conditions warranting provisional accreditation and specific actions

required of the laboratory when provisional accreditation is granted are found in the drinking water certification manual.

~~((4))~~ ~~Provisional accreditation does not apply to NELAP accreditations.)~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-120 Accreditation categories. (1) Environmental laboratories are accredited within one or more of the matrix groups defined in WAC 173-50-040. ~~((Additionally))~~ Within each matrix group, accreditation is granted within the following broad categories:

- General chemistry ~~((General))~~;
- ~~((Chemistry II))~~ Trace metals ~~((+))~~;
- Organics I ~~((Gas Chromatography (GC) and High Pressure Liquid Chromatography (HPLC) Methods))~~;
- Organics II ~~((Gas Chromatography/Mass Spectrometry (GC/MS) Methods))~~ (Category II methods use mass spectrometer detectors);
- ~~((Radioactivity))~~;
- Microbiology;
- Radiochemistry;
- Bioassay ~~((Toxicity))~~;
- Immunoassay; and
- Physical.

Within these categories, laboratories are specifically accredited for well-defined parameters, such as, but not limited to, those suggested in the procedural manual, using specific ~~((, recognized))~~ analytical methods or sampling techniques chosen by the applying laboratory.

(2) The scope of accreditation accompanying the accreditation certificate indicates the parameters for which the laboratory is accredited, and any applicable qualifications, such as interim or provisional accreditation.

~~((3))~~ ~~For laboratories granted NELAP accreditation,) The scope of accreditation also indicates the matrix groups within which each parameter applies. Those matrix groups may include, but are not limited to:~~

- Nonpotable water;
- Drinking water;
- Solid and chemical materials;
- ~~((Biological tissue))~~ and
- Air and emissions.

~~For laboratories granted NELAP accreditation, the scope of accreditation may also indicate the technology, such as gas chromatography/electron capture detection (GC/ECD) or inductively coupled plasma/mass spectrometry (ICP/MS), associated with each parameter.)~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-130 Requirements for maintaining accreditation status. (1) Accreditation is granted for a one-year period and expires one year after the effective date of accreditation. ~~((Except for NELAP accreditation which is limited to one year, exceptions to the one year accreditation may be made for documented cause. In such cases, accreditation may be granted for a period up to two years.))~~

(2) Renewal requires the laboratory to submit:

- An application and appropriate fees;
- An update of the laboratory's ~~((quality assurance)) QA~~ manual if applicable; ~~((and))~~
- Evidence of accreditation by a third party when appropriate; and
- Successful completion of proficiency testing requirements.

~~(3) For laboratories accredited for drinking water parameters, on-site ((assessments)) audits are required at periods not to exceed three years from the previous on-site ((assessment)) audit. ((For documented cause, on-site assessments may be extended up to four years from the previous assessment, except for laboratories accredited to analyze drinking water and NELAP accredited laboratories.))~~

(4) For laboratories not accredited for drinking water parameters, the schedule of on-site audits will be determined by the ecology accrediting authority.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-140 Denying accreditation. (1) The ecology accrediting authority may deny accreditation if the applicant laboratory:

- Fails to comply with standards for critical elements of the on-site ~~((assessment)) audit~~;
- Misrepresents itself to the department;
- Fails to disclose pertinent information in the application;
- Falsifies reports of analysis including ~~((PT)) proficiency testing~~ results;
 - Engages in unethical or fraudulent practices concerning generation of analytical data;
 - Is deficient in its ability to provide accurate and defensible analytical data; or
 - Fails to render applicable fees.

(2) A laboratory may be denied accreditation for a specific parameter for unsatisfactory ~~((analysis of that parameter in))~~ proficiency ~~((tests)) testing results~~.

(3) Laboratories denied accreditation may appeal under the provisions of WAC 173-50-200. If an appeal does not result in action favorable to the laboratory, and following correction of deficiencies, laboratories denied accreditation may reapply for accreditation to include payment of appropriate fees as determined in WAC 173-50-190.

~~(((4) Reasons for denial of NELAP accreditation are as specified in the NELAC standards.))~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-150 Revoking or suspending accreditation. (1) Revocation of accreditation is the withdrawal of a previously granted accreditation. Revocation may involve the entire laboratory or one or more individual parameters.

(2) Suspension of accreditation is for a specified period ~~((not to exceed six months))~~ during which the affected laboratory corrects deficiencies that led to the suspension. Suspension may involve the entire laboratory, or one or more individual parameters.

~~(((2)))~~ (3) The ecology accrediting authority may suspend or revoke accreditation if the accredited laboratory:

- Fails to comply with standards for critical elements of an on-site ~~((assessment)) audit~~;
- Violates a state rule relative to the analytical procedures for which it is accredited;
- Misrepresents itself to the department;
- Falsifies reports of analysis including ~~((PT)) proficiency testing~~ results;
 - Engages in unethical or fraudulent practices concerning generation of analytical data;
 - Is deficient in its ability to provide accurate and defensible analytical data; ~~((or))~~
 - Refuses to permit entry for enforcement purposes (WAC 173-50-210);
 - Fails to render applicable fees; or
 - Fails to maintain third-party accreditation.

~~(((3)))~~ (4) A laboratory having had its accreditation suspended or revoked may appeal under the provisions of WAC 173-50-200. If an appeal does not result in action favorable to the laboratory, and following correction of deficiencies, a laboratory having had its accreditation revoked may reapply for accreditation to include payment of appropriate fees as determined in WAC 173-50-190.

~~(((4) Reasons for revocation or suspension of NELAP accreditation are as specified in the NELAC standards.))~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-170 Third-party accreditation. (1) The department may recognize accreditation (or certification, registration, licensure, approval) of a laboratory by a third party when the accreditation process is determined to be equivalent to that described in this chapter.

(2) Laboratories applying for recognition of a third party's accreditation submit:

- An application and associated fee (WAC 173-50-190(7));
- A copy of the third party's certificate;
- A copy of the third party's scope of accreditation;
- A copy of the third party's most recent on-site ~~((assessment)) audit~~ report;
- A copy of the laboratory's corrective action report relative to the on-site ~~((assessment)) audit~~, if applicable; and
- A complete set of the most recent ~~((PT)) proficiency test~~ results for the applicable parameters.

(3) In consideration of a request to recognize a third party's accreditation as the basis for accreditation by the ecology accrediting authority, the lab accreditation unit reviews the application and supporting documentation to assure compliance with minimum accreditation requirements as stated in this chapter. If the review is favorable, a certificate and scope of accreditation are granted as in WAC 173-50-090.

(4) Laboratories granted third-party accreditation must notify the laboratory accreditation unit immediately of changes in the status of their third-party accreditation.

(5) Washington laboratories accredited or applying for accreditation in recognition of a third party's accreditation must notify the lab accreditation unit of on-site ~~((assess-~~

ments)) audits scheduled by the third party and allow a department observer to attend such on-site ((assessments)) audits.

~~((5) Primary NELAP accreditation cannot be granted in recognition of the accreditation by a third party.)~~

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-190 Fee structure. (1) Fees in this chapter are in U.S. dollars and are established to cover costs of administering the ~~((accreditation program))~~ WA ELAP. Fees shall be assessed for each parameter or method within each matrix, except as noted in subsection (3) of this section. The fee per parameter or method for each category, and the maximum fee per category ~~((for each matrix))~~ where applicable, are identified in Table 1.

(2) Examples of parameters or methods for each category are published in the procedural manual. Accreditation may be requested for parameters in addition to those listed in the procedural manual.

(3) When a fee is assessed ((only one)) for a ((given)) specific drinking water parameter ((even though that specific)) or method, the laboratory may be accredited for the same parameter ((may be accredited under more than one matrix)) or method in nonpotable water without paying an additional fee.

TABLE 1 - FEE SCHEDULE

((MATRIX	CATEGORY	FEE/	MAX FEE PER-
((MATRIX	CATEGORY	PARAMETER	CATEGORY
Nonpotable Water	Chemistry-I (General)	\$65	\$1150
	Chemistry-II (Trace Metals)	\$65	\$975
	Organics-I (GC/HPLC)	\$115	\$975
	Organics-II (GC/MS)	\$345	\$1035
	Radioactivity	\$145	\$1380
	Microbiology	\$175	\$520
	Bioassay/Toxicity	\$230	\$1435
	Immunoassay	\$65	\$390
	Physical	\$65	\$260
	Drinking Water	Chemistry-I (General)	\$60
Chemistry-II		\$60	\$720
Organics-I (GC/HPLC)		\$155	\$615
Organics-II (GC/MS)		\$155	\$155
Microbiology		\$155	\$460
Solid and Chemical Materials	Chemistry-I (General)	\$65	\$1150
	Chemistry-II (Trace Metals)	\$65	\$975
	Organics-I	\$115	\$975

TABLE 1 - FEE SCHEDULE

((MATRIX	CATEGORY	FEE/	MAX FEE PER-	
((MATRIX	CATEGORY	PARAMETER	CATEGORY	
	(GC/HPLC)			
	Organics-II	\$345	\$1035	
	(GC/MS)			
	Radioactivity	\$145	\$1380	
	Microbiology	\$175	\$520	
	Immunoassay	\$65	\$390	
	Physical	\$65	\$260	
Air and Emissions	Chemistry-I (General)	\$65	\$1150	
	Chemistry-II (Trace Metals)	\$65	\$975	
	Organics-I (GC/HPLC)	\$115	\$975	
	Organics-II (GC/MS)	\$345	\$1035	
CATEGORY	FEE PER	FEE PER	MAX FEE PER	
CATEGORY	PARAMETER	METHOD	CATEGORY	
General Chemistry	\$80	=	\$1,600	
Trace Metals	=	\$400	=	
Organics I	=	\$200	=	
Organics II	=	\$500	=	
Microbiology	\$200	=	=	
Radiochemistry	\$250	=	=	
Bioassay	\$300	=	\$3,000	
Immunoassay	\$80	=	=	
Physical	\$80	=	=	

(4) The minimum fee for accreditation, either direct or through recognition of a third-party accreditation, is three hundred dollars.

(5) In addition to paying the fee indicated in Table 1, out-of-state laboratories must pay for the actual cost of travel associated with on-site ((assessments)) audits. The department invoices the laboratory for such costs after completion of the on-site ((assessment)) audit.

~~((5))~~ (6) The laboratory must pay applicable fees before:

- Its quality assurance manual is reviewed by the department;
- The on-site ((assessment)) audit is conducted if applicable; and
- Interim, provisional, or full accreditation is granted.

~~((6))~~ (7) The fee for recognition of a third party accreditation (WAC 173-50-170) ~~((, other than NELAP accreditation (WAC 173-50-190(9))),~~ is three hundred forty five dollars.

(7) The fee for recognition of a laboratory under a reciprocity agreement (WAC 173-50-160) is three hundred forty five dollars, or as specified in the reciprocity agreement, but not less than three hundred forty five dollars.

(8) The fee for recognition of accreditation by a NELAP accrediting authority for laboratories in Washington is three hundred forty five dollars. For out-of-state laboratories, the fee for recognition of accreditation by a NELAP accrediting authority is the fee indicated in Table 1.

~~(9) For drinking water laboratories, the base fee to defray the extra cost incurred by the department because of the need to coordinate directly with two regulatory agencies is one hundred fifteen dollars.~~

~~(10)) is three-fourths (75%) of the fee indicated in Table 1.~~

(8) If a laboratory withdraws from the accreditation process after the application has been processed, but before accreditation is granted, the fee is ~~((non-refundable)) refundable, less an amount up to ((an amount of two)) three hundred ((thirty))~~ dollars as reimbursement for costs of processing the application. If a laboratory withdraws from the accreditation process after the on-site ~~((assessment))~~ audit has been completed, the department may retain the entire fee including reimbursement of travel costs if applicable.

~~((11)) (9)~~ Dollar amounts listed in Table 1 and subsections ~~((6)) (4), (7), and (8))~~ of this section may be adjusted every year based on inflation as indicated by the *Implicit Price Deflator for State and Local Government Services* as published by the economic and revenue forecast council. Dollar amounts listed in Table 1 and subsections ~~((6)) (4), (7), and (8))~~ of this section may be decreased at any time the department determines they are higher than needed to meet accreditation program requirements. The department notifies affected parties of any fee adjustment at least thirty days prior to the effective date of the adjusted fee.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-210 Enforcement. (1) For the purpose of conducting on-site ~~((assessments or otherwise enforcing))~~ audits or inspections to ensure compliance with this chapter, the department may, during regular business hours, enter ~~((any))~~ business premises in which analytical data pertaining to accreditation under the provisions of this chapter are generated or stored.

(2) Refusal to permit entry for such purposes ~~((shall))~~ may result in denial~~((;))~~ or revocation~~((; or suspension))~~ of accreditation ~~((or registration status))~~.

AMENDATORY SECTION (Amending Order 01-12, filed 10/1/02, effective 11/1/02)

WAC 173-50-220 Assistance to laboratories. Laboratories scheduled to undergo an on-site ~~((assessment))~~ audit may request a training session be conducted by department staff in conjunction with that ~~((assessment))~~ audit. Accredited laboratories may also request on-site assistance at times other than the on-site ~~((assessment))~~ audit. Whether requested as part of the on-site ~~((assessment))~~ audit or otherwise, the department will provide such assistance to the extent allowed by staff resources available at the time.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-50-160 Reciprocity.

WAC 173-50-180

Exemptions.

WSR 10-07-166
PROPOSED RULES
HIGHER EDUCATION
COORDINATING BOARD

[Filed March 24, 2010, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-16-029.

Title of Rule and Other Identifying Information: College bound scholarship rules, chapter 250-84 WAC.

Hearing Location(s): Higher Education Coordinating Board, 917 Lakeridge Way S.E., Olympia, WA 98502, on April 27, 2010, at 1:00 p.m.

Date of Intended Adoption: July 15, 2010.

Submit Written Comments to: Beth Ahlstrom, 917 Lakeridge Way, P.O. Box 43430, e-mail betha@hecb.wa.gov, fax (360) 704-6250, by June 18, 2010.

Assistance for Persons with Disabilities: Contact Kristin Ritter by June 13, 2010, (360) 753-7850.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are needed to clarify the college bound scholarship statute.

Reasons Supporting Proposal: The rules will address issues such as student eligibility, the application process, awarding of the scholarship, residency requirements, length of time the student may use the scholarship, and deadlines.

Statutory Authority for Adoption: RCW 28B.118.060.

Statute Being Implemented: Chapter 28B.118 RCW.

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

Name of Proponent: Higher education coordinating board, public.

Name of Agency Personnel Responsible for Drafting: Beth Ahlstrom, 917 Lakeridge Way, Olympia, WA 98502, (360) 596-4808; Implementation and Enforcement: John Klacik, 917 Lakeridge Way, Olympia, WA 98502, (360) 753-7850.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not affect small business in Washington.

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

March 24, 2010
 Beth Ahlstrom
 Program Associate

Chapter 250-84 WAC

COLLEGE BOUND SCHOLARSHIP RULES

NEW SECTION

WAC 250-84-010 Purpose. The college bound scholarship as authorized by chapter 28B.118 RCW is designed to inspire and encourage Washington middle school students

from low-income families to dream big. The early commitment of state funding for tuition may alleviate the financial barriers preventing students from considering college as a future possibility.

NEW SECTION

WAC 250-84-020 Definitions. "Board" means higher education coordinating board.

"C average" means a 2.0 grade point average on a 4.0 scale.

"FAFSA" means Free Application for Federal Student Aid.

"High school graduation" means students must graduate from a public high school, private high school approved under chapter 28A.195 RCW, or receive home based instruction under chapter 28A.200 RCW having met requirements to earn a high school diploma as defined in WAC 180-51-061 or 180-51-066 whichever is applicable.

"Legal guardian" means the person appointed by the court to take legal action on behalf of and be responsible for a minor.

"Median family income" means the median income for Washington state, adjusted by family size and reported annually in the federal register and used that year for the administration of the state need grant program.

"OSPI" means office of superintendent of public instruction.

"Tuition and fees" means tuition, building, operating, service and activity fees as are used for purposes of determining the state need grant award.

NEW SECTION

WAC 250-84-030 Eligible applicant. (1) Washington students in 2007-08 and thereafter may apply who are:

(a) Enrolled in the seventh and eighth grade in a public or private school as approved by chapter 28A.195 RCW or home school as defined by chapter 28A.200 RCW; and

(b) Meet the income eligibility as defined in subsection (2) of this section.

Eligible students enrolled in eighth grade in 2007-08 were granted a one-time extension to sign the pledge during the 2008-2009 school year as ninth graders.

(2) Seventh or eighth grade students are eligible to apply if one of these requirements are met:

(a) Family income falls within the monthly or annual standards set by the U.S. Department of Agriculture (USDA) for eligibility for participation in the free or reduced price lunch program (FRPL); or

(b) Student participates in the free or reduced price lunch program; or

(c) Family receives TANF benefits; or

(d) Student is a foster youth.

To determine eligibility in unusual circumstances, or for assistance in defining household size, foster youth status, and other criteria, the board will refer students and families to the district staff who oversee FRPL, and will refer to the USDA FRPL guidelines.

If a student qualifies in the application year, the information is not required to be updated throughout the middle and

high school years. However, income will be verified using the FAFSA upon enrollment. See WAC 250-84-060, eligibility for receipt of scholarship.

(3) Eligible applications are considered complete when the signed pledge has been received by the board.

(a) A student must sign a pledge during seventh or eighth grade that commits them to:

(i) Graduate from high school with at least a C average.

(ii) No felony convictions.

(b) The section of the application that indicates eligibility must be completed.

(c) The pledge must be signed by a parent or legal guardian to attest the information is true and accurate.

(d) The signature page for the electronic application, or the signed paper application, must be received by the board.

(e) The deadline for the application is June 30th of the student's eighth grade year.

(i) Electronic applications must be received by June 30th and paper applications must be postmarked by June 30th.

(ii) Missing information for applications received on or before June 30th will be accepted before the student enters the ninth grade year.

Exceptions to the deadline will be made on a case-by-case basis by the board based on extenuating circumstances.

NEW SECTION

WAC 250-84-040 Program promotion to eligible students. The role of the board, OSPI and school districts related to notification to students, families, and school personnel about the college bound scholarship is defined under chapter 28B.118 RCW.

(1) The board shall develop and distribute to all schools with students enrolled in seventh or eighth grade, an application pledge form that can be completed and returned electronically or by mail by the student or the school to the board.

The board will provide K-12 partners, professional associations, and college access programs with program information annually.

(2) The role of OSPI is to notify elementary, middle, and junior high schools about the college bound scholarship program using methods in place for communicating with schools and school districts.

OSPI will encourage schools and districts to target communications to eligible students to the greatest extent possible. Methods may include, but are not limited to, personalized letters, integrating the application into student conferences, or holding sign-up events.

(3) The role of each school district is to notify students, parents, teachers, counselors, and principals about the Washington college bound scholarship program through existing channels.

Notification methods may include, but are not limited to, regular school district and building communications, on-line scholarship bulletins and announcements, notices posted on school walls and bulletin boards, information available in each counselor's office, and school or district scholarship information sessions.

NEW SECTION

WAC 250-84-050 Tracking of scholars. The statute requires the board and OSPI to develop tracking procedures to ensure continued eligibility and determine compliance for awarding of college bound scholarships (RCW 28B.118.020 and 28B.118.040).

(1) The board shall develop and implement a student application, selection, and notification process for scholarships.

(a) Collect authorization to release information from the student and parent(s)/legal guardian(s).

(b) Develop a web-based application tool and paper application annually.

(c) Notify applicants of missing information in a timely manner.

(d) Notify applicants of their status of complete application in a timely manner.

(e) Treat applications confidentially and hold in a secure environment.

(f) Provide complete applicants with information regarding the disbursement of the scholarship and contact information for the board.

(g) Require applicants to update their address and other contact information with the board.

(2) OSPI will work with the board to develop student tracking procedures.

The board and OSPI will share data regarding the progress of college bound scholarship students such as current school, grade level, grade point average, and expected graduation date on at least an annual basis through high school graduation, following agency protocols for data exchange and security.

(3) The board will track complete applicants and monitor progress toward graduation to determine compliance for awarding of scholarships.

(4) The board will share data and authorized student information from the application for program sign-up efforts and to provide support services to scholars who have already applied.

(a) The board will share information with schools and approved college access providers who will provide services to college bound scholarship students to support their academic success, if the proper release of information has been provided by the student and parent(s)/legal guardian(s).

(b) Aggregate data will be provided periodically and as requested to schools, districts, and partners to improve sign-up efforts.

NEW SECTION

WAC 250-84-060 Eligibility for receipt of college bound scholarships. To be eligible to receive the annual scholarship disbursement, college bound scholarship students who have met the requirements outlined in WAC 250-84-030, must:

(1) File a FAFSA (see priority consideration under WAC 250-84-070(1)).

(2) Enroll no later than the fall term of the following academic year as defined by the institution one year after high school graduation.

For example, students graduating by August 2012, have until fall 2013 to begin using the scholarship.

(a) Enroll at an institution participating in the state need grant program within the state of Washington (requirements outlined in WAC 250-20-013).

(b) Students who graduate early will be assumed to enroll with their senior year cohort. However, if they enroll early, the four-year scholarship will need to be used within five years of their initial enrollment date.

(c) Scholarships will not be disbursed prior to fall 2012.

(d) Students will be considered to have enrolled upon earning credit(s) for the term.

(3) Have an annual family income at or below sixty-five percent of the state's median family income as determined by the income reported on the FAFSA and verified by the institution the student is attending. See subsection (4) of this section.

(4) Receive the college bound scholarship for no more than four academic years within a five-year period.

(a) The four-year scholarship may be used during any term during the five-year period, even if enrollment is not continuous.

(b) The scholarship must be used within five academic years of August of the high school graduation year.

For example, students who graduate from high school in 2011-12 must begin enrollment by fall 2013, and have through spring of 2017 to receive the scholarship. However, students who begin enrollment in fall 2012 have until spring of 2016 to receive the scholarship.

(c) Each year the college bound award is limited to one academic year (three quarters, two semesters or equivalent) of payment.

(d) If students do not meet the income requirement in subsection (3) of this section in any year within the five-year period, they may still receive the scholarship for any year(s) they do meet the income requirement. Receipt of the four-year scholarship does not have to be continuous.

(5) Comply with the other eligibility criteria to receive the college bound scholarship as outlined for the state need grant program in WAC 250-20-011 including, but not limited to, requirements related to residency, undergraduate student status, academic program eligibility including the theology prohibition, enrollment level, satisfactory academic progress, and repayments.

The requirements for state need grant that do NOT apply to college bound scholarships are:

(a) The equivalent of five-year limitation under WAC 250-20-011(6) since the college bound scholarship is a four-year award.

(b) Allowable use of summer leading to four terms of payment under WAC 250-20-041(5) as the college bound scholarship award is limited to one academic year. (See subsection (4)(c) of this section.)

NEW SECTION

WAC 250-84-070 Scholarship award. (1) The college bound scholarship is intended to combine with state need grant to ensure eligible students have the opportunity to receive sufficient state financial aid to meet the cost of full

tuition, plus five hundred dollars for books each year. The award is intended to replace unmet need, loans, and at the student's discretion, work-study.

(2) The value of each college bound scholarship shall be determined by the board annually based on the amount of tuition and fees at public colleges and universities (as used for state need grant purposes) plus five hundred dollars, less the amount of state need grant the student qualifies for based on the student's MFI, and less any other state aid awarded.

(a) In order to receive the maximum state need grant for which the student qualifies, the student must meet the financial aid priority consideration deadline for the institution the student plans to attend.

(b) College bound scholarship awards will be prorated for part-time attendance as outlined in WAC 250-20-041 (4)(b).

Sector college bound scholarship award amounts (such as public research, regional and two-year, and private career and private four-year) shall follow base award amounts determined for the state need grant program.

NEW SECTION

WAC 250-84-080 Appeals. Appeals regarding application eligibility under WAC 250-84-030 should be directed to the board. Appeals regarding scholarship eligibility and awards under WAC 250-84-060 and 250-84-070 shall follow the process outlined under WAC 250-20-071 for state need grant purposes.

NEW SECTION

WAC 250-84-090 Grant disbursement to institutions. (1) Cash requests and reimbursements will follow procedures similar to state need grant.

(2) A student-by-student reconciliation will be completed each term and filed with the board at the end of each academic year.

(3) Recalculations as a result of awards in excess of tuition charges shall follow the tolerance outlined in state need grant rules or guidance.

NEW SECTION

WAC 250-84-100 Program administration and audits. (1) The staff of the board under the direction of the executive director will manage the administrative functions relative to college bound scholarship.

(2) The board will review institutional administrative compliance as outlined in WAC 250-20-061.

Any student who has obtained a college bound scholarship through means of willfully false statement or failure to reveal any material fact affecting eligibility will be subject to applicable civil or criminal penalties and repayment.