

**WSR 11-22-013****PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF ECOLOGY**

[Order 11-09—Filed October 21, 2011, 12:36 p.m.]

Subject of Possible Rule Making: The mercury-containing lights product stewardship program rule making implements state law (chapter 70.275 RCW) passed by lawmakers in the 2010 legislative session (SSB 5543). This new rule will:

- Establish the responsibilities of producers, wholesalers, retailers, distributors, and electric utilities to safely manage mercury-containing lights sold in or into Washington state.
- Establish program requirements, such as developing a product stewardship plan, outreach and education efforts, and annual reporting requirements.
- Establish requirements for collecting, transporting, processing and recycling mercury-containing lights.
- Establish the enforcement process.
- Establish how producers will fully fund the product stewardship program.
- Include other requirements necessary to implement the program such as definitions.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70.275 RCW authorizes the department of ecology to establish rules on this subject.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Chapter 70.275 RCW requires ecology to establish rules to implement this program. This rule is needed to clarify the product stewardship program requirements and funding structure.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Ecology will coordinate rule-making activities with Washington utilities and transportation commission, department of health, department of labor and industries, and Environmental Protection Agency (EPA) along with other agencies.

Process for Developing New Rule: During rule making ecology will seek input and expert advice from stakeholders. This input and advice will inform and help shape an informal draft rule. Ecology will then seek comments from the public and stakeholders on this informal draft prior to issuing the proposed rule. After the proposed rule has been released ecology will hold at least one public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Ecology intends to involve stakeholders through an open and collaborative process. Ecology will host a public workshop November 14, 2011. Ecology will seek comments from stakeholders and the public and will host at least one public hearing on the proposed rule language. Ecology has established an e-mail notification listserv and rule-development web site that will be used to provide interested parties with updates on the process. Primary contact: Kathleen Scanlan, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6559, e-mail [ksca461@ecy.wa.gov](mailto:ksca461@ecy.wa.gov), web site <http://www.ecy.wa.gov/programs/swfa/mercurylights/>, listserv <http://listserv.wa.gov/>

[cgi-bin/wa?A0=ECOLOGY-MERCURY-CONTAINING-LIGHT](http://www.wa.gov/cgi-bin/wa?A0=ECOLOGY-MERCURY-CONTAINING-LIGHT).

October 21, 2011  
Laurie G. Davies  
Program Manager

**WSR 11-22-017****PREPROPOSAL STATEMENT OF INQUIRY  
MILITARY DEPARTMENT**

[Filed October 24, 2011, 10:06 a.m.]

Subject of Possible Rule Making: Chapter 323-10 WAC, Public records.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 42.56.010, 42.56.100.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Under RCW 42.56.100, agencies shall adopt and enforce reasonable rules and regulations consonant with the intent of chapter 42.56 RCW to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. The military department is replacing the existing language of chapter 323-10 WAC (last modified in 1973) with updated language to reflect administrative changes as well as the advisory Public Records Act model rules under chapter 44-14 WAC.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The attorney general has adopted advisory model rules on public records compliance, chapter 44-14 WAC. The military department will generally adapt and incorporate these advisory model rules in chapter 323-10 WAC.

Process for Developing New Rule: Agency study; and adapting model rules in chapter 44-14 WAC.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The military department encourages your active participation in the rule-making process. Contact Bernadette Petruska, Rules Coordinator, Military Department, Building 1, Camp Murray, WA 98430-0001, voice (253) 512-8108, fax (253) 512-8497, email [bernadette.petruska@mil.wa.gov](mailto:bernadette.petruska@mil.wa.gov).

October 24, 2011

Jill Bushnell  
Public Records Officer

**WSR 11-22-019****WITHDRAWAL OF  
PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF HEALTH**

[Filed October 24, 2011, 11:22 a.m.]

This memo serves as notice that the department is withdrawing the following CR-101s:

WAC NUMBER	WSR NUMBER	WSR DATE	SUBJECT
246-836-130, 246-836-140, 246-836-150, 246-836-160, 246-836-170, 246-836-180 and 246-836-200	10-15-097	July 20, 2010	Accreditation requirements for naturopathic medical institutions.
246-836-010 and 246-836-210	10-15-098	July 20, 2010	Naturopathic physician rules to identify which nonsurgical cosmetic procedures are in the naturopathic scope of practice.
246-836-080	10-16-106	August 2, 2010	Continuing competency program for naturopathic physicians.

Since the filing of these CR-101s, the 2011 legislature passed HB 1181 creating the board of naturopathy (board), and SSB 5152 modifying portions of the naturopathic scope of practice. In order to implement the legislation, the board must open chapter 246-836 WAC and withdraw all rule projects filed under the secretary of health's authority.

Individuals requiring information on this rule should contact Susan Gragg, program manager, at (360) 236-4941.

Gregg L. Grunenfelder  
for Mary C. Selecky  
Secretary

**WSR 11-22-023**  
**WITHDRAWAL OF**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF ECOLOGY**

[Filed October 25, 2011, 9:50 a.m.]

The department of ecology withdraws the CR-101 WSR 09-05-028, February 10, 2009.

In February 2009, ecology started a combined rule-making effort to amend the Model Toxics Control Act (MTCA) and the cleanup portions of the sediment management standards (SMS). The agency has decided to divide this rule making into separate processes. In December 2010, we decided to put the MTCA rule making on hold. We are continuing work on the SMS. To clarify this, immediately after filing this notice of withdrawal, ecology is filing a CR-101 for a rule making to update the cleanup portions of the SMS.

As a separate but related and concurrent process, ecology is beginning rule making focused on implementation-related updates to the surface water quality standards.

James J. Pendowski, Manager  
Toxics Cleanup Program

**WSR 11-22-024**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF ECOLOGY**

[Order 08-07—Filed October 25, 2011, 9:51 a.m.]

Subject of Possible Rule Making: Ecology is proposing to revise certain portions of the sediment management standards (SMS) (chapter 173-204 WAC). This rule defines the requirements for managing contaminated sediments in Washington. This rule making will include:

- Updates to the SMS cleanup decision framework to address bioaccumulative chemicals which present risk to human health and the environment. This includes methods and policies for establishing risk-based cleanup standards, procedures for incorporating background concentrations, and requirements for sediment cleanup actions.
- Fish and shellfish consumption rates used to support cleanup decisions.
- Chemical and biological criteria to support cleanup decisions at freshwater sediment sites.
- Clarifying requirements for coordinating cleanup actions and source control measures to prevent recontamination.

Statutes Authorizing the Agency to Adopt Rules on this Subject: The Model Toxics Control Act (chapter 70.105D RCW) and the Water Pollution Control Act (chapter 90.48 RCW).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The relationship between sediment contamination and risks to human health and the environment is better understood today than it was when this rule was adopted in 1991 and amended in 1995. Ecology has gained experience cleaning up contaminated sediments at sites where cleanup efforts are complicated by uncertainties about protecting human health, the timing and feasibility of source control, how to deal with background levels of contamination, and liability associated with historical releases. The current rule causes lengthy cleanup delays, inefficient use of available cleanup funds, and continued exposure to unhealthy levels of hazardous substances. Rule revisions are needed to speed up cleanup of contaminated sediments by providing clear, workable, and predictable requirements for sediment cleanup actions.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Establishing sediment management requirements is a responsibility assigned to the department of ecology in chapters 70.105D and 90.48 RCW. Many tribal nations have lands or usual and accustomed fishing areas on or adjacent to cleanup sites and will be consulted during the rule-making process. The United States Environmental Protection

Agency (EPA) is responsible for overseeing cleanup actions conducted under the federal superfund program and for source control activities under the federal Clean Water Act. The Agency for Toxic Substances and Disease Registry (ATSDR) and the Washington department of health (DOH) are responsible for evaluating human health hazards. EPA and DOH are represented on ecology's sediment cleanup rule advisory committee and will be consulted during the rule-making process. The United States Army Corps of Engineers and the Washington department of natural resources are also responsible for specific sediment management activities. These agencies are represented on the committee.

**Process for Developing New Rule:** This rule making will result in amendments to the sediment management standards. Ecology plans on sharing information and working with tribes and stakeholders prior to a formal proposal. Once ecology formally proposes rule amendments, people will have an opportunity to comment on the proposed rule. At least two public hearings will be held. The proposed amendments will be posted on the ecology web site and links will be sent via e-mail to those who have expressed interest. Hard copies will be available upon request.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Ecology recognizes that public involvement is key to this rule-making effort and will provide opportunity to contribute in an informed and meaningful way. Background materials, options being considered, meeting announcements, comment periods, and contact information will be posted at [www.ecy.wa.gov/programs/tcp/regs/2011-SMS/2011-SMS-hp.html](http://www.ecy.wa.gov/programs/tcp/regs/2011-SMS/2011-SMS-hp.html). For more information contact Martha Hankins, Toxics Cleanup Program, Washington Department of Ecology, (360) 407-6864 or e-mail to [martha.hankins@ecy.wa.gov](mailto:martha.hankins@ecy.wa.gov).

October 21, 2011  
James J. Pendowski  
Program Manager

### WSR 11-22-025

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF ECOLOGY

[Order 11-08—Filed October 25, 2011, 9:52 a.m.]

**Subject of Possible Rule Making:** Water quality standards for surface waters of the state of Washington, chapter 173-201A WAC, the surface water quality standards rule-making will:

- Clarify and modify existing regulatory tools.
- Evaluate and potentially add other tools identified during the rule-development process.
- Evaluate and potentially add other amendments related to updates listed above.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 90.48.035 provides clear and direct authority for ecology to revise the water quality standards. Additionally, 40 C.F.R. 131.20 requires states or tribes (with primacy for Clean Water Act actions) to review and update the water quality standards.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The purpose of these amendments is to provide flexible and predictable regulatory tools that help entities comply with new source control requirements or discharge limits. The changes will allow entities to maintain compliance with requirements while they effectively work toward meeting permit limits and controlling sources of pollutants.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** Ecology will work with tribes to discuss rule activities and seek input. Other coordinating federal and state agencies include Washington department of fish and wildlife, Washington state department of health, and United States Environmental Protection Agency.

Stakeholders will be involved through a series of public meetings about developments, updates, and changes to implementation language.

**Process for Developing New Rule:** Ecology plans to involve interested parties with one-on-one meetings, public forums, and public notice. Ecology will use all these public activities to clearly explain the updated rule to interested parties. We plan to actively seek input on the proposed rule proposal.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Becca Conklin, Water Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6413, fax (360) 407-6426, e-mail [swqs@ecy.wa.gov](mailto:swqs@ecy.wa.gov).

October 24, 2011  
Kelly Susewind  
Water Quality Program Manager

### WSR 11-22-037

#### PREPROPOSAL STATEMENT OF INQUIRY HORSE RACING COMMISSION

[Filed October 27, 2011, 8:47 a.m.]

**Subject of Possible Rule Making:** WAC 260-36-220 Industrial insurance premiums—Additional premiums for exercise riders, chapter 260-84 WAC, Penalties.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 67.16.020.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** To address the Washington horse racing commission's ability to accept payments for industrial insurance premiums and the penalties associated with late payments.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** None.

**Process for Developing New Rule:** Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Douglas L. Moore, Deputy Executive Secretary, Washington Horse Racing Commission, 6326

Martin Way, Suite 209, Olympia, WA 98516-5578, phone (360) 459-6462, fax (360) 459-6461, doug.moore@whrc.state.wa.us.

October 27, 2011  
Douglas L. Moore  
Deputy Executive Secretary

**WSR 11-22-061**  
**WITHDRAWAL OF**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed October 31, 2011, 1:14 a.m.]

The economic services administration requests the withdrawal of the preproposal statement of inquiry filed as WSR 10-07-058 (WAC 388-412-0020) filed on March 15, 2010.

Katherine I. Vasquez  
Rules Coordinator

**WSR 11-22-062**  
**WITHDRAWAL OF**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed October 31, 2011, 1:14 p.m.]

The economic services administration requests the withdrawal of the preproposal statement of inquiry filed as WSR 10-16-150 (WAC 388-434-0010) filed on August 4, 2010.

Katherine I. Vasquez  
Rules Coordinator

**WSR 11-22-063**  
**WITHDRAWAL OF**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed October 31, 2011, 1:14 p.m.]

The economic services administration requests the withdrawal of the preproposal statement of inquiry filed as WSR 03-22-054 (chapter 388-14A WAC) filed on October 31, 2003.

Katherine I. Vasquez  
Rules Coordinator

**WSR 11-22-064**  
**WITHDRAWAL OF**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed October 31, 2011, 1:15 p.m.]

The economic services administration requests the withdrawal of the preproposal statement of inquiry filed as WSR 08-08-113 (chapter 388-14A WAC) filed on April 2, 2008.

Katherine I. Vasquez  
Rules Coordinator

**WSR 11-22-074**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)

[Filed November 1, 2011, 9:15 a.m.]

Subject of Possible Rule Making: The department is amending sections in chapter 388-106 WAC, Long-term care services.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.520.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is amending rules in chapter 388-106 WAC to revise the assessment process for allocating personal care hours to disabled children as a result of the Washington state supreme court decision regarding *Samantha A. vs. DSHS*.

Other necessary changes that arise during this rule making may be incorporated. Other WAC chapters may need to be updated as a result of this rule making.

Process for Developing New Rule: DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file a proposal with the office of the code reviser with a notice of proposed rule making. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2495, fax (360) 407-7582, TTY (360) 493-2637, e-mail angel.sullivan@dshs.wa.gov.

October 27, 2011  
Katherine I. Vasquez  
Rules Coordinator

**WSR 11-22-081**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 (Board of Boiler Rules)

[Filed November 1, 2011, 10:03 a.m.]

Subject of Possible Rule Making: Board of boiler rules—Substantive (chapter 296-104 WAC).

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70.79 RCW and chapter 50, Laws of 2011 (2ESHB 1087).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The boiler program's budget and projected revenue indicate a fee increase is necessary to help cover the cost of ongoing services. The boiler program was given the authority by 2ESHB 1087, which passed the 2011 legislature, to increase fees to cover the program's expenditures.

The purpose of this rule making is to increase the fees for the boiler program. Fee increases are necessary to cover the costs for ongoing service delivery.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The board of boiler rules will review and approve all rule changes. Parties interested in these rules may contact the individual listed below. The public may also participate by commenting after amendments are proposed by providing written comments and/or testimony during the public hearing and comment process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail sally.elliott@lni.wa.gov.

November 1, 2011  
 Robert E. Olson, Chair  
 Board of Boiler Rules

**WSR 11-22-105**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Disability Services Administration)

[Filed November 2, 2011, 9:57 a.m.]

Subject of Possible Rule Making: The department is amending sections in chapter 388-106 WAC, Long-term care services.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.520.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is revising WAC 388-106-0650 and 388-106-0655. The volunteer chore program was changed to volunteer services per ESSB 6444 (supplemental operating budget). The intent in the name change was to broaden the types of assistance available to eli-

gible clients. Current rules limit services to a traditional list of chore-type services. Without revised rules, volunteers supervised by contracted agencies managing the program are unable to provide support services in keeping with the intent of ESSB 6444.

Process for Developing New Rule: DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file a proposal with the office of the code reviser with a notice of proposed rule making. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2495, fax (360) 407-7582, TTY (360) 493-2637, e-mail angel.sullivan@dshs.wa.gov.

October 26, 2011  
 Katherine I. Vasquez  
 Rules Coordinator

**WSR 11-22-107**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Disability Services Administration)

[Filed November 2, 2011, 10:05 a.m.]

Subject of Possible Rule Making: The division of developmental disabilities is proposing to amend all WACs governed by DDD to change any language that refers to "mentally retarded" or "mental retardation" to "intellectually disabled" or "intellectual disability." Furthermore any language that includes the wording "ICF/MR" should be changed to "ICF/ID."

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 71A.10.020, 44.04.280.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: In 2010, President Barack Obama signed into law "Rosa's Law," which directed federal law references to "mental retardation" to be changed to "intellectual disability," and references to a "mentally retarded individual" to be changed to an "individual with an intellectual disability."

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Washington state legislature updated RCW 71A.10.020 which eliminates the term "mental retardation" and has replaced it with the term "intellectual disability." Changes to these WACs will keep our rules in line with changes to this RCW.

Process for Developing New Rule: DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file a proposal with the office of the code reviser with a notice of proposed rule making. A copy of the

proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Meredith Kelly, Program Manager, Division of Developmental Disabilities, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3524, fax (360) 407-0955, TTY 1-800-833-6388, e-mail [kellymj@dshs.wa.gov](mailto:kellymj@dshs.wa.gov).

October 31, 2011  
Katherine I. Vasquez  
Rules Coordinator

lication by contacting Meredith Kelly, phone (360) 725-3524, fax (360) 407-0955, e-mail [kellymj@dshs.wa.gov](mailto:kellymj@dshs.wa.gov).

October 31, 2011  
Katherine I. Vasquez  
Rules Coordinator

### WSR 11-22-110

#### PREPROPOSAL STATEMENT OF INQUIRY

#### DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Disability Services)

[Filed November 2, 2011, 10:10 a.m.]

**Purpose:** The proposed amendments to WAC 388-845-0060 and 388-845-0061 are needed to revise the current working age adult policy to allow clients to choose between employment and community access services as directed by the legislature.

**Subject of Possible Rule Making:** The division of developmental disabilities is proposing to revise the current working age adult policy to allow clients to choose between employment and community access activities. Clients age twenty-one and older who are receiving services through a home and community based waiver shall be offered the choice to transition to a community access program after nine months of enrollment in a [an] employment program and the option to transition from a community access program to an employment program at any time.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 34.05.350 (1)(c).

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** HB [2ESHB] 1087, section 205 (g)(i), directed the department to revise the current working age adult policy to allow clients to choose between employment and community access activities.

**Other Federal and State Agencies that Regular this Subject and the Process Coordinating the Rule with These Agencies:** None.

**Process for Developing New Rule:** DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file a proposal with the office of the code reviser with a notice of proposed rule making. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before pub-